Midlands Institute for Non-Profit Management  
July 10-14, 1995  
Room  

**Agenda**

| Monday, July 10 |  
|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|
| 8:30 - 9:00 a.m. | Welcome & Introductions | Debra Daly | Linda Crossett | Ray Clark |  
| 9:00 - 10:00 a.m. | Overview of Nonprofits | Mike McLean | Pete Tulipana |  
| 10:00 - 10:15 a.m. | Break | Carol Boye |  
| 10:15 - 12:00 noon | Intro to Non-Profit Management | Carol Boye |  
| 12:00 - 1:00 p.m. | Lunch | Carol Boye |  
| 1:00 - 2:30 p.m. | Intro to Non-Profit Management | Carol Boye |  
| 2:30 - 2:45 p.m. | Break | Mike McLean |  
| 2:45 - 4:30 p.m. | Intro to Non-Profit Management | Mike McLean |  

| Tuesday, July 11 |  
|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|
| 8:30 - 10:00 a.m. | Strategic Planning | Ethel Williams |  
| 10:00 - 10:15 a.m. | Break | Ethel Williams |  
| 10:15 - 12:00 noon | Strategic Planning | Ethel Williams |  
| 12:00 - 1:00 p.m. | Lunch | Ethel Williams |  
| 1:00 - 2:30 p.m. | Strategic Planning | Ethel Williams |  
| 2:30 - 2:45 p.m. | Break | Ethel Williams |  
| 3:00 - 4:30 p.m. | Strategic Planning | Ethel Williams |  

| Wednesday, July 12 |  
|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|
| 8:30 - 10:00 a.m. | Board Development | Pete Tulipana |  
| 10:00 - 10:15 a.m. | Break | Pete Tulipana |  
| 10:15 - 12:00 noon | Board Development | Pete Tulipana |  
| 12:00 - 1:00 p.m. | Lunch | Jon Breuning |  
| 1:00 - 2:30 p.m. | Legal Aspects | Jon Breuning |  
| 2:30 - 2:45 p.m. | Break | Jon Breuning |  
| 2:45 - 4:30 p.m. | Legal Aspects | Jon Breuning |  

**Thursday, July 13**

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<td>8:30 - 10:00 a.m.</td>
<td>Human Resource Development</td>
<td>Susan Ogborn</td>
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<td>10:00 - 10:15 a.m.</td>
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<td>1:00 - 2:30 p.m.</td>
<td>Summary and Evaluation</td>
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<td>2:45 - 4:30 p.m.</td>
<td>Financial Management</td>
<td>Frank Velinsky</td>
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**Friday, July 14**

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<td>8:30 - 10:00 a.m.</td>
<td>Financial Management</td>
<td>Paul Tomoser</td>
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<td>Break</td>
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<td>2:45 - 4:30 p.m.</td>
<td>Pulling It All Together</td>
<td>Suzanne Allegretti</td>
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<td>• Brainstorming</td>
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"SEE YOU NEXT YEAR"

July 8-12, 1996
SOME OF THE VALUES & BELIEFS WE BRING TO THIS INSTITUTE

LEADERSHIP: We value leadership and believe it to be an essential part of any successful organization. We believe leadership occurs at many levels, regardless of hierarchy, and that we must constantly strive to strengthen our leadership skills.

TRUSTEESHIP: We believe that the nonprofit manager assumes the obligation of trusteeship, that is, we have all been entrusted with the hopes, needs, and resources of our communities.

LEARNING: We value learning - from our colleagues, from the business world, from friends and family, and perhaps most importantly, from those we serve. We believe learning is an ongoing process, and hope that we can all learn from one another during this week.

DIVERSITY: We value diversity and, even as we struggle to truly encompass it, we seek to learn from it and grow from its strengths and its challenges. We believe that fully embracing and appreciating our diversity during this week will significantly enhance the outcome for all of us.

RISK-TAKING: We value risk-taking, and believe it to be an important and essential quality to learning - both during this institute and throughout our personal and professional careers. Take risks this week - share your concerns and failures as well as your successes.

ACCOUNTABILITY: We value accountability to those we serve, and we believe we have a continuous obligation to make the most effective, efficient, and ethical use of all the resources with which we have been entrusted.

STEWARDSHIP: We value the concept of stewardship within our roles as nonprofit managers. We believe that we hold something in trust for another and that we are accountable for the well-being of the larger organization.
SOME THOUGHTS ON LEADERSHIP

"Leadership is the behavioral process of influencing the activities of an individual or group to accomplish goals in a given situation. Leadership is a learned behavioral skill which includes the ability to help others achieve their potential as individuals and as team members."

Jerry Robinson, Jr. and Roy A. Clifford

"Leaders are people who do the right things. Managers are people who do things right."

Warren Bennis

"When people are serving, life is no longer meaningless."

John Gardner

"It's not where the puck is that counts. It's where the puck will be."

Wayne Gretzky

"Leaders think about empowerment, not control."

Warren Bennis

"Leadership is much more an art, belief, a condition of the heart, than a set of things to do. The visible signs of artful leadership are expressed ultimately, in its practice."

Max DePree

"You manage things, but you lead people."

Grace Hopper

"A qualification for leadership is that one can tolerate a sustained wide span of awareness so that one better sees it as it is."

Robert Greenleaf

"A good leader ... recruits teammates who are strong where he or she is weak. Half of being smart is knowing what you're dumb at."

John Gardner

"He who drinks the water should never forget the person who dug the well."

Unknown
HOW TO GO ABOUT BECOMING A GOOD LEADER

Be yourself.

Figure out what you're good at.

Hire only good people who care.

Treat them just the way you want to be treated.

Switch from manager to maestro.

Identify your one or two key objectives or directions.

Ask your co-workers how to get there.

Listen hard.

Get out of the way.

Cheer them.

Count the gains.

Start right now!

Warren Bennis
THE SEVEN KEYS TO BUSINESS LEADERSHIP

1. Trust your subordinates. You can’t expect them to go all out for you if they think you don’t believe in them.

2. Develop a vision. Some executives’ suspicions to the contrary, planning for the long term pays off. And people want to follow someone who knows where he or she is going.

3. Keep you cool. The best leaders show their mettle under fire.

4. Encourage risk. Nothing demoralizes the troops like knowing that the slightest failure could jeopardize their entire career.

5. Be an expert. From boardroom to mail room, everyone had better understand that you know what you’re talking about.

6. Invite dissent. Your people aren’t giving you their best or learning to lead if they are afraid to speak up.

7. Simplify. You need to see the big picture in order to set a course, communicate it, and maintain it. Keep the details at bay.

Leadership Omaha 1994

Midlands Institute for Non-Profit Management
July 10-14, 1995
20 traits that add up to a good leader

by David Glass

At Wal-Mart I think that we've simplified the definition of leadership over and over again by simply saying that to be a good leader, you have to first be a good servant. That's so simple it's sometimes difficult for people to grasp. Unless you first are willing to serve those that you are going to lead, it's impossible to be a good leader.

The views that I will share with you on leadership, particularly as it pertains to retailing and most specifically to Wal-Mart are those characteristics that I believe most leaders have:

(1) Leaders are people of vision. They possess that "I have a dream" approach that inspires people and is a really important factor in being a leader.

(2) Leaders are people of integrity. If you can't communicate your vision or your thoughts, you probably can't lead.

(3) Leaders inspire trust. The people they lead come to trust them completely.

(4) Leaders have a positive self-regard. Someone once said that if you don't think much of yourself, other people won't think much of you either. I have never met anyone I thought was a good leader who didn't have very positive self-regard.

(5) Leaders cultivate mavericks. This may be one of the more difficult things to do. You all know what mavericks are. They are the ones in the company who are forever questioning things. They challenge things, and if you let them do as much of something as they want, they cause problems, other people complain about them and they don't necessarily agree with you. Yet they force us to get better, and they cause us to improve.

(6) Leaders are innovators. Unless you are innovative, unless you continue to second guess your competition or come up with new ideas or try new things, then you become just another me-too operator.

(7) Leaders are rarely satisfied. They can't be complacent. That doesn't mean never being satisfied. But they recognize that there might be better ways of doing things and grasp quickly that there are additional opportunities. If we were half as good at Wal-Mart as people tell us, we would really be dangerous. If they had any idea of how much we leave on the table, they'd be scared to death that we might have good results, but you can never be satisfied.

(8) Leaders are willing to fail. I can't tell you how much we at Wal-Mart believe that this is a quality that a leader needs to possess. It is a human trait not to want to fail, and we do all sorts of things to keep ourselves from failing — or from giving the appearance of failure. Of course, if failure is more than occasional, you have a different set of problems. But it's this willingness to fail that gets leaders onto the leading edge and push the outer limits. The lack of such willingness could seriously harm your abilities.

(9) Leaders have a low resistance to change. Once again, it's a human trait to resist change; we all like the status quo. If everything is going well, why not leave it alone? Remember the old theory that "if it ain't broke, don't fix it." The truth of the matter is that if it ain't broke, it soon will be, and you'd better fix it ahead of time so you don't have big problems later on.

(10) Leaders have an absolute sense of urgency. If a guy has a sense of urgency, it is contagious and everyone will have it. If he doesn't, the others will rarely have it.

(11) Leaders must be people-oriented. Good leaders manifest their talents through others, and the only way that can be done is to have great people orientation.

(12) Leaders have integrity. I have never met a great leader who lacked integrity, compromised it or didn't demonstrate it when called upon to do. I think that is a critical part of the concept of leadership.

(13) Leaders have a grass-roots philosophy. What's grass-roots philosophy? It's one that simply believes that almost all of the good ideas come from people out in the stores and on the firing line. They come from people who are actually doing something. They cause problems, other people complain about them and they don't necessarily agree with you. Yet they force us to get better, and they cause us to improve.

(14) Leaders are generalists. I suppose you can be a leader without being a generalist. People will point to leaders in the technology part of the business. Should leaders be generalists? My answer is that they should. We love to be where we can add value, and the area will almost always have a much broader view of a business, its surroundings, its economics. I think that things should be generalists, and this is a generalist certainly enhances the leadership field.

(15) Leaders are entrepreneurial. One of the ways to develop leaders is to teach those entrepreneurial skills at the senior level. We at Wal-Mart believe that everyone should be an entrepreneur. Sam Walton was the entrepreneur of the company. But if you went and talked to any of the 15 department managers we have in the average Wal-Mart store, you'd find they all believe that they are entrepreneurs. So in teaching leadership skills, one of the things to instill in your people is an entrepreneurial attitude.

(16) Leaders have high levels of expectation. If I were to prioritize this list, I would place high expectations close to the top. Almost everyone, including me, underestimates that. One of the most difficult lessons to be learned by a leader is the necessity of having high expectation levels. Almost everyone has more capacity and more ability and can produce more than they believe they can. I can't think of a company that has a problem because their expectation levels were too high.

Those people whom I would characterize as outstanding leaders all have very high expectation levels for their people. At Wal-Mart we have no superordinates. We are a company of ordinary people operating in an environment that encourages and perhaps requires us to be overachievers. And I think that is the healthiest situation of all.

(17) Leaders have a competitive spirit. If you don't like to compete in every way, you probably will not make a good leader. I think that good leaders are competitive by nature.

(18) Leaders delegate authority. Good leaders push down the decision-making process and empower people to do things. But there are good leaders with a lot of the other characteristics who are unable to push down that decision-making process or let go. With the decision-making process comes power, and power and leadership skills don't necessarily come together. If you are a good leader, power naturally accrues to you but you've got to harness the power of people everywhere. You've got to push down the decision-making process to make that work. It's a very difficult lesson to learn.

(19) Leaders dare to dream. If you don't take the time to dream about accomplishing things that haven't been accomplished before, you'll miss an opportunity. If you deal with total reality all the time, you'll miss that part.

(20) Leaders dare to be different. In this day and age when most of the country has a conformist mentality, we love to be like, but to dare to be different is the quality that I think good leaders have.

How do you find leaders? You can teach a number of leadership skills, and at Wal-Mart we have leadership seminars and philosophies of leadership that we teach. The first thing you have to teach is the willingness to serve. And anyone who isn't willing to do whatever it takes to serve others is going to be a leader. Once you get past that, I think you can teach a lot of the other skills and help develop leadership qualities. Then I think you have to give them the opportunity to lead.
The Life Cycle Of Organizations

INFANCY
- Dreams & ideals
- "Prophet" style leadership
- "Sacrificial" effort
- Little formal organizational structure

EARLY CHILDHOOD
- Dreams become realities
- Focus on how to achieve objectives
- Begin to think about need for some structure
- "Terrible Twos"

ADOLESCENCE
- Organization seeks to establish acceptance
- Leadership is in the field
- Few layers of authority; high degree of flexibility
- Many do more than one job

LATE ADULTHOOD & RETIREMENT
- Strong belief in "professional" mgmt
- Focus on numbers & reports, rather than creativity
- Little clarity of mission; major focus is on personal security

FULL ADULTHOOD
- Organization feels secure
- Increased security becomes a goal
- Structure and systems expand throughout organization; more levels of management and control are added

EARLY ADULTHOOD
- Focus on expansion of services
- Introduction of the value of efficiency
- Pressure between serving more and maintaining quality & efficiency
- Specialization begins to develop

Midlands Institute for Non-Profit Management
July 10-14, 1995
THE CHARITABLE CORPORATION -- FUNDAMENTAL LEGAL PRINCIPLES

A. WHAT IS A NOT-FOR-PROFIT CORPORATION

1. NO PROFITS DISTRIBUTED TO INDIVIDUALS
2. "NON-PROFIT" DOES NOT MEAN "LOSS"
3. A PUBLIC TRUST - HELD BY TRUSTEES

B. WHAT IS A TAX-EXEMPT ORGANIZATION

1. GENERALLY I.R.C. SECTION 501(c)
2. SECTION 501(c)(3) CHARITIES
   a. Organized and operated for charitable purposes
   b. Prohibition of inurement/private benefit
   c. Limits on lobbying and campaign activities
   d. Unrelated business income tax
3. STATE PROPERTY TAX EXEMPTION - CHARITABLE OWNERSHIP AND CHARITABLE USE

C. ORGANIZATIONAL DOCUMENTS

1. ARTICLES OF INCORPORATION
2. BYLAWS
3. MINUTES, BIENNIAL REPORTS, ETC. - MAINTAINING CORPORATE FORM

D. LIABILITY, INDEMNITY AND INSURANCE
THE MANAGEMENT PROCESS

↓

MISSION

↓

VALUES

↓

GOALS

↓

INPUT MECHANISMS
- Persons Served
- Staff
- Governing & Advisory Boards
- Other Professionals
- Regulators & Accrediting Bodies
- Funders
- Community

↓

ORGANIZATIONAL (STRATEGIC) PLANNING

↓

MANAGEMENT TOOLS
- Governance
- Human Resources
- Budgets
- Financial Management
- Program Planning & Service Delivery
- Quality Improvement

↓

EVALUATION
Our Annual Report on

INFORMATION TECHNOLOGY

OVERVIEW Page 86
The networked corporation can do business anywhere, anytime—in theory. But for many organizations, networking is not working.

ANATOMY OF A NETWORK Page 90
From your pocket pager to the World Wide Web, here's the circulatory system of the Body Electric.

SOFTWARE Page 92
MIDDLEWARE: Today's sprawling networks need plenty of cyber-spackle to hold them together, and the market for it is hot.

GROUPWARE: Why does IBM think Lotus is worth so much loot? SECURITY: What to do when every user is a potential hacker.

THE INTERNET Page 100
Business executives are still asking: "What exactly will it do for me?"

INFORMATION MANAGEMENT Page 102
SUN MICROSYSTEMS: It's proving companies can go mainframe-free.
TELECOMMUTING: At 8.4 million, it's the fastest-growing sector of the work-at-home set.

MOBILE COMPUTING Page 106
Beaming data over the airwaves sounds good, but the costs are stratospheric.

TELECOMMUNICATIONS Page 110
Deregulation is coming any decade now—and so is a better public phone network.

ENTREPRENEURS Page 114
There's a network play for every investor.

SERVICES Page 118
Dead disks, frozen file servers, dismembered PCs—it's all in a day's work for computer doctor Michael O'Brien.
Linking up is hard to do—but it's a necessity

The Internal Revenue service had a great idea a few years ago: Let millions of taxpayers simply phone in their returns. After successfully testing pilot systems, the agency is ready to go live in 1996. Some 26 million taxpayers who use the 1040EZ form will be able to call an 800 number, tell a voice-recognition computer their vital statistics—Social Security number, taxes withheld, and income—and, on the spot, the machine will say how much is owed or due. The system could save millions—and make tax day a bit less gruesome.

Seems like a great example of how the combination of clever computers and advanced networks can speed things up, eliminate hassles, and save money. And it could be. But because Congress requires that all tax forms be signed with a pen, taxpayers who use the new setup will still have to mail in paper returns—which will have to be processed the old way.

So you're probably thinking: That's the government for you—so mired in red tape that it can't begin to make use of high-tech networking. But think about your own company. Does your legal department let you accept a contract that has been sent by electronic mail? Can your employees fill out their expense forms on PCs, then get them approved and filed electronically? Does information flow freely throughout your organization to wherever it's needed, rather than up and down the hierarchy? Can customers dial into your computers to check the status of orders—instead of playing phone tag with somebody in your sales department? Is your company saving money by electronically linking up with a dozen suppliers in a just-in-time inventory network?

The answer is probably: Not yet. And it isn't because the telecommunications world hasn't dreamed up enough products and services. There are LANS and WANS, routers and brouters. There's SONET and ISDN and TCP/IP and ATM—a jumble of jargon representing huge advances in technology to move information anywhere it needs to go. The Electronic Industries Assn. estimates that U.S. manufacturers will ship $64 billion worth of communications gear this year, a 24% gain over 1994, while shares of 3Com and Bay Networks, makers of internetworking gear, are surging. Giant IBM believes its customers want groupware technology for networks so badly that it's spending $3.5 billion on Lotus Development Corp. to get it (page 96).

IBM is playing a costly but essential game of catch-up. From making widgets to posting electronic ads to collecting payments, businesses are going electronic, or trying to. That's why Business Week is devoting its first Annual Report on Information Technology to the Networked Corporation.

Even though networks are pervasive, the benefits
they promise are maddeningly elusive. “The technology is here,” says Daniel Shubert, director of client/server technical services for Electronic Data Systems Corp. “The problem is not with the technology, but with the corporate processes. Companies must fundamentally change the way they do business, and that’s hard.” In other words, you can’t run a 21st-century networked corporation with 1950s rules.

Outdated management schemes aren’t the only human factor holding things up. Around the world, politics has slowed attempts to liberalize outdated telecommunications regulations, leaving most countries with regulatory restraints that phone companies say restrict their ability to offer the most advanced services, such as video dial tone. And since most of the world’s phone companies have yet to deploy modern digital transmission schemes, it’s still tough to cobble together a high-speed network over large distances. Within a building, a local-area network (LAN) transfers data at “broadband” speeds—10 million bits, or 10 megabits, per second or more. Then the data hits the local and long-distance nets, and speed drops quickly, to 2 megabits at best.

And though digital technology has cut transmission costs, in the absence of real competition, local phone companies haven’t passed on the savings, customers complain. “There has been a 20% to 30% reduction in network costs, but there has been no big decline in the cost to the customer,” says Andrew Grove, CEO of Intel Corp. “Intel constantly badgers the phone companies to lower prices.”

Congress is currently debating a deregulation bill that would allow competition among local and long-distance companies and cable-television systems, as well as various and sundry new entrants. But several previous bills have been killed by gridlock (page 110).

Businesses can’t afford to wait. In the 1980s, a handful of cutting-edge corporations such as Wal-Mart Stores Inc. and Federal Express Corp. showed how networks—when used to support novel business approaches—can change the competitive landscape. Now, getting wired to speed up internal processes and reach out to others electronically is an imperative. “The ability to do more and more commerce over a network is at the forefront of everybody’s thinking,” says George T. Shaheen, managing partner of Andersen Consulting. “What’s going to happen—because we want it to—is that the network is going to take time, distance, and space out of the equation.”

For those that don’t get it, the future could be grim, warns Robert M. Curtice, director of Arthur D. Little Inc.’s North American Management Consulting Group. “Whole industries will restructure or disappear,” he says. “For some companies, such as banks, if they haven’t started doing [electronic commerce], it may already be too late.”

In industry after industry, though, you’ll find companies that are starting to reap big benefits from networking. BP America Inc., for example, the U.S. subsidiary of British Petroleum Co., is setting up a system that will process at least 40% of the 440,000 invoices it receives each year electronically. The switch will do more than save on man-hours and paperwork: BP expects to be able to eliminate duplicate purchases and negotiate bulk rates.

A networked corporation can do business anywhere, anytime, getting a jump on competitors that still conduct business the old-fashioned way. And it no longer matters where your best and brightest talent resides: Sweden’s L. M. Ericsson has 17,000 engineers in 40 research centers located in 20 countries around the world, all linked into one network. Development teams in Australia and England work together on the same design, then zip off the final blueprint to a factory in China.

In many businesses, networks allow companies to vacate expensive office space because employees can get their work done wherever they roam (page 104). Andersen’s Shaheen runs the Chicago-based consulting firm from his office in Palo Alto, Calif., and doesn’t much care where his employees are—as long as they’re connected to the network. ISDN (integrated services digital network), a high-capacity digital service available to residential phone customers, could be a boon to telecommuting.

Still, the biggest payoff from networking comes when companies use it to do better by their customers. Two years ago, Del Monte Corp. started

LANS and WANs do not an efficient workplace make: “You can’t assume people will share information,” says a consultant, “just because the network allows them to”
Overview

getting daily inventory reports electronically from grocers. When stocks fall to a predetermined minimum level, the Del Monte network immediately issues a restocking order. Retailers need only keep some 1½ weeks of inventory on hand as a result, compared with the four weeks’ worth they used to warehouse to avoid shortages. “One week of inventory in a warehouse costs a retailer some $250,000 a year,” says R. Vincent Livingston, manager of efficient consumer response for Del Monte. “The biggest thing a customer wants is to not have to invest as much in inventory.”

Most corporations have taken the first steps toward such digital nirvana by installing LANS to connect their ubiquitous desktop computers. A decade after they started linking PCs, LANS are the central nervous systems of offices. They carry everything from E-mail to desktop videoconferencing. At their best, LANS support sophisticated client/server computing setups that not only supplant older mainframes and minicomputers but also allow staffers to do things the old setups couldn’t, such as working on the same document simultaneously.

Getting to that stage is not easy. The complexity of putting all the technology together is enough to send managers screaming for pencil, paper, and stamps. For the network to operate smoothly, everything on it must adhere to consistent hardware and software standards and communications protocols. This goes beyond whether to buy IBM or Apple, Windows or OS/2. You have to worry about bridges and routers that connect LANS in different departments, modems and gateway computers that move data to the outside world, and the PBX that routes phone calls. All of these decisions are affected by how much capacity, or bandwidth, you want and the number of employees using the network.

The more cutting-edge the technology, the dicier the decision-making. For example, a new set of superfast digital-transmission technologies is appearing for wide-area networks (WANS). Asynchronous transfer mode (ATM) is particularly good at mixing voice, data, and video traffic at high speeds. Frame relay can send large files quickly by temporarily seizing extra bandwidth, and SONET, a technique that sends signals simultaneously over two different paths, raises the reliability of the net. Together, these three promise WANS that can hit speeds as high as 1 billion bits per second.

But mixing these technologies with existing net-

Communications Jargon That You Should Know

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<td><strong>ASYNCHRONOUS TRANSFER MODE (ATM)</strong></td>
<td>A high-speed digital switching and transmission technology that allows voice, video, and data signals to be sent over a single line at speeds ranging from 25 million to 1 billion bits per second (bps). An analog phone line transmits at about 2 million bps—at most.</td>
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<td><strong>BRIDGE</strong></td>
<td>A device that links two local-area networks together so they can share data.</td>
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<td><strong>BROADBAND</strong></td>
<td>Refers to any transmission at a speed higher than 2 million bps. A broadband network can carry voice, data, and video signals simultaneously. Remember: You can’t be too thin, too rich, or have too much transmission capacity.</td>
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<td><strong>CLIENT/SERVER</strong></td>
<td>A method of computing in which one computer acts as a central repository for files and programs that can be shared by a number of “client” PCs connected by a network. Replaces a mainframe-centric setup.</td>
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<td><strong>ELECTRONIC DATA INTERCHANGE (EDI)</strong></td>
<td>A series of standards that allows computer-to-computer exchange of business documents, such as invoices, shipping orders, payments, etc., between different companies.</td>
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<tr>
<td><strong>ETHERNET</strong></td>
<td>A set of local-area network (LAN) standards that allows networking products from different vendors to communicate. Introduced some 20 years ago, it is the most widely used LAN technology.</td>
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works means dealing with a host of vendors, each interpreting so-called industry standards its own way. A dozen suppliers offer gear built on the ATM standard, but it's rare to find two exactly alike.

And, warns Howard Anderson, managing director of Boston-based consulting firm Yankee Group Research Inc.: "If you build it wrong, you'll be chasing your tail trying to correct it well into the next century."

There are a couple of ways around the complexity. One is "middleware," software that acts as a translator for all the different devices and programs that make up a net (page 92). The beauty of middleware is that it provides a way to bring older computers in on the scheme. "Green-field opportunities are very, very scarce today. You always have to deal with legacy systems," says Krish A. Prabhu, chief technical officer for Acalte Network Systems.

Another option is to adopt the communications protocol of the Internet, TCP/IP, the shorthand way of saying transmission control protocol/Internet protocol, is now being worked into everything from mainframes to LAN equipment. Its near-universal use is making it the lingua franca of electronic commerce. And the World Wide Web, which provides an orderly way to go from one Internet computer to another, is rapidly turning into a virtual commercial district (page 100).

Or you can just sidestep the complexity altogether by leaving it up to somebody else. The network muddle is a boon to consultants and "outsourcers"—companies such as EDS that take over a company's entire network operation for an annual fee. Market researcher Dataquest Inc. estimates that the computer-services business will grow from $33.3 billion in 1993 to $65.2 billion in 1998, with the network-management portion increasing from 26% to 31%. Gregory M. Jacobsen, executive vice-president for outsourcing services at SHI Systemhouse Inc., points out that bringing in a third party also makes it easier for the chief information officer to rein in all those PCs. "You modern CIO is starting to recognize that outsourcing...is a way to win back control," says Jacobsen.

In the end, however, getting the most out of the network means giving up control. A key difference between companies that make the net work for them and those that don't is their approach to information. "You can't assume that people will share information on a peer-to-peer basis just because the network allows them to," says Yankee Group's Anderson. But until a company is willing to share information with workers at the sales counter or the shop floor, the most sophisticated network technology won't help the bottom line.

By Catherine Arnst in New York, with bureau reports

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**FRAME RELAY** A transmission standard for sending data over public or private leased phone lines. Data is broken down and placed in frames, each the same size, for relaying.

**INTEGRATED SERVICES DIGITAL NETWORKS (ISDN)** Offered by local phone companies, this protocol turns a standard copper phone line into a high-speed digital link that can send voice and data simultaneously. With an ISDN line at home, you can pretend you're in the office using the LAN.

**LOCAL AREA NETWORK (LAN)** A network within a building or a limited distance that links computers and peripheral devices, allowing them to share information and programs.

**PACKET SWITCHING** An efficient way of moving data through a network. A file is broken up into little packages that are sent by different routes through a network and then reassembled at the receiving end.

**PRIVATE BRANCH EXCHANGE (PBX)** An automatic telephone switch for an internal phone system. It replaces the old-fashioned office switchboard and manages the voice-mail system.

**ROUTER** A device that connects LANs that use different standards; essentially a more sophisticated type of bridge. What do you get when you cross a bridge and a router? A brouter, of course.

**SONET** Stands for synchronous optical network technology, but don't worry, no one ever uses the full name. A high-speed transmission architecture meant to exploit the huge bandwidth available on fiber-optic networks.

**TI** A standard for digital transmission over phone lines. In North America, it can handle at least 24 voice channels at once using copper wires and transmits at a rate of 1.5 million bps.

**WIDE AREA NETWORK (WAN)** An enterprise-wide communications network that allows signals to be transmitted from a LAN via a public or private line to other LANs in distant locations.
Anatomy of a Network

WAN: A Wide-Area Network connects suppliers, factories, and warehouses with corporate headquarters.

GROUPWARE: Network software that allows groups of people to work together on documents, schedules, and so on.

ISDN: Local phone companies offer Integrated Services Digital Network lines that can transmit voice, data, and video simultaneously, making it easier to telecommute.

WORLD WIDE WEB SERVER: A computer that stores "pages" of information that can be called up across the Web, a way of organizing the unwieldy Internet. Increasingly this is being used to set up electronic malls to reach customers directly.
Making all the connections

For the past decade, companies have been moving away from large mainframe computers to networks of personal computers, a setup known as client/server computing. The heart of this model is the local-area network, or LAN, a pipeline connecting computers and peripheral devices so they can share data. Employees use the LAN to send e-mail and call up files stored in a communal server, and to collaborate on files using groupware. The mainframe still has a big role—performing heavy-duty jobs and acting as a repository for large databases.

To exchange information with computers outside the building—at a factory in another state, say—the PBX funnels calls and data to local and long-distance services. It also manages all internal voice traffic and a company's voice mail system. The LAN is connected to the PBX via a gateway computer crammed with modems.

Fiber-optic cables provide high-speed links in and out of the local phone company's central office. This is where calls are routed between local subscribers, long-distance networks, and wireless services such as cellular phones. ISDN speeds data over ordinary residential phone lines used by telecommuters.

Increasingly, businesses are using wide-area networks to engage in electronic commerce with suppliers and customers. The Internet, a worldwide network of computers linked by phone lines, has emerged as a means for low-cost business networking. And there's a flurry of activity on the Net's World Wide Web, an engaging way to post information and electronic advertising that reaches a potential 25 million internauts.
CYBER-NETWORKS NEED A LOT OF SPACKLE

The golden opportunity in software: Paving over myriad incompatibilities

At the heart of every network is the acre of code that is software—the stuff that makes the bytes run on time. As corporate computing evolves from the mainframe-centric to the client/server model, the software running it all has had to become an extremely clever jack-of-all-trades, operating on machines from a variety of vendors and processing everything from huge data files to optically scanned images to video presentations. Getting the software right is one of the most important challenges for companies hoping to live the networked life. Here are three kinds of software—middleware, groupware, and security programs—that make it all happen.

BROKERING BABEL: Programs that give networks one voice

The great promise of computer networks has always been flexibility—that they would provide easy access to all sorts of information and electronic services—both within companies and, increasingly, across corporate boundaries. But that very flexibility creates monumental problems for programmers. And where there’s a problem, there’s an opportunity to create a whole new category of software—or at least a buzzword.

In this case, it’s called middleware. The nebulous name relates to its role as a critical middleman, mediating among the many kinds of hardware and software now found on large networks. It is a creature born of chaos, for most corporations today have built, without quite planning to, what the folks in computing call “heterogeneous networks”—sprawling setups containing all sizes and brands of computers and software. In the past, a billing application, say, would have been run on a single mainframe computer and would have relied on software supplied mainly by a single company, most likely IBM. Today, the networked version of that application may need to call on software from a dozen suppliers, whose products may or may not be compatible with one another.

Middleware aims to give this hodgepodge at least the appearance of harmony, even as its individual components change and expand in number over time. That looks to be the main programming challenge of the ’90s. Without middleware’s ability to pave over the incompatibilities among computers and to accommodate the shifting complexities of big networks, client-server computing networks would grind to a halt. So middleware is hot: Market researchers International Data Corp. forecasts a middleware market that will grow from $50 million last year to as much as $1.7 billion by 2000.

GLOBAL COHABITATION. The more complex the network, the greater the need for middleware. By now, getting a sales department’s two-dozen PCs to share files on a small server is practically a no-brainer. All the software one needs can be found at the local computer store. But try getting more than 2,000 computers, ranging from mainframes to all sorts of desktop workstations, to cohabit on a worldwide network—itself made up of numerous subnetworks.

That’s the very problem New York investment bank J.P. Morgan & Co. is tackling in an attempt to turn itself into a “real-time operation.” Says Jeffrey G. Chittenden, Morgan’s chief computer architect: “We want all of our information to be available anytime and anywhere.” That means heavy use of middleware, Chittenden says, to help Morgan’s programmers create complex new information systems on the fly—in a few min-

Middleware on the Job

A set of software dubbed middleware oversees the many interactions between disparate computers, both inside and outside of the bank, that help process a loan application. The middleware lets each computer—at a credit reporting agency or at a branch—continue operating independently yet, without reprogramming, cooperate intimately with the others.

DATA, EATY, COO & CO.
GROUP THERAPY: Why IBM paid all that loot for Lotus

How much is it worth to own the software that really lets groups of workers take advantage of computer networks—to collaborate as easily across the globe as down the hall? Try $3.5 billion. That's what IBM is shelling out for Lotus Development Corp., the roughly $1 billion software maker best known for its popular 1-2-3 spreadsheet.

The prize is Lotus Notes, the defining product in an emerging category of software known as "groupware," so called because it's designed for sharing information among members of a group.

What's the big deal? IBM Chairman Louis V. Gerstner Jr., a devout Notes user himself, sees an opportunity to turn the competitive focus away from operating systems—where IBM has had little luck slugging it out against Microsoft Corp.—to building the computer industry's next generation of networked information systems.

SEAMLESS PACKAGE. Groupware is actually a catch-all term encompassing products ranging from fancy E-mail systems to scheduling programs to electronic bulletin-board software. The most sophisticated groupware packages have advanced features for automating the flow of work, routing documents, and allowing far-flung people to collaborate on a single document at the same time.

So what makes Lotus Notes stand out in the world of groupware? While many products tackle pieces of the puzzle—scheduling or shared databases, say—Notes is a comprehensive, seamless package. It can also be customized and used...

Middleware becomes even more crucial as corporate networks start intersecting with one another. In building a system to collect clinical health data electronically from thousands of independent doctors, hospitals, laboratories, and pharmacies, for instance, Kaiser Permanente has turned to IBM's MqSeries software. Based on work originally done by New York-based Apertura Technologies Inc., Mq creates a sort of postal system that can move messages and coordinate tasks between 18 incompatible types of computers—including those from IBM's major competitors. At the Chicago Mercantile Exchange, Mq helps some 75 member firms, using a variety of computers, exchange trading information with one another.

In fact, many different software products are coming out under the middleware sobriquet. These range from so-called screen scrapers, which let PCs pretend to be mainframe terminals, to Xerox's Top End. That program, a so-called transaction monitor, keeps track of transactions between computers to make sure they are completed the way they are supposed to be.

All of these programs try to marry the old to the new, the near to the distant, and the proprietary to the open—and, of course, to make networks easier to program. If a network starts delivering on that promise of easy access to any information anywhere at anytime, you can bet middleware is on the case.

By John W. Verity in New York
as a "platform" upon which to build additional applications—for managing a remote sales force, for instance. That has attracted many large organizations—such as Price Waterhouse, General Motors, and Compaq Computer—that need to connect widely dispersed workers but want a system tailored to their needs.

Take Andersen Consulting. The $3.45 billion consulting firm built a system based on Notes called Knowledge Exchange, which serves some 20,000 consultants around the world. When Andersen had only a few people working in a particular area, it was easy to know which one of them to call for advice, explains Charles M. Paulk, Andersen's chief information officer. Today, Andersen has over 30,000 employees worldwide, and the Notes system, says Paulk, "is how we keep up with ideas and developments around the world."

**Quick Solutions.** Knowledge Exchange, which Andersen launched three years ago, now consists of over 2,000 databases that consultants can tap into. Each specialized group has a database on the system and a "page" summarizing its contents and any relevant news. As employees add to their database, they build a library to store the group's collective experience and knowledge. So when a question relating to a project arises, consultants can check the Notes database to find an answer quickly. Employees can also use Notes for electronic consultations with each other. The result: Problems that once took two weeks and thousands of dollars to figure out are solved overnight, says Paulk.

No wonder sales of groupware programs are taking off. Workgroup Technologies Inc., a Hampton (N.H.) researcher, predicts that sales of groupware packages of all types will more than double, to $4.2 billion by 1999, from just over $2 billion in 1994. Operating system. In reality, for Notes to compete with the Windows juggernaut, it must become a standard. Notes Version 4.0, due later this year, will help. The upgrade will give Notes a slicker user interface and make it easier for network administrators to manage. But more important, it will be better suited for sharing information beyond one company, whether over the Internet or over private networks. The new version will be able to serve thousands of users and make it easier for one company to grant another access to its Notes server.

The big boost, however, could come from Network Notes, a version being adapted to work across AT&T's long-distance network. Call it groupware on steroids. Already, companies such as Compaq and Egghead Software are testing Network Notes to share information with customers, partners, and
field offices. IBM plans a similar system, pairing Notes with the IBM Global Network, which serves 25,000 corporations.

The lure of Notes on these private networks, says Lotus, is that it will provide the far-flung access of the Internet without the chaos or risk. Like the Internet itself, Notes is now mainly a means for disseminating information—say, product and pricing data to customers. But in its beefed-up, long-distance version, it could be used for electronic commerce—for buying and selling everything from industrial goods to the latest fashions.

The biggest competition from Notes may not be other groupware programs, but the Internet. The Net’s World Wide Web is already being used as a sort of poor man’s Notes. “The World Wide Web will do more than Notes,” says Robert D. Kutnick, chief technology officer at Quarterdeck Office Systems, Inc., which is developing Web-server software. And it’s cheap. For less than $500, he says, you can set up a Web server for an entire corporate network—much less than $275 per workstation it would cost with Notes.

Still, no Internet setup has yet matched all the useful features of Notes. One of the most difficult to duplicate is replication, which ensures that even if there are thousands of users, they all have the latest version of a document or database. And like everybody else in the high-tech world, Lotus has figured that the only way to beat the Internet is to join it. Notes 4.0 will tap into the Net and convert Notes databases into the Web format known as HTML (hypertext markup language). The payoff of combining groupware and the Internet—two of the hottest technologies around—could even be worth a $3.5 billion bet.

By Amy Cortese in New York, with bureau reports

**HACKER HEAVEN: So many computers, so few safeguards**

Ever since armed men guarded the “electronic brains” that cracked Nat Sec, selling a user’s data, and tampering has been a concern in computing. With today’s distributed computing networks, though, there’s a more difficult to keep unauthorized users out and data secure. Networks, as the Office of Technology Assessment reported to Congress last year, “can make every user essentially an insider” with the potential to ello, ber vital information systems.

It’s easy to make you want to yank out those network wires. But that won’t be necessary, experts say. If businesses adopt a new approach to network security. With so many modern and local-area network (LAN) connections installed on so many PCs, and with private and corporate connections to the Internet proliferating, companies must take it for granted that every computer on the planet can now reach and possibly meddle with any other— and will, if appropriate protection isn’t in place. “We assume that everyone is a hacker,” says Carmine Villani, vice-president of information management at McKesson Corp., a drug wholesaler.

“That’s the only way.”

The range of security measures for PCs and LANs is expanding daily. Devices originally designed for spy agencies are now standard corporate issue. Security Dynamics Technologies Inc. and LeeMah Datacom Security Corp., among others, supply pocket-size cards that generate a brand new password every minute. Biometric devices can now identify people by the size of their hands, patterns in retinal blood vessels, or the dynamics of their voice or handwriting.

Connecting your network to the hugely popular Internet opens it to potentially millions of largely unidentifiable visitors—of whom, you can be sure, at least a few are malicious, and even criminal, hackers. To keep the bad guys out while still allowing insiders full access to the Internet, many organizations are setting up “firewalls”—gate- network, companies are also encrypting their traffic with secret keys, or keys. This raises a new issue: When millions of individuals and corporate entities are doing business in cyberspace, each using a unique key, who will manage all of those keys? Who’s going to do the record of them? A government agency, perhaps, such as the post office, or a private company? “No one’s done this for 100,000 people, much less a million,” says Geoffrey Baehr, chief network officer at workstation maker Sun Microsystems Inc. “It smells like an opportunity to me.”

One company that has seized the opportunity is Northern Telecom Ltd. The phone equipment maker now sells a program called Entrust that, besides helping manage large numbers of keys and protecting network traffic against snoops, makes sure messages arrive intact and verifies that senders are who they say they are.

Indeed, network security is a field ripe with opportunity—and unknowns. Baehr and his colleagues at Sun are working on strategies for countering so-called denial-of-service attacks. Using a powerful computer, an adversary could effectively shut down a company’s Internet server by bombarding it with false messages. One solution: a new breed of firewall system programmed to continuously look out for and then block such threats. It just shows: For every solution in cyberspace, there’s always another problem to solve.

By John W. Verity in New York

“Firewalls” block unwanted traffic—“It’s like having a big bouncer at the door”
HOW TO KICK THE MAINFRAME HABIT

At Sun, the network finally is the computer

Thanks to advances in the powers of Sun’s workstations, servers, and the software that binds them, the company is already living by its trademarked corporate slogan: “The network is the computer.” The lone mainframe is merely one of 230 servers feeding 22,000 workstations on the Sun network. And it’s already a persuasive sales tool. Says Dennis W. Walsh, chief information officer at Entergy Corp., a $6 billion utility in New Orleans, which is running everything but its billing system on a network of Sun computers: “You can go there and see it working.”

Surprise. Warts and all. Even the self-proclaimed leader of networked computing has had to deal with the issues facing thousands of other businesses trying to live on a network. Delays, missteps, and internal resistance have added years and millions of dollars to the process, Sun concedes. Surprise No. 1, says William J. Ruckelshaus, Sun’s vice-president for corporate planning and development: The biggest obstacle isn’t technology, but people. Even Harris Kern and Randy Johnson, the managers charged with carrying out the transition, didn’t believe it could be done. Nor did Sun’s engineers, who presented having to adopt mainframe safety measures such as regular data back-ups and using standardized software. Only after years of negotiation and system outages were they convinced that central coordination was a must.

The next problem: Off-the-shelf software to run critical operations on a global network, and share data simply didn’t exist. So Sun painstakingly had to write its own. Sundans, for instance, zaps new applications across the network to the individual machines where they are needed. Now a new application is up in a day, instead of the weeks or months it took with the mainframe. Another program, Sun Paperless Reporter, automatically distributes data in easy-to-read report form, saving millions of printed pages a year.

All this networking is already reflected in Sun’s bottom line. For instance, since managers now have faster access to inventory and order data, Sun takes only 135 days to log revenue from the time an order is taken, down from 275 days in 1989. That has helped generate some $700 million in cash. Sun’s earnings are expected to jump about 80%, to $350 million, on a 25% increase in sales, to $5.9 billion, in the fiscal year ending June 30.

Sun is far from done with its network, however. An early developer
Information Management

and user of the Internet, it's adopting the Net's World Wide Web format to make company data more easily available. Employees can simply click on a word or phrase, and they're instantly connected to more detailed information on that subject. And Sun is at the forefront of using the Net for electronic commerce—forging digital links with suppliers, resellers, customers, and software companies. Raduchel is also setting up a Web server for the chief information officers of Sun's top 10 customers to exchange tips. Says Raduchel: "We're moving from a computing castle to a computing community."

PROMISES KEPT. The toughest transition, though, still looms—moving manufacturing support off the mainframe and onto the network. Sun had hoped to unplug the mainframe last year. But Oracle Corp. was late with its customized networked program for manufacturing resource planning. Also, to ease transition to the network, Sun decided first to simplify its manufacturing operation by consolidating distribution warehouses, reducing its supplier list, and farming out packaging and delivery. With the reorganization mostly complete, Sun hopes to move the last manufacturing operations off the mainframe by February in the U.S. and by August, 1996, elsewhere.

By then, it will be able to make production changes daily or even hourly instead of biweekly, says John C. Shoemaker, vice-president for worldwide operations.

The final step, due to start in August, is a data-sharing scheme that will end the need to write complex middleware software between every program. Sun will "broadcast" every key transaction over the network, and each operation will receive only the data it needs, translated automatically for their programs.

Network computing hasn't been nirvana. It often requires spending more on computer equipment and staff in each location. "At the end of the day, this might not be cheaper than mainframe computing," says Sun Controller George Reyes. But there's the benefit of increased overall efficiency (chart, page 102).

Perhaps more valuable, the network has become Sun's chief selling tool. Says James Stikeleather, a partner with Tampa computer consultant Technical Resources Connection: "They've been able to do what they promised." Indeed, Sun has literally written the book on networked computing: Rightizing the New Enterprise, by Kern and Johnson. Now Sun has to keep living up to its claims.

By Robert D. Hof in Palo Alto, Calif.

WELCOME TO THE OFFICELESS OFFICE

Telecommuting may finally be out of the experimental stage

DANIEL, a sales manager for American Express Co. who lives in West Palm Beach, Fla., rarely sees her supervisor or spends little meaningful face-time in the office—she's still in the loop. She even gets a daily cheerleading missive from her boss via AmEx's private network to her laptop, wherever she is working. "Let's end this year with a massive finish," reads one. "THINK BIG, THINK GIANTIC, THINK HUMONGOUS, THINK ABSOLUTELY ASTRONOMICAL, DON'T STOP AT NOTHING!"

Most of all, don't stop at headquarters. Daniel and the entire 240-member core sales staff at American Express Travel Related Services Co. are telecommuters, members of the labor force who have chosen to, or have been told to, work anywhere, anytime—as long as it's not in the office.

With groupware, digital phone lines, and wide-ranging cellular networks, wherever these workers are can be a node on the corporate computer network. Market researcher Link Resources says the 84 million telecommuters out there today represent the fastest-growing portion of the work-at-home set. It expects the number to exceed 13 million by 1998.

The push to telecommute has gained momentum through federal incentives to reduce air pollution, corporate efforts to cut office space, and the need to hire key talent. Take Northern Telecom Ltd.'s Tennessee-based service operation: It wanted to hire William W. Holtz last year as vice-president for global enterprise services, but the former Unisys Corp. executive refused to leave Philadelphia. Northern Tel got him anyway, and Holtz now supervises a staff of 1,000, including his Nashville-based secretary, from his home in Philly. "There's nothing I can do in an office that I can't do at home," says Holtz. "And you eliminate the cost of having an office just to drive to and sit in."

DESK SET. Companies' efforts to cut costs have led to some interesting experiments. Ernst & Young has implemented "hoteling," in which up to 10 people share a single desk in a fully equipped office on an as-needed basis. Employees must reserve in advance. Over the past three years, the accounting firm has slashed its office space requirements by about 2 million square feet.
saving roughly $25 million a year.

But the mobile concept of work does not come easily to all. For now, it's mostly salespeople and other travel-intensive staffers who are moving out of the office, on the theory that they weren't around much to begin with. Many companies still like to keep an eye on the troops. "This isn't the same workforce we had even 20 years ago," says Joel Kugelness, author of Telecommuting: A Manager's Guide to Flexible Work Arrangements. "But we're managing the same way we did 100 years ago."

New technology could help. Affordable desktop videoconferencing means that more home-office workers can beam in as needed. Vivo Software Inc. just launched TeleWork-5, a $1,495 software-based package that lets telecommuters use video, share documents, and surf the Internet. In April, Avaya, Intel, and Lotus teamed up to develop new videoconferencing products that exploit Avaya's WorldWorX Network Services, Intel's ProShare videoconferencing system, and Lotus' Notes software. "The last bastion of disbelief for reluctant managers is "How can I supervise them if I can't see them?" says Jack M. Nilson, president of JALA International, a Los Angeles consulting firm. With videoconferencing, he says, "that goes away."

FANCY PHONES. Local phone companies are also waking up to a huge market in the making. All seven Baby Bells are rolling out integrated services digital network (ISDN), speedy phone lines that can carry voice, video, and data simultaneously. ISDN had been hampered by spotty availability, installation headaches, and high prices, but the Bells started improving their offerings last year. ISDN is now available in about 80% of the country, at fast-dropping prices—Pacific Bell offers it for as little as $23 a month.

But fancy phone lines will not be a telecommuter's mecca. Many of the companies that allow telecommuting on an ad hoc basis provide home workers with out-of-date laptops and slow modems. David Goodtree, an analyst with consulting group Forrester Research, contends that companies need to turbocharge the home office with speedier equipment. The cost of outfitting a telecommuter with the right gear is about $4,500 for the initial setup and $2,150 in annual upkeep. The corporate infrastructure also needs a makeover, with modern remote-access computer servers and toll-free phone support to use when at-home setups have problems. With all the pieces in place, more companies can then follow the lead of American Express and Think Hummous.

By Edward C. Baig in New York

Wireless data was supposed to be the next big thing in networking: Over what thin air, mobile workers could relay E-mail, purchase orders, and inventory reports as if they were deskbound. The idea is as good as ever, but the reality hasnt caught up. At General Electric Co., for instance, only 5% to 10% of the wireless communications budget goes for data; the rest is for voice. Jerry W. King, CE's manager of telecommunications tech-

Moving Data Over the Airwaves
Some Promising Approaches

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<tr>
<th>TECHNOLOGY</th>
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<th>USES</th>
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<td>CELLULAR NETWORKS</td>
<td>Radio modems in laptops use cellular voice channels</td>
<td>Transferring files</td>
<td>Available over existing network</td>
<td>Expensive</td>
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<tr>
<td>CELLULAR DIGITAL PACKET DATA</td>
<td>Packets of data fill idle gaps in cellular network</td>
<td>Short bursts of data such as messages</td>
<td>Price, speed, reliability</td>
<td>U.S. rollouts behind schedule</td>
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<td>PRIVATE PACKET RADIO</td>
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<td>Nearly nationwide coverage</td>
<td>Expensive for large transfers</td>
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<td>Fleet dispatch, paging</td>
<td>Combines voice and data; all-digital</td>
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By Edward C. Baig in New York
year that only 1.2 million Americans used any form of mobile data network. "We were naive to expect that it would take off immediately," says Roberta C. Wiggins, Yankee's research director on wireless mobile communications.

There's hope in the air, though. Suppliers of wireless data networks realize the deficiencies of today's systems and are working hard to eliminate them. Wiggins predicts that in two years improved wireless data offerings will begin to reach a mass market. In fact, Yankee forecasts that the number of U.S. customers will rise to 7.3 million by 1998.

OLD HABITS. Still, venturing forth with wireless data today requires careful planning. Wilson Sporting Goods won high-tech brownie points and even made a magazine cover for equipping its sales reps with laptops that linked up with Chicago headquarters via Motorola Inc.'s Ardis Co. wireless data network. But around six months ago, it went back to wired connections. The problem: It never persuaded most sales reps to enter orders from the road.

For now, the wireless data market remains dominated by traditional uses such as field service and fleet dispatch. Slightly more than half the customers use private, special-purpose networks run by the trucking companies, government agencies, and shippers. Yankee Group says. One third use cellular, either by hooking modems to conventional voice channels or sending on the cellular industry's new piggyback service, called CDPP, for Cellular Digital Packet Data. Satellite services come in next with 8%, dominated by Qualcomm Inc.'s data and vehicle-location service for long-haul truckers. Just 5% use the specialized data networks run by Ardis and Ram Mobile Data USA, a company affiliated with BellSouth.

Cutting prices is the first prerequisite to expanding wireless data's niche. Ardis and Ram charge about 15c for 600 characters, or more than 1,000 times the per-character rate for a wired transmission with a 14.4 kilobit-per-second modem. Hardware prices are still as well: IBM charges about $800 for its new line of radio modem cards for Ardis, Ram, or CDPP systems.

Network availability is another deficiency, though Ardis, Ram, and others continue to expand their coverage. The CDPP standard will eventually take wireless data services wherever cellular phone networks reach. As yet, though, it's available in only a handful of markets. Ditto for Nextel Communications Inc.'s data network that uses mobile

radio (fleet dispatch) frequencies.

Finally, there's software. Applications that are designed for office-standard 10 megabit-per-second local-area networks aren't practical for wireless connections, which run about one thousand times slower. More than a dozen companies, including Motorola, are trying to solve that with middleware that sits in the wireless device and in a special network server and smooths the interaction between them.

Even as suppliers continue to tackle these bugs, there are plenty of happy wireless pioneers. Marcia G. Kadannoff, a principal in Miller/Kadannoff Direct, a San Francisco direct-marketing firm, uses her Motorola Envoy digital assistant to fire off questions to her staff during visits with clients. Generally, an answer comes back before the meeting is over. Says Kadannoff: "I totally love my Envoy." But would she shell out more than $1,000 apiece to equip her staff with Envoy's? "If they came to me today, I'd say, 'Love to do it, let's wait till the technology gets a tad cheaper.': That's why most roving workers will continue to look for a phone jack.

By Peter Cay in New York

KISS THAT OLD
PATIENT LOGBOOK GOODBYE

For the staff at River Hills West Healthcare Center in Pewaukee, Wis., the most dreaded chore used to be the paperwork. Each of the center's 245 residents was receiving multiple doses of up to 15 different medications a day. Every time a doctor wrote a new order, it had to be transcribed by a secretary to a

the center's staff. Instead of transcribing orders, nurses write the first three letters of a drug's name on the screen of an electronic notepad called a Compuscribe. A list of choices appears on the screen, along with boxes to check off for doses and time of day. Once these items are filled in, the device automatically saps the information over a 900-Mhz wireless link to the River Hills network server. Records are instantly updated, thus eliminating about five stages of paperwork. "To say it's made life easier is an understatement," says Assistant Director of Nursing Martha Kath.

At first, nursing staff had mixed reactions to Compuscribe, which Compuscribe Inc., a division of GranCare Inc. in Atlanta, cost Tatsuya $486 notepad. But in just six months, two of the four units

phone order, a pharmacy sheet, and several other patient forms. These all had to be checked by nurses and then entered into a three-ring binder. Each month, nurses and secretaries spend about 64 worker-hours transferring records to new logbooks.

Since January, however, the whole routine has changed for about half

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Since January, however, the whole routine has changed for about half
ITALIC FASTER PHONE NETWORKS? ANY DECADE NOW...

Upgrading local service is hampered by 60-year-old laws—but Congress may take action.

It's amazing what you can do with a corporate network these days. Fiber-optic cables and state-of-the-art digital switches can whiz data, video, and voice transmissions around an office in any combination. Everything works great—until an employee wants to reach somebody beyond the building. That's the moment when the Information Superhighway turns into a two-lane back road—otherwise known as the public phone system.

On many local lines, transmission speed drops from 10 million bits per second to 56,000 bits. You can increase that only if you're prepared to drop a bundle for leased private lines. Either way, your transmission costs go up. Public networks are not only slow, they're often expensive, too.

**OBSTRUCTIONIST.** This is one problem you can truly blame on Washington, where political in-fighting has gummed up efforts to deregulate the communications industry for years. If you doubt that deregulation will make a difference, consider the gulf between the U.S. long-distance market, where competition is fierce, and the tightly regulated local calling monopolies. AT&T, MCI Communications, and Sprint all offer state-of-the-art asynchronous transfer mode (ATM) switching, fiber networks, and high-speed SONET transmission. Sprint has just completed a network upgrade and now guarantees all-digital service without interruption, even if a cable is cut.

Then, look at what local phone companies are doing. Of the seven Baby Bells, only US West Inc. offers ATM service—to business customers only—throughout its 14-state region. Pacific Teleis Group is seeking regulatory approval to offer a similar service in California. But none of the seven plans widespread ATM deployment. They cite the morass of regulatory approvals and the heavy investment and reengineering of aging networks required as reasons for not pushing the new technology.

This is no time to go slow, however. "Technology is changing rapidly," says Daniel J. Miglio, CEO of Southern New England Telephone Co. "Public policy is trying its hardest to keep up with all this, but increasingly, public policy is becoming outmoded."

Worse than outmoded, telecom regulations can be downright obstructionist. Take the efforts by two local phone companies to upgrade their networks to carry video signals over phone lines—so-called video dial tone—enabling them to offer videoconferencing as well as compete in cable TV. This requires spending billions of dollars to replace copper networks with some sort of broadband technology. But before the Bells can even build a trial network to test the technology, they need approval from the Federal Communications Commission. In 1992, both Bell Atlantic Corp. and US West applied for permission to build small trial networks combining fiber optics and coaxial cable. This April, with no decision in sight, the companies suspended their applications, saying the technology had advanced so much that they wanted to reconsider their options.

**DISTANT GLEAM.** But any new approach will have to go through the same application process, starting from scratch. "We've had these permit proceedings held up literally for years," says Bell Atlantic General Counsel James R. Young. "And getting the construction permit is only the first step in the process." Even after they built a video-capable network, the Bells would still have to win approval for the channels they would offer and the rates they could charge.

With the Information Superhighway still just a distant gleam in the eyes of media moguls, some critics say the FCC may have...
kept carriers from making a technology mistake. But most analysts figure the Bells and their customers would be better off if they could just go ahead, take a risk, and build something—the way unregulated companies do. “The video dial-tone process at the FCC is a total mess,” says Scott Cleland, an analyst at Washington Research Group. “If the Bells could get out from under all this, they would be willing to invest much more.”

This could be the year that happens. Congressional leaders pledged in January that they would overhaul the nation’s 60-year-old telecommunications laws by July 4. Right now, Washington-watchers give such a bill a 60% to 70% chance of passing this year. Of course, that’s what they said in 1994—and legislation that seemed certain to pass last summer died in the Senate in October over differences between long-distance and local phone companies.

This time around, with the anti-regulation Republicans in charge, the Senate is expected to pass a bill this month. A draft is slated to reach the House floor for a vote by late June or early July. If it passes, and if differences between the Senate and House versions can be ironed out in a joint committee, President Clinton is almost sure to sign it. But those are big ifs. This legislation affects long-distance and local carriers, cable-TV operators, broadcasters, and cellular-phone companies—industries representing one-sixth of the U.S. economy. With that kind of money at stake, it is one of the most heavily lobbed bills Washington has ever debated.

FREE-FOR-ALL? For corporate customers, the proposed legislation offers what they want most: choice. If the bill passes, local phone companies will suddenly face competition from cable companies and long-distance carriers. Corporations in both those industries are planning or have already started building state-of-the-art local networks in key cities. With the FCC’s powers greatly reduced, however, the Bells would find it far easier to fight back with new technology of their own.

What deregulation won’t do for local companies is erase decades of monopoly thinking. Bell Atlantic’s Young acknowledges that the phone companies deserve some of the blame for not introducing better services sooner. “I don’t want to give the impression that, if it weren’t for [the regulatory hurdles], we would have done all this three years ago.” The Bells dragged their feet for years, for instance, on the rollout of integrated services digital network (ISDN) lines, which can transmit voice and data 27 times as fast as regular phone lines. After all, why roll out new technology when customers have no choice but to keep buying the old? It still takes months to get ISDN installed in some regions, but the Bells are moving to meet rising demand from home-based workers and Internet cruisers.

But nothing is easy in public phone land. In March, the FCC decided that ISDN subscribers must be charged for each channel within the service as though it were a separate line. Since ISDN can have anywhere from 3 to 24 channels, the ruling could have raised ISDN costs by 40% or more. The Bells protested, and the FCC tabled the idea, but it’s still looking at the issue.

If Congress passes the proposed legislation, the Bells will be freed from such oversight. Federal law would require that rates everywhere be pegged to actual costs rather than capped at a predetermined profit level, as about half the states do now. Not that callers need worry about prices soaring—the competition will see to that. Just look at California, where intrastate toll calling was thrown open to competition on Jan. 1. PacTel immediately cut its rates by 40%. “There is no question that the unit cost is going to come down,” says Nynex Chairman Ivan G. Seidenberg. “That has been the case in all segments of the telecommunications business.” Such sentiments must be music to American industry’s ears.

By Peter Burrows in Fort Worth

COMMUNICATIONS CENTER: Casey Jones now gets to see trouble ahead to Seattle. If a flood or broken switch forced changes in traffic, isolated dispatchers in places like Alliance, Neb., and Springfield, Mo., simply had to adapt when extra trains unexpectedly poured into their regions.

The company is now two years into a four-year reengineering plan meant to change all that. The centerpiece is a $120 million state-of-the-art communications center opened in April. There, dispatchers can view up-to-the-minute status reports of the entire rail system and national weather maps on massive 18-foot screens. When trouble crops up, a wireless phone system lets them roam the 183,000 square foot compound at will. To get the information flowing into one central place, Feld installed computer hubs in eight cities that give dispatchers in Fort Worth direct control over the trains.

CARGO LOCATORS. Gains should be evident soon. In May, Burlington Northern published its first service schedule; before, customers had to wait for a train to become available. Burlington Northern expects to improve on-time delivery from 60% in 1994 to 90% by yearend. When its 70,000 cars are outfitted with radio in tags this autumn, customers—some with their own in-house terminals—will be able to track their cargo 24 hours a day.

The former Pinto-Lay Inc. cfo still has a lot left to do: Burlington Northern’s network makeover is only 30% done. Once it’s completed, the company should double its asset utilization. “The goal is to have all our trains moving all the time,” Feld says. “If it works, it will mean the renaissance of rail.” And replacing the iron horse with a cyber-horse?

By Catherine Arust in New York
THE NEW SULTANS OF CYBERSPACE

It's virgin territory, and these upstarts are staking their claims.

Making computer networks live up to their promise is no mean feat. But entrepreneurs who tackled the problem stand to make a fortune. Take Cisco Systems Inc. A decade ago, it came up with a way to make local-area networks (LANs) talk to one another. In 1987, veteran Silicon Valley investor Don Valentine of Sequoia Capital plunked down $2.5 million on the outfit and the investment grew more than a thousandfold.

That rocket ride may be hard to match. Still, analysts and venture capitalists see roaring growth for companies that can upgrade the existing generation of network equipment. Hot groupware programs along the lines of Lotus Development Corp.'s Notes could also be a gold mine. And nearly everyone is romanticing the Internet. "The party isn't over," says Valentine.

The most obvious plays are companies that can unsmear digital traffic jams on LANs. Each year, as desktop computers get more powerful, the files they exchange grow bigger and gobble up more bandwidth. To prevent bottlenecks, network companies are pushing a new generation of switching gear that breaks LANs into segments and then moves packets of data from one to the next.

HIGH-SPEED SWITCHING. So-called Ethernet switches speed things up. So does a newer approach called "asynchronous transfer mode" (ATM), which can switch up to 622 million bits of data per second. Dozens of companies are selling such upgrades. "Switching is the hot word in the LAN area," says venture capitalist Geoffrey Y. Yang at Institutional Venture Partners in Menlo Park, Calif. Network Peripherals in Milpitas, Calif., which makes such gear, went public last June and has since grown over 100% each quarter. Yang also likes Grand Junction Networks Inc. over in Fremont, which may go public by yearend.

Another opportunity: "smart" LANs that analyze traffic to break up jams. Agile Networks in Boxborough, Mass., has combined Ethernet LAN technology and ATM switching in one box, along with software "that automatically connects groups of users, wherever they are," says founder William M. Seifert.

One reason analysts like Agile is Seifert's track record. The 45-year-old CEO developed the first routers sold by Wellfleet Communications Systems, which later merged with SynOptics to form giant Bay Networks. Today, network users have installed faster desktop computers, but LANs haven't kept pace. By narrowing the speed gap, Agile's new LANs "are changing the paradigm in networking," says customer Jeff Marshall, a Bear, Stearns & Co. senior managing director.

Connecting networks between cities poses other problems—and opportunities. Phone companies have plenty of high-capacity fiber-optic lines. But most of their switching gear was designed for voice traffic, where each call needs a separate connection. Computer users don't need such dedicated circuits. So carriers are shifting to new approaches, such as ATM and frame relay, which chop messages into packets and move them in bursts. Frame-relay products and services alone will soar from $800 million last year to $2.2 billion in 1996, predicts Vertical Systems Group Inc. in Dedham, Mass. That's flooding the coffers of Cascade Communications in Westford, Mass., and StrataCom Inc. in San Jose, Calif.

NOVEL SOFTWARE. Simplification is the order of the day. Keeping up with the flood of data pouring into a corporate network used to require a tangle of terminal adapters and a closet full of lines. "It was a management nightmare," says venture capitalist James Lally of Kleiner Perkins Caufield & Byers in Menlo Park. That's why his company invested in Ascend Communications Inc., which has novel software for aggregating incoming data and funnelling it to a LAN. Ascend's solution: a sleek, modular-size box that connects to an ISDN line. The outfit racked up sales of $20 million in the first quarter of '95. Its shares, listed in May, 1994, have increased in value sixfold.

The magic word now for investors is "Internet." Stocks of newly listed access providers, such as Netcom Online Communication Services, have skyrocketed. And investors are abuzz over a possible initial public offering this year from Netscape. Launched by Silicon Graphics Inc. founder James H. Clark, it makes software to cruise the World Wide Web.

The magic word now for investors is "Internet": Stocks of newly listed access providers have skyrocketed.

By Neil Gross in New York
Michael G. O'Brien is trying to save a life—the life of a 560-megabyte file-server disk drive. It failed yesterday at an ad agency in Midtown Manhattan. Working until 10 last night, O'Brien, his boss, and a colleague tried to master the disaster. They were back at 6 a.m. O'Brien is operating on four hours' sleep and his workshop's air-conditioning is broken. It's 8:45 a.m., and he's trying to download files he needs to test the drive. But for 20 minutes there has been no answer at two bulletin boards that have them. The phone rings: his boss. The client is asking whether the data can be saved....

Welcome to a day in the life of a computer technician. When a PC displays a strange error message or a network crashes, it's people like O'Brien who get the call. They're the ambulance crews, triage doctors, and heart surgeons of data. Without them, networks would blink out like dead bulbs on a Christmas tree.

Understandably, it's a job with a future: The U.S. Bureau of Labor Statistics projects that the ranks of data-processing equipment repairers will rise to 120,000 in 2005, from 83,000 in 1992.

O'Brien, 30 and married with a child on the way, ended up in the career by chance. The Queens native studied programming at Bernard M. Baruch College (part of the City University of New York), but couldn't find a programming job after graduation. So he went into repairs. He has spent the seven years since working with Richard C. Nathan, majority partner of Tailored Technologies Co., a computer sales, installation, and maintenance company with six employees and 10 subcontractors. O'Brien, now a partner himself, describes the job as "20% malting" but it's clear he loves it. "I'm like a detective every day."

Today's case began at 12:30 yesterday afternoon, when clients at Milton Samuels Advertising Agency Inc. started having trouble opening files stored on their LS drive. O'Brien went over immediately, got the users to log off, and repeatedly ran a Novell Inc. utility program called VRepair that corrects disk errors by moving data from bad spots to good ones. No luck: By the time he restarted the network, the drive had dropped out completely.

DATA PANIC. Well, no great loss, he figured. All the data was automatically copied onto tape every night at 11 p.m., right? Surprise. The procedure had not worked properly, so the last good backup tape was nearly three months old. Even so, if the LS drive had contained only programs, it wouldn't have been too serious: You can always get a new program. But it turned out that several people had been staring data on it.

By this point, then, O'Brien is hoping that somehow the drive is actually O.K.

Calls have been coming in from the...
and the flaw is somewhere else. To find out, he has carefully transported it to Tailored Technologies and attached it to "Frankenstein"—his name for the dismembered PC sprawling across his desk. But to complete the simulation of the ad agency's network, he needs two pieces of software for the drive controller card. Those programs can be downloaded from two bulletin boards, O'Brien knows, but neither answers.

Out of desperation, O'Brien searches one of Tailored Technologies' own disk drives for the programs named Asipitan and AHA1520. At 9:07 a.m., he finds them. "We might be in business here," he mutters. Fingers flying over the keyboard and circuit cards, he stitches together a facsimile of the Milton Samuels file server—Ethernet, router, definition table, and all.

Meanwhile, a few blocks away at the Park Avenue ad agency, Richard Nathan and Travis Johnson are going from desk to desk, getting people running despite the missing server. This turns out to be no easy task: Many of the employees used versions of Windows and other programs that ran on the L drive. There was already a project under way to move those programs onto individual pcs. Now, the Tailored Technologies crew must finish the long-term transition in a few hours. Further complicating matters, many of the PCs have undersized hard drives, so Nathan has to order and install six new ones. The priority list is on the back of an envelope. One woman—blissfully unaware of the crisis—complains that she's missing her favorite screen saver.

With all the new hardware, this is getting to be a costly job, but Nathan doesn't discuss billing with the agency's chief financial officer, Michael Spano. Spano is having a bad day of his own. Last night, a truck rammed his brand-new sports car. And this system crash has happened at a bad time: The agency is working on end-of-the-month bills. Says Nathan: "I'd never bring up money at a time like this. Bad form."

Back at Tailored Technologies, O'Brien's Bugs Bunny watch reads 9:50 a.m. Calls have been coming in from a midtown law firm where all the computers on the network are frozen and from a U.N. agency with a screwup that sounds like it might be a cabling problem. He has farmed the jobs out to other colleagues.

POSTMORTEM. Now, the moment of truth: Time to try out the malfunctioning L drive in the full network setup. Oops. Frankenstein "sees" the drive but can't read anything from it. Anything at all. What's more, the drive is making unpleasant grinding and clicking noises. It appears to be a major, irreversible failure. Says the unflappable O'Brien:

"When you hear a hard click when you turn it on, that's not good."

The only thing left to do is ship the dead drive to a computer pathology lab that will dismantle it and try to retrieve the data for hundreds or thousands of dollars. (In the end, the agency cancels the job when most of the files turn out to be unrecoverable.) O'Brien unwraps a new drive and starts loading it with files from the March backup tape. Around 11 a.m., he heads to the ad agency to help Nathan and Johnson with the clients. Though this work is less intriguing than sleuthing for faults, it has its own rewards. After he gets media director Jill Elias on line about noon, she responds: "I'm printing! What a guy!"

By the time they knock off for lunch, Tailored Technologies' crew has done a full day's work of the sort. A rescue like this would usually cost $10,000 or more, parts included. Because Milton Samuels has a service contract, Nathan predicts the ad agency will have to lay out only about $4,000. There are still loose ends to tie up there this afternoon.

First, though, O'Brien rides the subway to Duke & Co., a fast-growing East Side brokerage and investment banking firm, where there are some computers to move around. After the 90-minute commute home, he should sleep well tonight. Unless his beeper goes off.

By Peter Coy in New York
MIDLANDS INSTITUTE FOR NONPROFIT MANAGEMENT

STRATEGIC PLANNING SESSION
Tuesday, July 11, 1995

Ethel Williams, Facilitator
MIDLANDS INSTITUTE FOR NONPROFIT MANAGEMENT
STRATEGIC PLANNING SESSION

Schedule

8:30 - 10:00 AM  Understanding Strategic Planning: An Overview of the Process
                 Definition, purpose, benefits

10:00 - 10:15 AM  Break

10:15 - 12:00    Strategic Planning Simulation: Developing a Plan from Beginning
                 to End
                 • Understanding the relationship between strategic planning
                   and the organization’s mission
                 • Performing and Environmental Scan
                 • Identifying Strategic Issues
                 • Establishing desired outcomes and benefits

12:00 - 1:00 PM  LUNCH

1:00 - 2:15 PM   Identifying Strategic Issues
                 • Developing priorities
                 Developing Strategies
                 • Exploring alternatives

2:15 - 2:30 PM   Break

2:30 - 4:00      Developing Strategies and an Action Plan
                 • Exploring alternatives
                 • Understanding barriers
                 • Linking strategies to specific actions

4:00 - 4:30     Reviewing the Planning Process
Benefits and Problems of Strategic Planning

Benefits

• Think strategically and develop effective strategies.
• Clarify future direction.
• Establish priorities.
• Make today’s decisions in light of their future consequences.
• Develop a coherent and defensible basis for decision making.
• Exercise maximum discretion in the areas under organizational control.
• Make decisions across levels and functions.
• Solve major organizational problems.
• Improve organizational performance.
• Deal effectively with rapidly changing circumstances.
• Build teamwork and expertise.

Problems

• It is a set of concepts, procedures and tools only. It will work only when used with common sense and a sensitivity to the particulars of the situation.
• May not be the best first step for an organization in serious trouble.
• Strategic planning will be a waste of time if the organization lacks the skills, resources, or commitment of key decision makers to produce a good plan.
• It is of little use if the costs of the process are likely to outweigh the benefits, or if it takes time and money that might be better used elsewhere.
• Those organizations that have enormous difficulty reaching decisions that cut across levels, functions, or programs, may find that "muddling" is the only process that works.
• It should not be undertaken if implementation is extremely unlikely.
Steps in Strategic Planning

I. Organizing
   a. Set Up Strategic Planning Group
   b. Determine Group Size

II. Clarifying Design Issues
   a. Facilitator
   b. Objectivity
   c. Existing Tensions and Concerns
   d. Formal versus Informal Atmosphere
   e. Clarify Work Tasks

III. Clarifying Organizational Mandates

IV. Clarifying Organizational Mission and Values
   a. Stakeholder Analysis
   b. Develop Mission Statement

V. Assessing the Environment
   a. Identify Internal Strengths and Weaknesses
   b. Identify External Strengths and Weaknesses

VI. Identifying Strategic Organizational Issues
   a. Approaches to Issue Identification
      i. Direct
      ii. Goal Driven
      iii. Vision Driven
   b. Issue Tensions
   c. Success factors

VII. Formulating Issue Strategies

VIII. Formulating Action Steps
CONDUCTING A STAKEHOLDER ANALYSIS

A stakeholder is defined as any person, group or organization that can place a claim on an organization’s attention, resources or output, or is affected by that output.

A complete stakeholder analysis will require the planning team to identify:

- the organization’s stakeholders,

- their stake in the organization or its output,

- their criteria for judging the performance of the organization,

- how well the organization performs against those criteria,

- how the stakeholders influence the organization,

- how important the stakeholders are.

- what the organization needs from its various stakeholders,

- whether the organization should have different missions and perhaps different strategies for different stakeholders.

From: Bryson, John. Strategic Planning for Public and Nonprofit Organizations.
DEVELOPING A MISSION STATEMENT

A mission statement can be developed by responding to six questions:

- Who are we as an organization?

- What are the basic social and political needs we exist to fill, or the basic social or political problems we exist to address?

- What do we do to recognize or anticipate and respond to these needs or problems?

- How should we respond to key stakeholders?

- What is our philosophy and what are our core values?

- What makes us distinctive or unique?
Case Study: Strategic Planning for a Mental Health Center

Agency Background

The organization was founded when a steering committee was forced to open a mental health center in the early sixties. Within two years, five counties were involved in the center through the steering committee. The center opened two years later to provide mental health service for a five-county catchment area. Funding from the state created expanded mental health and retardation services in 1969. The center's growth and its continuous service to clients was recognized by a mental health levy that was passed in 1975. In the center's locality, and throughout the nation, the awareness of the need for mental health service was growing. In 1978, the center received a grant from the National Institute of Mental Health (NIMH) to design a comprehensive service package.

The rapid growth led to a decentralization of services to local communities. This step helped to assure that local communities would become involved in the center, with a central management structure providing oversight for financing and development. NIMH funding led to designation as a "comprehensive center." Staff grew to 130 professional and support personnel, who provided services to 1500 clients by 1980. In 1981, two new clinic buildings were opened in two of the counties. Another was added in 1982 and two more in 1984. Also, a fifteen-bed inpatient unit was completed during this time period.

The center tailored services to the needs of each of its five counties and involved the community in each local center. This approach helped to provide services that were responsive to local needs, rather than programs that must meet needs preferred by center practitioners and federal policy makers.
The center's existence depended on volunteers who gave it the initial impetus and provided support for the subsequent growth of its services. In addition, strength was drawn from 200 crisis volunteers. These volunteers were thought to demonstrate the center's commitment to its community and partnership with the community in service development and delivery.

The commitment to offer services of the highest quality to anyone who needed them resulted in huge growth, doubling the center's number of cases over the past six years. In addition, 18,000 contacts were served through a crisis line.

Current Situation

The center operates on a $4 million budget and has one hundred twenty professional staff members, including psychiatrists, psychologists, social workers, counselors, and technicians. Through five clinics, about 2700 clients were being served. The center offers a range of services including aftercare, adult outpatient care, day treatment, children's residential care, consultation and education, emergency services, and substance abuse treatment.

The center described its mission as providing leadership and services on a community basis to foster positive mental health. The center was committed to finding ways of preventing, reducing, and minimizing the residual effects of mental health problems. The center believes that services should be made available to everyone in its catchment area without regard to factors that distinguish people, including ability to pay. A strict confidence between client and the agency is maintained in all service delivery.
The center provides services for people with mental disabilities, substance abusers, and people with stress-related ailments. Programs have been fashioned to serve suicide attempters, people having difficulty with marital and economic problems, and victims of domestic violence and of rape or abuse. Substance abuse programs are focused on drugs and alcohol. A variety of special programs have been mounted to deal with displaced homemakers, children services backup, unemployed caregivers, survivors and survivor families, correctional institutions, the hungry and needy, the deaf, stress victims, Alzheimer’s disease support groups, teen parents, single parents, persons in life crisis, the elderly, farmers in economic strife, and the unemployed.

Funds to operate the center are received from several sources. State and local funding through state appropriations and local levies made up about 33 percent of the revenues, Title XX and Title XIX made up 12 percent, self-pay and insurance made up 6 percent, and children’s residential and LEAA made up 4 percent. Income from services sold to local industry made up 10 percent of the revenues. The source of revenue had to grow if the 33 percent of the budget currently provided by federal block grants was phased out.

The center was under the general direction and oversight of a multicounty volunteer board. A politically appointed "648" board contracts with the center for the delivery of the mental health services. The 648 board distributes state mental health funds to multicounty areas by contracting with mental health centers to offer services in those areas.
Motivation

The triggering development for strategic planning was the loss of federal funding. This cutback was to eliminate, over a three-year period, 34 percent of the revenues used to operate the center. The center was groping for ways to replace these lost revenues without curtailing services to needy groups who had become dependent on the center.

The triggering development had a production value. The strategic management process uncovered a tension between the values of productivity and equity that had gone unrecognized by the center’s management. The most obvious way to replace revenue lost from federal block grants was to charge for services. However, the traditions of treatment professionals in the center made this difficult. The therapists encouraged the use of mental health services by divorcing payment from the service. Even questions about private fees and the ability of a service user to pay through insurance had been ignored, making service fees that could have been collected go undetected. The sliding-fee scale used by the center was not acceptable to welfare agencies, which made collection from medicaid and other public assistance programs impossible. The therapist’s negotiation with a client set treatment goals as well as payment levels. the sliding scale for payments was strongly rooted in the organization’s traditions. As a result, the productivity-equity tension was moderated by preservation.

ACTION PLANNING
Key Elements

Goals

• Key end results or desired conditions over time, for which a work group expects to be held accountable or responsible.

• Supportive of overall purposes and objectives of organization or project.

• Results, not activities or tasks.

Objectives

• Performance targets that must be reached if the organization is to achieve its goals. Objectives are more specific than goals; translation of goals into concrete terms against which results can be measured.

• Measurable

• Specific - Who will be served and how will they benefit?

• Realistic - What can be done about the problem?

• Mutually owned by the group.

• Time-limited - When will the objective be accomplished?

• Controllable by individual group.

Strategies

• A way of getting something done.

• More specific than objectives.

Activities

• Very specific activities leading to completion of strategies and objectives.

• Who is responsible for getting it done?

• When will it be completed and resources needed for completion
ACTION PLAN

Goal Statement:

The City of Oakville should develop and implement a specific strategy to expand the available housing stock at all income levels. In order to recruit new industries or business investment to Oakville, potential investors must know that housing will be available in the price range that will suit their employees. Further, Oakville must present a long range plan for better meeting the natural growth that will occur between Elm and Cedar counties. Clearly, housing is a major component of such growth.

Objective one:

Oakville must work with governmental agencies at the state and local level to lessen the flood plain designations on the eastern borders of the community to make these areas more economically feasible for housing development.

Strategy:

1. Realign flood plain improvements and file for a change of flood plain designation with the U.S. Corps of Engineers when the Natural Resources District construction is completed on the Rawhide Creed and the corresponding diversion channel.

Action Steps:

A. Meet with Natural Resources District to ascertain specific completion date of Cheyenne Creek improvements

Responsibility: City of Oakville
Oakville Chamber of Commerce

Timeframe: July 15, 1994

B. Meet with U.S. Corps of Engineers to solicit support for flood plain change designation and determine what actions community can take to expedite this action.

Responsibility: City of Oakville
City council member and representative of Oakville Chamber of Commerce

Timeframe: August 15, 1994
IDENTIFYING STRATEGIC ISSUES

A strategic issue is defined as a fundamental policy choice affecting an organization’s mandates, mission, values, product or service level and mix, clients or users, cost, financing, organization, or management.

1. Review the organization’s mandates, mission, strengths, weaknesses, opportunities and threats. The strategies that are developed to deal with these issues define what the organization is, what it does, and why it does it in relation to the environment. Good strategies provide the best fit between the organization and the environment.

2. Select an approach to strategic issue identification.

3. Once strategic issues have been identified, they should be sequenced in either priority, logical or temporal order as a prelude to strategy development.

4. It may be helpful to use a feasibility or litmus test to measure how strategic an issue is.

5. Critique issues to be sure they really do frame the fundamental choices the organization faces. The planning team should ask several questions about the issues it identifies before settling on a set of issues to address. Some useful questions include:

- What is the issue, conflict, or dilemma?
- Why is it an issue?
- What is it about mission, mandates, or SWOTs that make it an issue?
- What are the consequences of not doing anything about it?
- Can we do something about it?
BRIEF DESCRIPTION OF COURSE UNIT

The success of an organization is dependent on a strong board of directors. One of the critical functions of an executive is to have a keen awareness of the board's role and responsibility and the ability to motivate and direct their energy toward the achievement of the mission. This unit examines the relationship between executive and board, highlights important issues, and suggests strategies to move a board in directions supportive and helpful to the organization.

COURSE OBJECTIVES

At the end of this course unit, the participants will have:

1. A clear understanding of their role and relationship with the board.
2. Methods to help motivate and assist the board in understanding their role and responsibility.
3. An understanding of the board and staff roles in developing, setting and implementing policy.
4. Methods to recruit, train and keep board members.
5. Knowledge of the need for evaluation of the CEO and board.

BRIEF COURSE OUTLINE

Board Motivation and Development is a Journey, Not an Event
The course will cover the new executive's life cycle.

Courtship
How they got the position, what was agreed to, developing relationships.

Marriage
- The commitment, carrying out the agreement
- The honeymoon
- Board orientation
- Role and function of the Board
- Ongoing Board education
- Setting Policy
- Making changes

The First Crisis:
What is, was or will be yours?

Family Planning:
Where do we go from here?

Separation/Divorce:
Where do we go from here?

Pete Tulipana
Midlands Institute for Non-Profit Management
July 10-14, 1995
MOTIVATING AND DEVELOPING YOUR BOARD

Pete Tulipana ACSW, MPA
Midlands Institute for Nonprofit Management
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What is, was or will be yours?

Family Planning:
Where do we go from here?

Anniversaries and Day-to-Day Living
Celebrate accomplishments;
CEO evaluation;
Board evaluation;
Board recruitment.

Moving On
Leave in evolution or revolution?
Board motivation and development is a journey, not an event.
WHY DO PEOPLE SERVE ON BOARDS?

- Give back to community
- Commitment to agency/cause
- Have been helped
- To meet a need in community
- Recognition
- Represent an interest group
- Political, business, personal
- "Membership" by family or company
- Someone asked them
CEO's LIFE CYCLE

Courtship
Marriage
Honeymoon
First Crisis
Family Planning
Anniversaries
Moving On
# NOT-FOR-PROFIT BOARD'S LIFECYCLE

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Volunteer - Hands-on -------- Delegating ------------------------ Assessing & Evaluating ------------------
Clear & Open Communication
Get to know your agency and the community's perception of your agency.
THE BOARD'S PRIMARY JOB IS TO DETERMINE:

WHAT GOOD ARE WE GOING TO DO FOR WHICH PEOPLE (OR NEED)

AT WHAT COST
BOARD ORIENTATION
AND TRAINING

History

Mission

Philosophy

Role of Board & Structure

Services/Programs

Financial Structure

Future
BOARD OF DIRECTORS ORIENTATION

1. Welcome and Introductions ................................................. Julie Hefflinger
   Board President

2. Review of Board of Directors Manual; Agency History, Mission and Philosophy ... Pete Tulipana
   Executive Director

3. Your Role as a Board Member ........................................... Julie Hefflinger
   Board President

4. Agency Programs and Services .......................................... Janet French
   Director of Professional Services

.............................................................. Jesse Sharpe
   Director of Community Services

5. Fund Development ......................................................... Jane Ellsworth
   Development Director

6. Financial Structure ....................................................... John Herzog
   Assistant Executive Director

7. The Future ................................................................. Pete Tulipana
   Executive Director
FUNCTION/ROLE OF BOARD

1. Hire the most qualified executive to carry out the plans, goals, mission, and policies of the organization, monitor performance and evaluate.

2. Be focused on the future of the agency. Act as a visionary and plan the direction that the agency should go.

3. Assess agency performance to meet plans and goals.


5. Be responsible for sufficient resources to carry out agency mission and goals. FUND-RAISING.
VISION

PLAN

IMPLEMENT

EVALUATE
ASSESSMENT FUNCTIONS

Evaluate and Monitor Agency Performance

Monitor Adherence to Agency Mission

Evaluate & Review Programs, Services and Operations

Through Internal and External Audits
$ 

BUDGET 

OVERSIGHT 

AUDIT 

INVESTMENTS
FUND DEVELOPMENT

Make a Personal Financial Commitment to the Agency

Use Contacts on Behalf of Agency

Assist and Participate in Fundraising Activities
Excuses, Excuses

Why trustees are reluctant to raise money—and what to do about it

By Harry White

Editor's note: Though this article, taken from Currents, is addressed to development officers of colleges and universities, it points on how to deal with board members' avoidance of fundraising responsibilities is relevant to all nonprofit organizations.

How many of your board members are gung-ho solicitors? If yours is a typical 25-person board, likely no more than three or four. The fact that this number is so small should definitely concern you.

And yet, how often do you stop to analyze your trustees' hesitation? Surrounding the reluctant fundraiser is a mix of negative but unspoken feelings. Often we fail to acknowledge this mix; even more rarely do we address it. For instance, here is a typical conversation between a chief development officer and a trustee fundraiser:

CDO: We're asking each trustee to visit three major annual giving prospects.

TRUSTEE: You know, I've never enjoyed this part of my service.

CDO: But you seem to recognize it as a board role, and we certainly appreciate

TRUSTEE: Just give me the names, and I'll see what I can do.

Three months later:

CDO: I understand you've had scheduling problems since we talked. Why not just ask your assistant to prepare and sign some letters?

TRUSTEE: You know, I've never enjoyed this part of my service.

CDO: The CDO never acknowledged, much less dealt with, the trustee's excuse of not enjoying fundraising. Such reluctance to face the problem is always a mistake; in raising money for your institution, you must take the initiative in finding out what stands between your trustees and success. By talking about your trustees' excuses, the feelings behind the excuses, and the ways to resolve those feelings, you can get even the most reluctant trustee to buy into your program.

I've developed a double-barreled approach to dealing with the six most common excuses. The approach includes positive counter-arguments and specific techniques for understanding the excuses' underlying causes (and, I hope, moving the reluctant trustee to action).

Excuse No. 1: I don't want to solicit Joe personally, so you give him a call and use my name.

This excuse typically comes from trustees who are embarrassed to solicit their acquaintances. You can counter by saying that if Joe is worth calling on, then he's worth calling on the right way.

Fundraising builds on—but is much more than—names and contacts. If Joe is a personal or professional friend of your trustees and yet a staff person contacts him, Joe will quickly note the absence of peer involvement. He'll then wonder if his friends view the project (or him!) as second-rate. These questions will lead Joe to resent his friends and your institution. Then, if Joe gives only out of courtesy, the second-rate solicitation will have done more harm than good.

A red flag should go up whenever you hear this excuse. By avoiding a peer solicitation, what trustees are really saying is that they haven't bought into your fundraising projects. So the second half of tackling this excuse is to cultivate ownership. I suggest the following steps:

1. Be sure that when trustees vote for projects, they also vote on their enthusiasm, ownership, and responsibility. You or your campus CEO should discuss these three attitudes explicitly whenever the board considers a particular motion. Even though the board will approve fewer projects as a result, the ones it does OK will be more likely to succeed.

2. Make certain the projects your board does approve are part of a strategic plan. The plan should include a rationale for the project and a distinctive mission that excites the board. Viewed in the context of a good plan, raising funds for the project is more

Excuses

3. Encourage polite fundraising. If the reluctant donor says, “It’s rude to hit up friends,” point out that it’s more rude for staff to hit up strangers.

Help trusts ease into fundraising by showing them how to cultivate and listen to prospects. For instance, trustees at Tilton School have unanimously adopted an outreach/cultivation/listening program for all board members. Such a program helps trustees see that, far from pressuring uninterested colleagues, a well-planned solicitation helps askers match donor interests with opportunities to give.

4. Cultivate trust in and enthusiasm for the institution. Honor trustees as your institutional ambassadors. Then find ways for your most loyal and active board members to encourage fellow trustees to “belong” to the institution. The “use my name” excuse will disappear as trustees start to want to speak for their institution.

Excuse No. 2: I don’t give enough myself to be an effective high-level solicitor

Trustees who say this are right: Peers are often the most effective solicitors. But help these trustees be realistic. We can’t exhaust busy board members by asking them to do all the soliciting. And we can’t bankrupt the rest of the trustees just so they can qualify to peer-solicit major gifts.

Since peer solicitation isn’t always possible, help your trustees recognize that it’s only one part, and not a prerequisite, of successful solicitation. People respond to people more than dollar amounts. It’s most effective for the trustee to simply say, “I gave more than I should have. Will you do the same?” After all, just as impressive to potential donors are such traits as enthusiasm, sensitivity, credibility, clout, and even chutzpah.

Another approach trustees can use is with a potential donor of large means. Appeal to the prospect’s desire to lead. For example, “At Arkansas College we built on a single family’s friendship, enthusiasm, and trustee history to gain a $15-million bequest that tripled our endowment,” says Dan West, former president of Arkansas College and now president of Carroll College. “We never lowered our sights for lack of peers to solicit this exceptional gift.”

Other ideas for helping trustees ask for more than they can give:

1. Have successful trustee fundraisers talk with the full board about the ingredients of a successful solicitation. This puts peer solicitation in perspective and uncoils willing and able solicitors with enthusiasm, contacts, chutzpah, and so on.

2. Build imaginatively on trustee contacts. I often see $1,000 trustee donors who—because of business connections, community standing, or personal friendships—obtain $100,000 gifts. After all, how many peers could have solicited Arkansas College’s $16-million bequest?

3. Help trustees recognize that stretch commitments are proportional to means. To match raises rather than dollars, advise your trustees to ask, “Will you join me in doubling annual giving” or “Like me, could you give a capital gift 20 times your annual gift?”

4. Always encourage board members to stretch. The $20,000 donor may well solicit the $75,000 or $100,000 prospect, and so on.

Excuse No. 3: I don’t see the urgency of the project these potential donations would support

This excuse is hard to counter because it reflects the trustee personal feeling. Yet the reluctance stems from controllable problems in board/staff relations, strategic planning, communication, or all three.

So work with the reluctant solicitor to find solutions to these problems. Don’t automatically ignore the excuse, change solicitors, or—worst of all—change projects to suit solicitor interest. Here are talking points to reassure the solicitor or to promote improvement:

1. Find out who owns the project. If it came from a challenge donor rather than from the board’s plans, then rethink who should solicit or even whether the board members truly want the project. If the project was your campus chief executive’s idea, then be sure the board has enthusiastically adopted it.

If you have a founding or long-term CEO who tends to lead your board, then the problem may be that neither projects nor solicitations are board initiatives or priorities. If you truly want members of your board to raise money under such circumstances, you will need some honest talk about the board/CEO relationship.

2. Look again at the board’s strategic plan. Ironically, a plan can motivate trustee fundraisers more than a fundraising case. That’s because of all people, trustees know that a fundraising case is meant to justify a project. So a plan has more credibility for them. It looks objectively at your changing environment and all your options and needs.

So look carefully at the plan and then ask:

• Does the plan’s mission truly motivate trustees? Does it cover the “why” rather than just the “what” of their endeavor?
• Are the projects for which you want the board to raise funds in the plan? Does the plan offer a rationale for them?
• Did the board initiate, participate in, and approve of the plan? Did members of the board specify beforehand the uses and benefits of the plan? To help drive your fundraising, the plan’s purpose and impact need to go beyond fundraising.

3. Review how the development staff communicates the importance of fundraising projects. What does the staff say, or not say, in campaign reports, gift acknowledgments, and publications? Do the messages repeatedly bring home the project’s import? And do trustees actually read these messages?

Excuse No. 4: Fundraising is what we hired the campus CEO to do

This excuse boils down to the particulars of your board and institutional management. Inevitably, relations between your board and CEO evolve over the years as
your institution changes and the balance of leadership shifts among the board, CEO, and staff. But at many institutions today, the board and staff also share responsibility for fundraising. This fact appears in CEO job descriptions, search interviews, trusteeship statements, and evaluations of both the CEO and the board itself. Find ways to make sure your trustees know this.

Other ways to deal with this excuse:
1. Have trustees ask themselves whether fundraising is an important board priority. Avoid such trite maxims as “Give, get, or get out.” Let the board define its own responsibilities. A board workshop can help.
2. If fundraising isn’t now a board priority, decide whether it’s temporarily OK to rely on a founding or visionary CEO to assume responsibility for raising funds. In the meantime, you and the board can work to understand and reshape board/staff relationships and plan for the future. Again, a workshop can help.
3. Ask trustees to help plan fundraising and prospect strategies. As I said, this involvement makes board members feel they own the development effort.
4. Clarify the board’s expectations of the staff. By targeting and researching appropriate prospects and reminding solicitors of their assignments, you and other members of the staff can encourage and strengthen your trustees’ fundraisers.

An example of how staff can help: A trustee leader told me that a prospective donor he’d solicited once returned to campus and pulled from her purse a check for 10 percent of the capital campaign. The trustee wouldn’t have known to ask her for that much if the staff hadn’t coached him.

Excuse No. 5: I’m just too busy.

This excuse suggests that the trustee’s enthusiasm for and belief in your institution is weak. The chief development officer, your campus CEO, or a fellow board member should talk with the reluctant trustee to explain and strengthen:
1. The relationship among the four institutional cornerstones—board issues, planning, marketing, and fundraising. When it comes to exploring how these cornerstones support your institution, a board workshop is once again a good way to give trustees the perspective and enthusiasm to get off the dime. In addition, an outside consultant may be able to help trustees see the link between the cornerstones in strengthening your long-term fundraising potential.
2. Your institution’s investment in board management. By doing a better job of managing the board, your school or college can improve trustee membership, involvement, and enthusiasm. Enthusiasm is the most important prerequisite for fundraising. You should try to:
   • Strengthen the nominating or trustee affairs committee to attract the most committed new trustees possible. As part of this, profile your current board, identify the kinds of new expertise you need, and build a large and well-researched candidate pool. Then help the board select, cultivate, recruit, and orient new members with these unfilled needs in mind.
   • Use workshops to uncover trustee aspirations and match them to selected board responsibilities.
   • Initiate trustee self-evaluations. These will help your board members come to their own conclusions about areas in which commitment and skill are lacking.

Excuse No. 6: I’m afraid of fundraising. It’s distasteful. And I’m no good at it.

This excuse reflects fear of the unknown as well as fear of rejection and loss of prestige and friends. It could also mean that trustees who say this are themselves afraid of being expected to give more than they want to or are able to.

When trustees solicit, one of two things will happen: The donor prospects will say yes or no. Remind trustees that a no is not a personal rejection, and rarely is it a rejection of the institution. Instead of concentrating on the no, trustees should consider the potential joy of a yes, especially since a trustee-solicited major gift is often many times greater than what other askers could bring in.

Trustees should also remember this: The alternative to thinking positively is often saddling themselves with two negative emotions: fear of soliciting and guilt about failing to help solicit. Trustees can also take these steps to reduce their fears:
1. Give a gift of their own. Conventional wisdom holds that the solicitor who has given is better at asking others to give. Making a donation also helps the solicitor get beyond any fear and uncertainty about his or her own commitment.
2. Regularly talk with other members of the board about successful solicitations. This reinforces positive lessons, makes solicitations more familiar, and can lessen fear of the unknown.
3. Make calls as part of a boardsaff team. Again, this can give the reluctant asker a record of success to build on later. Also remember that it’s best for trustees to solicit only for projects justified in a board-approved plan. Under these circumstances, I’ve seen trustees’ fear of soliciting change into a desire to do a great deal personally and then to ask others to do the same.

The importance of sensitivity

Any time your trustees express any of these six excuses, respond by listening closely and questioning carefully. Although you can counter some excuses directly, others reflect problems with your institution or board. Exploring the problems in a sensitive, non-threatening manner can provide a catalyst for better management.

So as vexing as excuses may seem, they can be a great help. They can open up productive discussions with your board about fundraising, what makes it work, and what it says about your institution.
I'm new here and don't know many people.

"I just hate to ask people for money."

"I'm sure someone else could do a better job."

"I worked on the last one."

"I don't have a car—and can't walk."
ROLE AND FUNCTION OF THE BOARD OF DIRECTORS

A. Six Primary Responsibilities:

I. Appointing, Supporting and Evaluating the CEO
   - maintain appropriate relationship between Board and CEO

II. Planning and Setting Direction and Policy
   - mission statement, long range plan and goals
   - inform self agency
   - set policies (e.g., personnel policies; conflict of interest; quality assurance)

III Evaluating and Monitoring Agency Performance
   - monitor adherence to mission and long range plan
   - evaluate and review agency's programs and operations

IV Fund Development
   - raising money; participating in fundraising events
   - personal financial contribution

V Fiscal Management
   - budget; audit; review financials; oversee investments

VI Selecting, Training and Retaining Board Members
   - member and director -- 2 roles
   - we pick our own successors

B. Schedule of Activities

1. Ten board meetings/year

2. Monthly committee meetings

3. Annual Board retreat
4. Attend approximately three agency "events"/year:
   a. Mystery Gala
   b. Salute to Families
   c. Board Orientation

C. Committees

Standing Committees

1. **Executive** (Chair, Julie Hefflinger, President)
   - Vice President
   - Secretary
   - Treasurer
   - Standing Committee Chairmen

   - exercise powers of board between meetings (and report to board)
   - evaluate CEO and recommend salary to board.

2. **Planning/Assessment** (Chair, Mary Lynn Reiser)
   - assist in long and short range planning
   - communicate with other committees
   - internal and external performance review of agency
   - monitor how well goals and objectives are being met
   - miscellaneous

3. **Development** (Chair, Brad Knuth)
   - develop fundraising goals and programs
   - execute fundraising activities
   - recruit donors

4. **Finance** (Chair, Joy Narzisi)
   - develop budget
   - monitor financial operations
5. **Nominating/Board Development** (Chair, Steve Ritzman)
   - recruit potential board members
   - nominations for directors and officers
   - new board member orientation
   - ongoing development, education, and board evaluation

**Ad hoc Committees**

- bylaws
- Mystery Gala
- Friends of Family Service
Responsibilities

Is Your Board a 10?

The Ten Basic Responsibilities of board members should be well understood by each board member serving a nonprofit, and should be used to evaluate the work of the board. They are:

1. Determine the organization’s mission and purpose. The board’s responsibility is to ensure that everyone understands precisely the focus of the organization and its work.

2. Select the executive. This involves a thorough search process for an executive who will fit the current needs of the organization, as outlined in an up-to-date job description. (For more information about selection, see this issue’s Special Report as well as “Boards” section in the January/February issue of The Digest.)

3. Support the executive and review his or her performance. The board is responsible for providing moral support, guidance and strong public support. The executive must have frequent and constructive feedback, introductions to community leaders, invitations to key events and praise for good work.

4. Ensure effective organizational planning. Although management staff often have the responsibility to conduct and coordinate planning, the board is responsible for the oversight of the process, and for setting the direction of the organization.

5. Ensure adequate resources. This means reviewing all finances and raising money to support the organization.

6. Manage resources effectively. Boards are the community’s representatives to the organization, and, as such, have a public trust to maintain. They should ensure good stewardship of all resources.

7. Determine and monitor the organization’s programs and services. Always, the board must ask which programs are most effective, and why. The board must ensure quality, cost-effective programs and services over the long term — and then allow the staff to creatively initiate and manage them.

8. Enhance the organization’s public image. The board is an important ambassador of the organization to the community at large.

9. Serve as a court of appeal. Solid personnel policies eliminate the need for the board to be involved in most matters. However, in exceptional circumstances, the board may be called on to resolve an important dispute.

10. Assess the board’s own performance. Each board should regularly assess its own performance. And every three to five years, the board should take time for a retreat to evaluate its work in more depth.


Nightmares

Service on nonprofit boards can be one of the most rewarding of experiences — or one of the most terrifying. Board work should be carefully chosen. Once on a board, it is important to become an involved and interested trustee.

Lack of involvement in policy and evaluation has created nightmares for some boards. For example, the board of the New York Historical Society allowed the organization to drift year-
Board Should:

1. Be mission driven;

2. Be involved in governance, not management;

3. Act as an official body (as opposed to individual members);

4. Have appropriate contact with staff.

A board of directors should be:

- Focused on the future of the agency
- Hire the most qualified CEO to carry out their plans, goals and objectives
- Assess the CEO's, agency's and board's performances
- Be active in fundraising
- Represent the agency to the community, and the community to the agency.

The board of directors should not be involved in the day to day management.
FAMILY SERVICE
STRATEGIC PLAN

1994 - 1997
FAMILY SERVICE
STRATEGIC PLAN

MISSION
The mission of Family Service is to strengthen the well-being of families in our community through education, counseling and support services.

VISION
Family Service will be recognized for its commitment to building strong families. The agency will be the primary community resource providing leadership and professional expertise regarding families and their needs.

Family Service will have the financial strength to maintain quality, professional staff and provide the facilities needed to support the mission and to achieve the goals of the agency.

Family Service will offer innovative prevention and treatment services of the highest quality to provide families the opportunity to develop the full potential of each family member.

Family Service will bring issues impacting families before the public and work with others to improve the quality of family life.

FOCUS STATEMENT
Family Service is committed to low and moderate income families in the greater Omaha/Council Bluffs region (Douglas, Sarpy, Cass, Mills and Pottawattamie Counties). Future geographic expansion of services must not jeopardize our ability to provide programs in our primary service area.

While all services aim to strengthen the well being of families, our main focus is professional counseling and education. Future program development will primarily center around prevention programs in order to reduce the need for treatment.
Goal #1 -- AGENCY SCOPE: Examine and define program scope and geographic boundaries of the agency.

Strategies:

Define programmatic and client focus for the agency.

Assure that programs offered meet the needs of families and are accessible to them.

Promote interdepartmental cooperation to facilitate work with the client’s entire family.

Create a mechanism for the agency to take a public stance on issues impacting families.

Goal #2 -- RESOURCE BUILDING: Develop and secure the resources needed to fulfill the mission and achieve the goals of the agency.

Strategies:

Develop board, staff and volunteer resources to enhance the effectiveness of the agency.

Develop and implement a strategic plan for Public Relations and Development.

Conduct a capitol and endowment campaign to make proper equipment, space and resources available to provide clients better services.

Continue to diversify the funding base and attract new revenue.

Maintain and develop new working relationships with human service funding sources.
Goal #3 -- COLLABORATION: Collaborate with others to insure that high quality, integrated services are available to families throughout the community.

Strategies:

Assist the business community in providing support services for employees and their families.

Research and prepare for the implementation of managed health care and its impact on families.

Continue to develop partnerships with government agencies and monitor funding goals to strategically position the agency.

Forge partnerships with local school systems to increase potential for the success of children in school.

Collaborate with other human service organizations to provide a comprehensive, integrated delivery system of services that minimizes duplication of programs and improves the quality of services for families.

Goal #4 -- QUALITY SERVICE: Provide services of the highest quality.

Strategies:

Develop and implement a total quality service plan to insure that the client comes first in the delivery of service.

Develop outcome measures to evaluate program effectiveness of each service offered by the agency.

Develop a system to monitor outcome measures and client satisfaction feedback to insure that all services are continually modified and improved to meet the client’s needs.

Develop a comprehensive centralized intake system, including an initial assessment, which directs the client to a complement of integrated services in the community.
THE POLICY GOVERNANCE MODEL
ENDS AND MEANS
THE ROLES OF BOARD AND STAFF

ENDS = WHERE WE ARE GOING - BOARD'S AREA
MEANS = HOW WE ARE GETTING THERE - STAFF'S AREA

(Board's involvement is to say what they won't allow - set limitations)

Ends
The board defines which human needs are to be met, for whom, at what cost. Written with a long-term perspective, these mission-related policies embody most of the board's part of long-range planning.

Executive Limitations
The board establishes the boundaries of acceptability within which staff methods and activities can responsibly be left to staff. These limiting policies, therefore, apply to staff means rather than to ends.

Board - Executive Relationship
The board clarifies the manner in which it delegates authority to staff as well as how it evaluates staff performance on provisions of Ends and Executive Limitations policies.

Board Process
The board determines its philosophy, its accountability, and specifics of its own job.
ENDS--Board's Area
Where We Are Going

MEANS--Staff's Area
How We Are Getting There
(Board should stay out except to say what they won't allow)
OWNERSHIP

Policies on Board Roles

BOARD

Policies on Board/Staff Relationships

Means should be prudent & ethical

CEO

Policies on limiting Executive authority

"MEANS"

Policies on organizational ends (mission, what we are trying to create)

'ENDS'
EXAMPLES OF BROAD AGENCY POLICIES

EXISTING:

SALARY: "THE AGENCY WILL STRIVE TO PAY COMPETITIVE SALARIES AT OR ABOVE THE TOP 50 PERCENTILE AS COMPARED TO THE MEDIAN SALARIES FOR LOCAL NOT-FOR-PROFIT SOCIAL SERVICE AGENCIES, TO THE EXTENT THE AGENCY DETERMINES IT IS PRUDENT AND FINANCIALLY FEASIBLE."

INVESTMENTS:
SUMMARY - "...ASSET ALLOCATION RANGE OF CASH 0-25%, BONDS 40-70% AND STOCKS 30-60%..."

CHECK SIGNING:
"CHECKS DRAWN SHALL BE SIGNED BY ANY ONE OF THE FOLLOWING FOR CHECKS NOT OVER $2,500.00 AND BY ANY TWO OF THE FOLLOWING FOR CHECKS OVER $2,500.00..."

NEED FOR BROAD POLICIES ON:

CAPITAL EXPENDITURES

OPERATING BUDGET
Who does what?

As a board/administrator team, discuss items on the list below and decide how you would assign the responsibility for each decision. Label each item with one of the following:

- B = only the board may make the decision
- A = administrator has complete authority to make the decision
- F = administrator has authority to act and then inform the board
- P = administrator must seek prior approval from the board to act

1) Write a grant proposal

2) Submit a grant proposal to a funding source

3) Discipline an employee who arrives at work intoxicated

4) Change board meeting times or frequencies

5) Decide the administrator will represent your organization at a business or social function

6) Initiate a total ban on smoking in agency offices

7) Set minimum salary for new staff

8) Have preliminary plans drawn up for a new building project that was mentioned at a meeting

9) Hire a consultant for a construction project

10) Purchase a new telephone system with budgeted funds

11) Send an office secretary to a three-day leadership conference in Las Vegas at the organization’s expense

12) Plan a board/staff retreat to revise the long-range plan

13) Select a firm to audit your organization’s finances

14) Hold a press conference to announce building-expansion plans

15) Have the administrator’s office redecorated and refurnished

16) Decide the administrator can go to a week-long seminar

17) Hire an employee for an unbudgeted position

18) Approach citizens about serving on an advisory committee
19) Communicate information to another board

20) Notify contractors of bidding results

21) Decide in which bank(s) to deposit organization funds

22) Decide how to invest $20,000 of surplus funds

23) Decide which items or services to cut to meet budget demands

24) Change billing procedures

25) Change office records to a computerized system

26) Give recognition awards to community members for their contributions

27) Lay off a staff member to meet budget

28) Develop the agenda for board meetings

29) Award contracts to vendors

30) Order repair of vandalized property

31) Hear budget requests from outside organizations

32) Promote a staff member from a direct service position to an administrative position

33) Establish guidelines for evaluation of employees

34) Change the administrator evaluation form

35) Determine the type and number of clerical positions for the office

36) Retain legal counsel for the agency

37) Select a person for an administrative assistant position

38) Establish a flexible work schedule for the administrator

39) Fire a popular, long-time employee for poor job performance
FAMILY SERVICE  
TAKES A BUS TRIP

A goal has been set for the Board of Directors to visit all eleven office locations of Family Service. The visit is to take place in one day, beginning at 9 am and ending at 5 pm. $100.00 has been approved to cover bus rental, related expenses and lunch for all attending.

In order to meet the time and expense limitations a decision needs to be made about the itinerary, including which offices to be visited in what order, which streets and roads should be used, how much time can be spent at each location and what should be served for lunch. There is to be an evaluation of the trip.

Your assignment, should you agree to accept it, is to determine who is responsible for making each decision and why. Your choices are "B" for board and "S" for staff.

1. Setting the goal to visit all 11 locations
2. Setting the amount of time to complete the trip
3. Deciding the amount of funds to be spent on the trip
4. Determine the best day to make the trip
5. Determining which Bus Company should be used
6. Deciding which offices to visit in what order
7. Determining what streets and roads are to be used
8. Decide how much time is to be spent at each location
9. Deciding what to have for lunch
10. Evaluation of the trip and how it was carried out
MANAGEMENT CLINIC

Building Your Board: Eight Essential Steps

Although each institution’s needs differ, every proactive board is a strong board developed through a systematic recruitment process. The proactive board selects trustees to meet the organization’s needs, and looks for specific competencies that they have identified as crucial to its future. Here is how that recruitment process works:

1. Revitalize the Nominating Committee

When the organization seeks a more active, diversified board, the work of the nominating committee becomes much more important. The nominating committee and the board begin to see board recruitment as a major task. The chair of the committee should be a determined individual. The CEO should be present at all meetings, in an ex-officio capacity, if required. The committee should receive good staff support, either from the organization or outside consultant. Recruitment planning should begin early.

2. Assess Board Leadership Needs

The nominating committee’s work begins by reviewing the organization’s mission, strategic plan, programs, and structure. Where does the organization plan to be in three to five years? What challenges are expected? Where does the board need talent?

Just as position descriptions are developed when recruiting staff, descriptions of the duties and responsibilities of board members are needed as well. When a candidate has the opportunity to review a written description, there can be no misunderstanding of what is expected.

3. Develop a Slate of Candidates

People tend to nominate people they know. This limits the pool of potential candidates and may not result in the best choices. No matter how many good people the nominating committee may know, “cold” calls to people in key positions are essential in generating “hot” leads to promising board talent.

The generation of leads comes from talking with leaders in business, the public sector, and other nonprofit organizations. Individuals who are contributing to the success of other organizations are the best board candidates.

Once a slate of potential candidates is compiled, the full board should review and discuss it. Discussions should always be held in confidence. If a potential candidate learns his/her name is being bantered around, or if board members or management take it upon themselves to check out the willingness of an individual to serve, success of the process can be impeded.

4. Research Candidates

Research is required to develop a short list of best candidates. Resumes, though important, almost never tell you what you want to know most about an individual—and may not be available. Confidential conversations with people who know the candidates and can comment on their accomplishments, personality, and potential “fit” are a good method for getting the information needed.

5. Select Candidates and Arrange Appointments

With research in hand, the nominating committee is in a position to make decisions about who should be approached and in what order. At this stage, the committee should be clear about which candidates will be acceptable to the full board. Unlike the recruitment for a staff position, meeting with potential board candidates to “screen” them is awkward. If a board candidate indicates a willingness to serve, he/she should understand, though a full board vote is required, approval is likely.

In calling to schedule an appointment, be direct. Explain that the purpose of the meeting is to discuss the organization’s leadership needs. Plan for sufficient time—at least an hour.

A comment about approaching “important” people:

This is the time for boldness—and not the “we can never get him/her mentality.” What is to be lost? Even if the candidate declines, the organization and its work will have come to that person’s attention. Some positive outcomes may result.

6. Recruit Candidates

The actual meeting to recruit new board members is the most important part of the recruitment process. Ideally, recruitment should be done by a person who knows the candidate and at least one or two other board members and/or the CEO. A team approach provides for multiple perspectives.

A compelling and thoughtful case, persuasively presented, is essential in recruiting both those familiar with your work and those who have limited or no knowledge. The recruiter, or recruitment team, should prepare in advance rather than “winging it.” The most recent annual report and other pertinent materials should be presented to the candidate.

The board member needed for the
A Guide to Building Your Board

Six Keys to Recruiting, Orienting, and Involving Nonprofit Board Members

By

Judith Grummon Nelson

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Information Center
11700 West Lake Park Dr.
Milwaukee, WI 53224

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BUILDING A BETTER BOARD:

A Guide to Effective Leadership

by ANDREW SWANSON

The Taft Group
Washington, D.C.
be kept off the premises. At every board meeting, it should be an agenda item for the president to remind the board and senior staff of their responsibility to turn in the names of possible future board members.

Board Candidate Recommendation

To the nominating committee: I recommend that the person listed below be considered for election to the Board of Directors:

Name ____________________________________________________________
Street ___________________________________________________________
City/State __________ Zip __________ Phone ________________
Business __________________ Street ________________________________
City/State __________ Zip __________ Phone ________________
Business/Profession _____________________________________________

Skills of Interest to Our Organization ______________________________

_______________________________________________________________
Current Interest in Our Organization ______________________________

Board Activities That Would Interest This Person _____________________

Recommended by _______________________ Date ________________

(Adapted from Leadership Development and the Nominating Process. See bibliography.)
Who Should Sit on the Board of Directors?

A board needs a combination of talents to be most effective in its policy-making and stewardship roles. Many boards have found it helpful to make a determination as to the combination of skills and other characteristics which make an optimum board for their organization using a tool such as the Board Profile Grid (see p. 32). The grid shown is one which is recommended for an American Red Cross local chapter board. Your organization should develop its own grid based on its own individual needs.

Boards should include a good community cross section—and what is a good community cross section for a seemingly similar organization will not necessarily be appropriate for your organization. As a result of the growing consumer movement, clients or consumers of services are also appearing with increasing frequency on the boards of organizations from which they receive services.

In considering potential board members, there is a tendency to focus on the community’s most visible or most affluent citizens. There may be better candidates, however, among the up-and-coming generation of future community leaders, or perhaps among persons who have linkages to the community’s decision makers. Sometimes, wealthy or prominent people may be willing to serve on an advisory board, board of sponsors, or “friends” group, even if they are not willing to make the commitment of full board membership.

The Work of the Nominating Committee

It is possible that you will eventually serve on your board’s nominating committee. Since your entire board has been involved in the identification of potential new board members and since a nominating committee should not make decisions about the next year’s board until it has some experience with the current year’s, it is usually best for this important committee to be appointed in the sixth month of the organizational year. Your nominating committee is building a leadership team; therefore, it should take an organizational view of its task, first identifying the nominee for the next year’s board president and then working downward.

When the nominee for the presidency has been identified and has agreed to serve if elected, the strengths and weaknesses of the probable next board president are known. With these characteristics in mind, the nominating committee can identify nominees for the remaining offices and obtain their agreement to serve if elected.

The nominating committee’s first source of information and advice about the skills needed on the board during the next few years is the current board president. The board president should present an evaluation of the incumbent board as well as suggest whatever talents and other characteristics that are likely to be needed in the future to the members of the nominating committee immediately after their appointment.

When the nominating committee has identified the remaining officer candidates, it should begin to identify candi-
It may be necessary to permit nominations from the floor in some national or large state organizations, but in general, this practice should be avoided because it fails to provide the voters with adequate time to contemplate the choices.

Making Good Committee Appointments

Assume that you are the nominee for president and are now waiting out that 45-day period between the announcement of your nomination and the annual meeting at which elections shall take place. You can turn this waiting period to excellent advantage by using it to plan sound committee appointments. One of the advantages of this 45-day interval is that you now know who the probable players are going to be, assuming that there is no alternative slate. Even if there is, you can still accomplish much of the work of making committee assignments during this period. If you use this time for this purpose, immediately after your election you will be able to call a brief meeting of the new board following adjournment of the annual meeting, announce your committee assignments, and obtain the approval of these appointments by your board. You would thereby have your board organized from your first day in office. Thus, while these 45 days are passing, you can use the time to accomplish the following tasks:

- Determine the interests of board members and other appropriate and available volunteers, using a questionnaire for the purpose.
- Review the past committee assignments of all the available people.
- Assess the performance of all the available people in their past assignments. You should not automatically repeat the same assignments; variety of experience is vital to the growth of board members as well as of volunteers who may one day join the board.
- Select the chairpersons for all committees and secure their willingness to serve.
- Fill out each committee with members, considering the desires of each committee’s chairperson to the extent possible. In this process, be sure to involve every board member in at least one substantive committee assignment.
- After your election, present a complete list of proposed committee appointments to your full board for approval at a special board meeting called for this purpose immediately following the annual meeting.

The Orientation of New Board Members

Once elected, the new president has a responsibility to ensure that all new additions to the board receive a full orientation. (See beginning of Part 1,
What to Look for in a Board Member

Grantsmanship Center, Whole Nonprofit Catalog, Los Angeles, 1986, Page 21-23.

By Brian O’Connell

Brian O’Connell is President of INDEPENDENT SECTOR, national coalition of voluntary organizations, foundations, and corporations who seeks to preserve and enhance our American traditions of giving, volunteering, and not-for-profit initiative. He is the author of several books, including his Board Member’s Book: Making a Difference in Voluntary Organizations, from which this article was excerpted, his Board Member’s Book is available for $16.95 from The Foundation Center, 70 Fifth Avenue, New York, NY 10003.

Usually when we think of leaders and leadership, we envision towering giants who can do anything or the charismatic magician who can get the rest of us to do anything. In “A Guide For New Trustees,” Nancy Axlerod of the Association of Governing Boards quoted a Wall Street Journal article which described the ideal board member as “a man or woman with the versatility of Leonardo da Vinci, the technical acumen of Bernard Baruch, and the scholarly bent of Aristotle.”

Leadership actually comes from ordinary people who move them to take responsibility. These people are all around us leading thousands of communities and national institutions through devotion, hard work, and quiet ability to help individuals and organizations achieve their common purposes.

In all of the resources I’ve been reviewing, most of the experts enumerate the kinds of professional experience that an organization will need on the board and pay no attention to personal qualities. But when I look at what makes a board tick, it’s often the ability to work together that counts and it depends on qualities that lend themselves to teamwork. Brian O. Houle, in The Effective Board, “organization is the way by which people relate to one another so that they can achieve their common purposes.”

Because I’ve learned this lesson so totally and am so sinned to see others so preoccupied with the buzz word expertise,” I want to dwell a bit to try to communicate what mean and how much I mean it. For years I have been watching boards and making mental notes of the personal qualities of people who become the formal or informal leaders. If I were restricted to one quality, I would single out the ability to start and end every analysis and evaluation with the standard of what is right. As simple as that may seem, it is too rare in evidence. Determining what is right becomes obscured in a multiplicity of other considerations which so confuse the analysis that decisions are far too often made without primary consideration of what it, in fact, is right. One of the most significant lessons I’ve learned is that is that I let their factors intervene, such as timidity, ambition, wanting a please, and all the other things that come to the fore when we’re asked to speak our minds. I generally end up using our judgment. On the positive side, there have been times when I’ve had to stop myself in my tracks and think, “Wait a minute, I want to stop and be in the minority, but I persisted and I usually learned that by following the rule of doing what is right, I’m not going to get hurt or at least I respected, and I didn’t have otherwise would have been wrong in every respect.

As hard as it often is to figure out what is right, that approach makes even complex matters surprisingly clear and their solutions fairly obvious. I’ve seen boards struggle interminably with decisions, only to have someone bring them gently back to the starting place by pointing out that they have first to articulate what is right and then concentrate on how to achieve it. Often groups prefer not to struggle with this primary consideration or want to bound off under the false assumption that there is a common grasp of the issue. Just as often, the board will erroneously assume that what is right is unachievable and will proceed from there without really shaking the bell out of that assumption.

It’s important not to be among those who feel they must stand up and be counted on every issue. Those kinds are pains in the neck and usually confuse personal privilege with principle. As a private habit, though, it’s important to begin each analysis with the standard of “what is right” foremost in mind before moving on to the “what’s” and “what’s.” By starting there and ending there we at least know what the basic issue is. That’s a comfort in itself, and in addition, the exercise of the standard provides a healthy discipline.

The second most important quality of a leader I’ve observed is fairness. This, too, is simple in concept but difficult in application. It’s obviously related to any determination of what is right, but it is important in itself. For one thing, it lends to leadership an important and attractive kindliness.

Sometimes what is fair to some people is in conflict with what is right. What’s right may have long-range considerations but might not be fair to people caught in the short-term consequences. At least by determining what is right and what is fair, we have a better grasp of all considerations and may be able to minimize the consequences or provide compensation to those unfairly affected.

Fairness also involves giving credit to others for their contributions. Not only is this an important attribute, but it’s a great way of pleasing a large individual. It is rarely done, or at least with grace and sincerity.

Toughness and sensitivity are a necessary combination of characteristics for good leadership. It’s a beautiful thing to see the individual who sticks tenaciously to a plan or a goal yet can still remain attuned to the human side of the enterprise. Successful leaders often handle themselves to badly that we marvel that they ever could have become successful.

The answer is that they’ve forgotten or underestimated how much a part of their success involved alertness to moods, feelings and needs. It’s almost an axiom of success that fairly quickly the toughness survives and the sensitivity subsides.

The leader who can go the long haul is one who can somehow manage to keep these two qualities in balance.

I’m at a level of activity where I can see some of the former young superstars beginning to pass over because, while they are still spectacular individual doers, they haven’t the patience or reasonable team play necessary to pull together a really large operation.

In the reverse, it’s fascinating to see some of the sleepers coming to the fore. Supported by their peers, they’ve grown quiet and steadily in organizing opportunities and abilities.

Jesse Jackson says there are two kinds of bright young leaders, the “stars” and the “satellites.” “Satellites were very bright in the sky,” he says. “They outshine the stars for awhile, but they burn themselves out and they just disappear.”
But the stars come out every night. They have pace.

Related to pace and peer support, but deserving separate mention, is reliability. There's no need to dwell on it suffice to say that depending on people who aren't is a nightmare and working with people who are is a delight.

The next quality involves contradictory characteristics. It's controlled ambition. Ambition is a healthy trait, but when it's out of control there's nothing less appealing. I delight in watching a person who is able and ambitious but who has learned that the way to achieve important goals is to subordinate the ambition to fairness with a dash of humility blended in.

There is an apt Chinese proverb that says, "Those who lead well will know that their followers might say that they led themselves."

Given the above difficult combinations of attractive qualities, it's probably not surprising that the next characteristic of the best board members and leaders is flexibility. Maybe it's assumed that anyone who possesses the qualities mentioned would have to be flexible, but I've seen many people who seem to have everything going for them still miss the mark, and the problem invariably comes down to inflexibility. People who are capable often learn early in life that they are special, and this unfortunately leads to excessive confidence in their own judgment and capacities. Gradually doubt recedes, humor gets pushed into the background, and temper shows more often. The person who knows what is right, is tough, efficient, and ambitious, and has had success and recognition tends to become impressed with himself or herself, and begins not to look at each new situation in its own right. Adding flexibility to the blend of fairness, sensitivity, and imagination helps the product to rise.

I cannot leave enthusiasm either. I can hope that people will have a strong sense of humor, but I can survive, for the short run, if they don't. But lack of enthusiasm I can't quite survive. Thoreau Wilder provided this counsel: "It's your business not to be eager about the thousand things in the night-sky of knowledge, but to be enthusiastic about the one or two constellations that you have marked down for your own... Count that month lost in which you have not been swept up in an enthusiasm."

Ralph Waldo Emerson put it even more definitely. He said, "Nothing was ever accomplished without enthusiasm." Although I obviously believe that these personal qualities are even more important than specific skills, I realize that they don't satisfy the usual questions about specific responsibilities. I've also learned that it's not sufficient to give the simple reply that each trustee is responsible for assuring that the board as a whole is fulfilling its accountability through planning, execution, and evaluation, although that is still the best answer.

On the most basic level, you, as a board member, should understand the mission of the organization, attend board meetings, serve actively on at least one committee, be certain that you and the board as a whole are in control of planning and evaluation, contribute to a sense of camaraderie and teamwork, and ask questions.

At least half of those board members who wanted me to say exactly what they should do are now exclaiming, "That doesn't seem enough!" If it's any help, I can pretty much guarantee that if you'll do those things the rest will become obvious.

Most lists of fundamentals refer to the trustee's role in raising money. The veteran fundraiser Harold Seymour used to put it bluntly: "Contribute wealth, wisdom and work."

Today, in our efforts to be more representative, it's not fair to put the arm on everybody for $10,000 or even $500. On the other hand, I think it is fair to ask all board members, within their means and spheres of contacts, to contribute as much as they can and to help raise money. Asking for this help should be the responsibility of other volunteers and not the staff, and no board member should feel above these obligations.

Just a word on another basic responsibility involving the importance of asking questions. If you don't understand the financial statements of the budget or the issue being voted on, ask questions. Sometimes these are better asked ahead of time or during the break so that you are not taking up too much time, and you can use these opportunities to get a bit of a tutorial in areas where you are not as knowledgeable as others. However, the ultimate and necessary task is to assure yourself who you are voting on. I can guarantee that other trustees will be grateful that someone else admits confusion, which will lead to a broader sense of comfort in asking even more questions. If you are accountable and don't understand it, where does that leave you and the organization?

There is a balance between not being intimidated into inactivity and at the same time not feeling guilty if you don't understand everything. Pick the areas that really seem important and on which others don't seem to be coming forward. Don't be critical of yourself or others because you or they don't seem to understand or don't have an interest in everything. It's not realistic to expect that all board members will have an interest in or a grasp of all the things the organization is doing. My experience is that voluntary agency boards of any size are rarely composed of individuals who have across-the-board interest or knowledge. I find that if a board is effectively organized, some people participating will have an intense interest in certain topics and others will have a like interest in other issues and that, in turn, the group will provide an effective screen for all the issues and reasonable discussion of them.

Don't be afraid of healthy give and take. Among other things, it builds a sense of family. Board meetings should be viewed as healthy arenas for controversy. If the issues are laid out in advance, well formulated and clearly presented, and if sufficient time is available for debate, then it is healthy and constructive for all board members to question, debate and disagree.

One of the faults of nonprofit organizations is that the leaders strive for compromise and for unanimous votes. My experience has been that if you are dealing with real issues, striving too hard for compromise and unity may mean that you are not facing squarely the issues themselves, you don't have the right mix of people, or you've watered down the issues until they're harmless and impotent. It's far healthier to have a split vote as long as the issues are on the table, the debate is fair and there has been sufficient time for consideration.

Providing for fair and objective consideration is matter-of-fact that done. Those in charge of the meeting often have strong feelings about the issues; meetings are usually too short for any real discussion; and there is too little advance dissemination of the facts to prepare people for adequate debate and vote.

If there is significant controversy, the organization must take the time to present the issues before the board so that the matter can be decided without feeling that something has been put over on people. There will always be the temptation to slip a tough issue through to avoid hurt feelings or ill will, or to let the executive committee handle a matter simply because it is potentially upsetting. Don't tolerate any of it. Be certain that a proper process is available and that this process is objectively and fairly followed to the letter.

Is it far better to lose even on critical issues as long as the organization comes out of the battle with greater confidence in the integrity of the process. It's also better to take additional time for debate and decision on major items than to put them behind you. For instance, on a major issue I always suggest that the matter come up initially for reaction and discussion without a vote, even though this means postponement. It is more conducive to correct decision-making and to confidence in the system to take extra time for consideration and review. Even on lesser matters, I generally favor having the board consider issues at one board meeting for vote at the next. Committee chairpersons and staff members are almost always dismayed when I recommend this process. Usually they have worked hard on a project, on guidelines, or on a position statement, and they feel it's imperative that the vote be taken as soon as possible. My approach is that if the matter is so important, it's worth being sure that the people know the issues. I also believe that with this course there is more likely to be fellowship once the vote is taken.

The posture of the leader should be one of patience, tolerance and flexibility. I include flexibility because leaders will often have their own biases, and yet they especially must be willing to seek out and hear new facts and different opinions. The more important the issue, the more intense the feelings and debate are apt to be. You will find some people dog in their heels very early and are adamant about a given position. You will also find that people tend to describe the issues as a matter of principle or moral right. Generally, if you look closer, you will find they have confused policies with principles, or rules and regulations with philosophy. It's helpful to delineate the important distinctions between philosophy, principles, policies, procedures, rules and regulations. It's easier to take something lower in the order too seriously simply by confusing it with a higher value.

The object of all the lessons to minimize and create unity is to use the wonder necessary and time to fight for the cause and not against another.

That's a pretty good rule for the role of all boards and board members.
Hagar the Horrible

This will be a dangerous mission, but anyone who refuses to go will be forever branded a cowardly, weak, gutless, soft, faint-hearted, cringing, trembling wimp! I can live with that.
A BOARD EXPECTS ITS EXECUTIVE DIRECTOR WILL:

1. Serve as chief operations executive of the organization;
2. Serve as professional advisor to the board;
3. Recommend appropriate policies for consideration;
4. Implement effectively all policies adopted by the board;
5. Inform the board fully and accurately regarding the program;
6. Interpret the needs of the program and present professional recommendations on all problems and issues considered by the board;
7. Develop a budget (in conjunction with the finance committee) and keep the board up-to-date on budget problems;
8. Recruit the best personnel and develop a competent staff and supervise it;
9. Devote time to improving the staff;
10. Assist the board in developing and conducting community information programs.
AN EXECUTIVE DIRECTOR EXPECTS THE BOARD WILL:

1. Counsel and advise — giving the benefit of its judgement, expertise and familiarity with the local setting;
2. Consult with the executive on all matters which the board is considering;
3. Delegate responsibility for all executive functions;
4. Refrain from handling administrative details;
5. Make all the staff responsible to the executive director;
6. Share all communications with the executive director;
7. Provide support to the executive director and staff in carrying out their professional duties;
8. Support the executive director in all decisions and actions consistent with policies of the board and the standards of the organization;
9. Hold the executive director accountable for the supervision of the organization;
10. Evaluate the work of the executive director.
Effective Boards in a Time of Transition

By Eva Schindler-Rainman, D.S.W.

Effective and Creative boards in a time of transition—a challenge and an opportunity. Indeed, this means an invitation to revise, review and change.

From Second to Third Wave

It is a time of transition in the world, in this country, in our communities. We are moving from an industrial to a post-industrial society, or from an industrial to a service society, or, as Alvin Toffler says, "from the second to the third wave." We are moving from the no longer to the not yet, from the way it was to the way it will be as a world, as a country, as a province, as a voluntary sector, as individuals, as family units—transiting from the past to the future. Transitions have their own crisis of opportunity, their own characteristics. They are fascinating, but sometimes also frustrating.

Five key transition trends are selected here because they affect boards in important ways.

From Plenty to Limited Resources

The first transition is from a feeling of plenty to doing more—better—with less. We are pressured to do more with less, but the expectations of our clientele and consumers are rising at the same time. We are living in a time of limited resource management. Decreasing monetary and material resources challenge us to look at and/or develop new resources.

We are struggling with increasing needs and expectations as well as increasing sophistication of consumers in a society where changes are more rapid and more complex than ever before. This requires the integration of wisdom and technology at much higher and higher levels of skill and collaboration.

Margaret Mead once said that all of us over 30 are immigrants to the culture under 30. Thus, she summarizes the rapidity of the changes and the need for us to be aware that the changes are fast, vast, complex and sometimes difficult.

Changing Values

A second trend reflects changing values—from values that we thought we were sure about to values in transition. Here are four examples:

- From one loyalty to multiple loyalties and roles in the family, the community, and the workplace. This means that some board members do not want to stay on for long terms, not take on vast and exhausting responsibilities. Multiple roles and loyalties are challenging dynamics in board functioning.

- From permanent commitments to temporary, short-term commitments ("commitment" used to mean lifetime, or at least a long time). Now it may be commitment to the moment, or to some hours, or commitment to a month of service. Certainly, it has implications for boards.

- From an unquestioning respect for authority to confrontation and questioning of authority and decision makers whenever possible. This change is reflected in such articles as "Increasing Risk at the Top," which points out that when you are a decision maker, you may have to deal with such things as liability and malpractice suits.

- From an emphasis on conformity to an appreciation of the beauty of difference. We are beginning to appreciate diverse people, and we are beginning to appreciate that differences make for a richer menu of ideas, ideals, contributions and resources.

From Turfdom to Collaboration

A third major transitional change is that we are moving from organizational turfdoms to collaborative networks and coalitions. We are discovering new ways of giving service. This includes sharing audio-visual expertise, development of interorganizational teams, cross-system telephone conferences, collaborative development of educational video and audio tapes, and the barter system, such as using a trainer from one system and a trainer from another one to work on a reciprocally beneficial and united

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Eva Schindler-Rainman is an organizational consultant, behavioral scientist, social worker, teacher, lecturer and writer. Her article is based on a portion of a paper presented at the Today for Tomorrow Board Conference in Toronto, sponsored by The Junior League of Toronto, The United Way of Greater Toronto and the Canadian Centre for Philanthropy.

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The Business of Boards is Serious Business

By G. Neil Karn

First things first and second things not at all. — Peter F. Drucker

SERVICE ON A POLICY-MAKING board of directors was never for the cavalier, but its moral and legal responsibilities in this age of increasing accountability and decreasing resources are a bit frightening. The lives and well-being of millions of fellow citizens are affected daily by the decisions and actions of such boards.

Board decisions once involved new wings for hospitals, demonstration programs, increased services, expanded eligibility. Today, board members are more likely to struggle with budget cuts, staff lay-offs, the redefinition of services and eligibility, reductions and outright terminations of programs. In many instances, citizen boards must decide who among the many deserving gets served.

Neil Karn is the director of the Virginia Division of Volunteerism, an agency mandated to serve nonprofit organizations in the Commonwealth of Virginia. He has led numerous board training seminars, including a workshop at the 1992 National Conference on Citizen Involvement upon which this article is based.

Complicating this moral dilemma is the increasingly litigious context within which boards must operate. Members of policy-making boards are individually and collectively liable for what the organization does. The volume of suits involving not-for-profit boards has been on a dramatic rise in the last decade, and the complex nature of decisions to be made in this era of scarce resources hardly portends any decline in litigation.

In the face of these awesome challenges, what course can the conscientious board member take? To borrow a phrase from the field of education, it is time for a "return to basics." Volunteer board members would be wise to concentrate their energies on the fundamental responsibilities of board membership, such as program budgeting, policy development, evaluating program effectiveness and financial stewardship. As Robert K. Greenleaf suggests in Trustees as Servants, service volunteering and the social amenities of board membership may have to be put aside:

Too much of the public concern for the quality of society is still devoted to caring directly for individuals and not enough attention goes to caring for institutions and the way they are structured. Structural flaws can cause harm to individuals; conversely, conceptually sound and ably administered institutions can build people and enrich society.

Today, a nonprofit's focus must be relentlessly on board business. If board members never plan the refreshments for the annual meeting, redesign a brochure, or serve as a one-to-one volunteer for the sake of concentrating on the responsibilities of board directorship, then they have set their priorities correctly.

Staff and board alike must internalize this value. The time and energy of board members are too often the result of fragmented activities. Full attention to the primary functions of board membership will fill their volunteer calendars very nicely.

What are those primary responsibilities? Board functions can be organized essentially into six broad categories:

1. Administration of the corporation
2. Program planning and budgeting
3. Evaluating organizational effectiveness
4. Retaining and evaluating top management
5. Financial stewardship
6. Constituting the community connection

The history, purpose and organization of policy-making boards certainly will differ, but these six functions apply uniformly.

Administration of the Corporation

By law, a not-for-profit corporation must have a board of directors responsible for the management of its affairs, which involve maintenance and legal direction of the corporation:

• The board of directors constitutes and continues the legal entity by attending to legal requirements for the conducting of agency business, such as maintaining an official record (minute book), and filing such required reports that keep the corporation in good standing and by providing for continuity by electing its successors.

• The board of directors defines the organization's purpose by establishing a clear statement of mission—its raison d'etre. It does not change without a conscious reconstitution of the corporation.

• The board of directors determines policy for the organization. Policy statements establish governing principles, address procedural matters and provide
directors must thoughtfully weigh the type of person it requires. A board should pose this question to itself, "At this point in our organizational life, do we need a bold innovator, an aggressive fund developer, a savvy politician, or a smooth manager?" The board must decide and then determinedly set out to find the candidate of the highest quality. If a board fails to hire the right executive in the first place, everything else is catch-up.

- The board of directors establishes the compensation and conditions of employment for the executive director. The board of directors must not relinquish control of this key personnel responsibility. The board should always be in the driver’s seat. The executive director serves at the pleasure of the board and should be exempt from all standard personnel policies. This is a condition of employment. Expectations must be clear and certainly equitable. Excellence should be rewarded and inadequate performance penalized. The board should establish and observe a regular schedule for salary reviews. An executive director should never be put in the position of reminding the board of the need to review his or her salary or to suggest an increase. The executive director may be asked to present a compensation package for other staff, but the establishment of the top manager’s salary and benefits is strictly the board’s prerogative.

- The board of directors must not hesitate to evaluate the executive’s performance regularly. Too often, after completing an exhaustive search for a top executive, the board of directors heaves a collective sigh of relief and assumes its obligation is complete. Performance objectives should be set and regular reviews of the executive director observed. Boards should never leave an executive in doubt about his or her performance. Many boards wait until it is too late, until there are problems. In the absence of regular performance reviews, the rumblings from the board of a need to take stock of the executive can usually be translated to mean, "We’ve got a serious problem here!" By this time, it's usually too late.

Fairness to an executive director dictates clear expectations and regular feedback. It is one of the ironies of organizational life that the staff with most discretionary power gets the least supervision and feedback. There are 101 things an executive could be doing—fundraising, organizational development, program development, public relations, coalition building, fence mending. The question is—what should he or she be doing and is it being done well? Most professional executives welcome critiques when expectations have been made clear.

Financial Stewardship

The board is responsible for the financial integrity and solvency of the corporation.

- The board of directors must take the lead in the development of financial resources. First, all board members have an obligation to make a personal contribution to the organization. What right have directors to ask others in the community to give when they have not contributed a significant personal gift themselves. Second, they must be willing to assist in fundraising. This cannot be totally delegated to staff. The board’s assistance can take a variety of forms, such as making personal contacts, identifying sources or engaging in fundraising events. Third, if the board’s corporate abilities are insufficient to generate adequate operating resources, it must realistically invest organizational resources in competent staff and investment capital to generate additional funds.

- The board of directors must set conditions and standards for all funds solicited in the organization’s name. This includes reviewing and approving all proposals for governmental or philanthropic support and plans for fundraising campaigns. Boards need be aware that this is a potential point of tension in board-staff relations, particularly when resources are tight and staff have worked hard to prepare a funding proposal or engineer a grant. The board must constantly be aware of the fact, and staff occasionally reminded, that only the organization itself is eligible for a tax-deductible gift. Staff’s hard work notwithstanding. If staff wants to have the final word, they need to incorporate as a 501(c)(3) organization.

- The board of directors must exercise fiduciary care of the funds entrusted to the organization’s use. Board members are trustees for these public monies (outright governmental grants or charitable contributions which constitute diversified tax dollars) and have personal financial responsibility for exercising prudence in fiscal planning, controlling and reporting. Evidence of due fiduciary care includes approving the organization’s budget, calling for regular financial reports and audits, insisting on appropriate policies and controls for deposits, expenditures, purchasing and investments; and avoiding self-serving policies and conflicts of interest. Boards of directors have a moral and legal responsibility for reasonable oversight of the financial affairs of the corporation.

- The board of directors must engage in sound long-range financial planning. The board must concern itself not only with today’s revenues but also tomorrow’s. Many not-for-profit organizations begin with government demonstration grants or foundation seed money. From day one, the board must develop a plan for making the transition to self-sufficiency when these funds are exhausted. Further, boards must be alert to future growth needs and plan accordingly. Will client populations increase due to changing governmental policies or economic conditions? Will capital expenditures be needed to replace worn-out or outdated equipment and facilities? Can giving patterns be expected to increase or decrease? These are some of the questions a forward-looking, fiscally responsible board must be asking itself.

Constituting the Community Connection

The sixth function of boards involves serving as a link between the community and organization:

- The board of directors represents the public interest. An organization with not-for-profit status enjoys special privileges. A public trust is implicit in an organization that receives either government funds or charitable gifts, and the board of directors is the guardian of that trust. The board has a moral responsibility to the community-at-large to ensure both program and fiscal accountability.

- The board of directors represents the interests of particular publics. Members are frequently elected to represent such groups as the elderly, handicapped, certain neighborhoods, consumers or racial and ethnic minorities. The purpose is to ensure that the full range of community views and values are incorporated into organizational decision-making.

- The board of directors represents
EIGHTEEN NOTEWORTHY RULES FOR BOARD MEMBERS

1. Attend board meetings regularly.
2. Make sure the organization keeps a written permanent record of all board minutes and official actions.
3. Exercise general supervision over the organization's affairs.
4. Investigate and audit the organization's major or controversial decisions.
5. Inform yourself before participating in decision-making -- use both concrete information and a great deal of common sense.
6. Pursue any warning signs that come to your attention that something is wrong.
7. Insist on meaningful board meetings with full disclosure of operating results.
8. Require the organization to engage a professional auditing service, preferably a CPA.
9. Require the organization to consult with legal counsel as indicated by prudent management -- in its founding, at crisis points, or in complicated transactions.
10. Require reports at the directors' meetings of all committees.
11. Authorize only appropriate indebtedness.
12. Know all the directors and officers.
13. Adopt and follow sound business policies and practices.
15. Avoid conflict of interest.
16. See that the organization maintains a good credit and financial standing.
17. Review the adequacy of the organization's insurance programs.
18. Full knowledge of the organization is needed to assume proper responsibility in its effective management.

Four Winds Girl Scout Council
Flint, Michigan
RIGHTS OF VOLUNTEER BOARD MEMBERS

1. To be fully informed about the responsibilities, time commitment, organization, etc. before accepting the position of board member.

2. To have opportunities for orientation and continuing board training which will assist the board member to function effectively.

3. To be kept fully informed through accurate financial reports, management reports, regular and thorough briefings by staff, etc. about the operation of the organization.

4. To expect that volunteer time will not be wasted by lack of planning, coordination and cooperation within the organization or within the board.

5. To be assigned jobs that are worthwhile and challenging with freedom to use existing skills or develop new ones.

6. To be able to decline an assignment if it is felt that the match of skills and interests is not appropriate.

7. To have successful job experiences that provide opportunities for personal growth.

8. To be trusted with confidential information that will help the board member carry out assignments and responsibilities.

9. To know whether the volunteer work is effective and what results have been obtained; access to an evaluation process which will measure that performance based upon measurable, impartial standards.

10. To be recognized at appropriate times for one's work and involvement as a board member.

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Developed as extra material for Organizing/Governing workshop
United Way of King County, Washington
Margaret Ceis, Trainer
Board Self-Assessment: The First Step to Effective Planning

Are your board and organization living up to their ideals? The evaluation method described here will give you concrete answers you can use to make new plans.

By Mark Michaels

When people work together and develop a sense of group belonging, they tend to stress actions which help them stay together. Likewise, they avoid actions which, at least on the surface, tend toward conflict and division.

This dynamic plays itself out in the board room through many unspoken rules. One such rule is, "Don't criticize people. It will only hurt them." As a result, many boards resist evaluation systems, perceiving board assessment as a process of criticizing their peers.

But criticizing peers is not the purpose of board evaluation. Rather, evaluation is part of the primary planning function of the board—one step in a crucial evaluation-planning cycle. Evaluation identifies where the board is, while planning helps the board decide where it wants to go and how to get there. This evaluation-planning cycle is not flat. It is a true spiral, moving the nonprofit upward on the scale of organizational effectiveness.

The evaluation-planning cycle is not flat. It is a true spiral, moving the nonprofit upward on the scale of organizational effectiveness.

TASK PLANNING:
WHAT DO WE WANT TO ACCOMPLISH?

Of the two types of planning, task is the more concrete. For boards, task planning relates to strategic planning and management by objectives (MBO). It is a simple process of formulating objectives for the organization.

Begin With a Work Plan

Most boards practice task planning. At the beginning of the year, they meet to decide what they want to accomplish as a group in the next 12 months. Examples of such tasks might be:

- Develop a new mission statement.
- Raise $150,000 in private contributions.
- Develop a sustaining funds system.
- Improve our organization's public image.
- Evaluate the CEO.

Nonprofit boards are responsible for performing three types of evaluations. They must evaluate the organization as a whole: Is it effective in achieving its mission? They must evaluate the chief executive officer, a task closely linked with the organizational evaluation. And they must evaluate themselves, to insure that they are properly performing their tasks as the ultimate leaders of the organization.

The key to any successful evaluation is the existence of measurable standards. There are two areas of performance for which standards can be set—task (what is done); and function (how it is done). Let's look at both these types of planning and see how we can use them to improve performance.

WHAT DO BOARDS EVALUATE?

Nonprofit boards are responsible for performing three types of evaluations.
The task plan lists what is to be done, who is to accomplish each task, and the date it is to be completed. The completion date is an important, but often overlooked, part of this plan. It underscores the necessity for follow-up.

agers often did anything necessary to accomplish their objectives. As a result, their subordinates and peers would burn out, quarrel, compete, and exhibit other behaviors with long-term detrimental effects on the organization.

Boards forget to evaluate in the hope of avoiding finger pointing and conflict.

The Importance of Evaluation

Many boards establish excellent work plans but stumble over evaluating their competence in task completion. Such boards meet annually to develop new lists of tasks, forgetting that they should first review the results of last year's plan.

Boards forget this evaluation in the hope of avoiding finger pointing and conflict. In truth, this failure destroys effective planning. The lack of evaluation leaves out half the planning formula.

Task evaluation does not require blaming. It merely requires answers to two simple questions:

- Did we complete the task as planned? If not, why not?
- What impact did the results have on our organization?

With answers in hand, the board has the information it needs to establish next year's work plan. This new plan, of course, answers the question, "Where do we have to go now?"

Thus we see how the cycle works—planning, evaluation, and back to planning. Both parts of the evaluation-planning sequence are essential. While task planning clarifies the board's objectives, task evaluation measures the board's effectiveness.

Task Approach Useful, But Not Enough

One benefit of the task approach is a reduction in conflict. Task evaluation is simple: Either a task is completed or not. The answer is available in black and white. While people may offer excuses about why things weren't done, the answer itself is absolute.

When the concept of management by objectives was in its heyday, some management gurus claimed that such a task evaluation was all that was needed. What mattered was what got done, not how it got done.

Now we know that such reliance on task evaluation was naive. In management evaluation, it turned out that managers often did anything necessary to accomplish their objectives. As a result, their subordinates and peers would burn out, quarrel, compete, and exhibit other behaviors with long-term detrimental effects on the organization.

Boards can be just as guilty of such behavior. When total emphasis is placed on outcomes, more aggressive members can overlook others' needs. The organization quickly loses valuable knowledge and support from alienated members.

Therefore, evaluating what the board has done is only the first phase. It is just as critical for the board to evaluate its functioning as a group—how it gets things done. Although this process is more complicated, you can obtain measurable, useful results through the following steps. Again, we will examine both planning and evaluation—equaly important parts of the cycle.

FUNCTION PLANNING:
HOW WILL WE ACCOMPLISH OUR OBJECTIVES?

Planning how a group wishes to function requires a relaxed, supportive atmosphere. It is best to perform such planning in a retreat setting. You may want to conduct the planning session as part of your annual planning retreat after the board develops its task plan.

If this is the first time you have held a function planning session, have an outside facilitator conduct it. You will thus reduce the power role of the chair or note taker, allowing all board members to participate equally. After two or three evaluation-planning cycles, the board will have enough experience to take over the process, and an outside facilitator will no longer be necessary.

Draw Up a List of Functions

The first step is to put together a list of functions which your board wishes to evaluate. If you want to work on group process problems, you might address such areas as intra-board communication, teamwork, or decision-making methods. You may also wish to evaluate such functions as fund development, organizational evaluation, or staff-board relations.

To develop the list, ask board members, "What functions must a board perform to be effective in accomplishing its purpose?" Have them independently write down answers to this question. After 10 minutes or so, have the group share what they have written, with a recorder keeping track of ideas on large newsprint.

As the sharing occurs, encourage members to add new ideas. Then, through group discussion and consensus, combine the list and reduce it to about 10 basic functions for evaluation.

Set Standards for Group Performance

The real discussion will come during the next step, in which the group develops performance standards for each function. The standards describe, in behavioral detail, what such terms as "excellent," "meets standards," and "poor" mean to your board. The goal is to develop a consensus on these values.

Develop standards for each function separately. Repeat the following steps for each function:

- For the function under consideration, have each member independently develop three lists: a list identifying behaviors shown by groups who are outstanding examples of achievement for this function; a similar list representing poorly functioning boards; and a third list representing boards which just meet the standards.
- Once the individual lists are made, have the recordkeeper transfer them to newsprint or some other shared document.
- Discuss the lists and reduce duplications.
- Hand out sheets of paper with three columns, titled "Excellent," "Meets Standards," and "Poor." Or, for a more complex evaluation, use five columns, as shown in Figure 1. Have the members individually place the behaviors listed on the newsprint into what they feel is the appropriate column on the sheet in front of them.
- Review each behavior until the group agrees on its proper placement on the worksheet. During this discussion, you will probably need to revise the description to reach a unified understanding of what that behavior really means, especially when there are great differences in people's perceptions of appropriate placement. If agreement cannot be reached, drop the behavior from the list.
- Edit the results into an evaluation form.
<table>
<thead>
<tr>
<th>Dimension</th>
<th>Poor</th>
<th>Below Standards</th>
<th>Meets Standards</th>
<th>Good</th>
<th>Exceptional</th>
</tr>
</thead>
<tbody>
<tr>
<td>Work in harmony with the CEO</td>
<td>CEO takes individual directions. Board meddles in personal matters. Board members solve problems with patrons instead of sending to CEO. Board members show favoritism and collusion.</td>
<td>Very little discussion of problems and solutions.</td>
<td>Board members are good at public relations.</td>
<td>Members make CEO aware that board will back him/her up. Board members work together to achieve goal.</td>
<td></td>
</tr>
<tr>
<td>Assure the financial success of the organization</td>
<td>Hold meetings infrequently. Ignore modern technology. Lets one member dominate. Members stay home for meetings. Decisions are swayed by special interest groups. Local demographics are ignored. Don't pay capital credits. Schedule annual meeting in Hawaii.</td>
<td>Chairperson does not lead meetings. Board lets manager make decision. Meeting time is too short. Members do not attend seminars.</td>
<td>Budget information is disseminated before the meeting. Salary and benefits are kept comparable. Keeps current with financial trends. Makes sure borrowing ability is not overtaxed. Are realistic with rates.</td>
<td>Prepares a budget, reviews it and reports at monthly meeting. Reviews financial policies and knows cash flow position. Understands financial reports. Defines membership needs. Develops long-range plan and projects capital needs. Keeps up with legal requirements. Hires excellent auditor.</td>
<td></td>
</tr>
<tr>
<td>Enhance CEO relations with clients through delegation of authority</td>
<td>Poor attendance at board meetings. Directors involved in day-to-day operations with clients and not backing up the CEO. Letting the CEO do his/her own thing.</td>
<td>Giving the CEO breathing room.</td>
<td>Put out newsletter with monthly billings. Have group meetings and discussions.</td>
<td>Furnish quality equipment. Have interesting and informative annual meetings. Keep policies current. Communicate tactfully with public.</td>
<td></td>
</tr>
<tr>
<td>Hire and evaluate the CEO</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Set board policy as it relates to all areas of operations</td>
<td>Ignores present policies. No consultation between board and CEO on policies or adopts policy based only on CEO recommendation.</td>
<td>Sets policy without legal advice.</td>
<td>Committee develops policies for board consideration.</td>
<td>Board reviews policies regularly and when problem occurs. Determines if policies are in best interest of organization.</td>
<td></td>
</tr>
</tbody>
</table>
Hold an Evaluation Meeting

After establishing standards, a logical question begging for follow-up is, "Now that we know what we want, how are we doing?" And many boards find moving immediately from standards development to evaluation an effective way to capitalize on the energy developed in the standards planning session.

On the other hand, the standards development session is long and can be quite emotional. The message of what is wanted is made clear. It may be wise to step back for a few months and let individuals gravitate toward achieving the standards on their own before jumping into evaluation. Keep the motivation alive by giving the board a chance to breathe!

When you decide it is time for evaluation, the next step is to hold another group meeting. To assure that you focus on results, have the meeting conducted by an objective facilitator skilled in conflict management. That person will help keep the spotlight on evaluation and planning as opposed to criticism. Again, as the board matures, it can take over this role, making an outside facilitator unnecessary.

At the meeting, use the form which you created at the standards-development session, and ask board members to rate the organization in light of that form. Let them remain anonymous for this exercise. Then have a facilitator compile results and report the average and extreme evaluations.

You will find that these results will generate extensive discussion and some disagreement. For instance, suppose you have a scale for decision-making. A description under "Poor" may be "Decisions are made by a small group prior to the board meetings." A description under "Meets Standards" may be "Decisions are made by a democratic majority after a complete discussion by board members."

Suppose that five board members chose "Meets Standards" and two chose "Poor." When evaluating the board, it is then logical to ask: "Why do some of us feel that decisions are made by a small group?"

The results of such discussions may never end in a consensus on the ratings. For instance, the group may realize that some people feel left out of the decision-making and that, therefore, decisions really are made by a small group. Or the two individuals who chose "Poor" in their evaluations may recognize that, while they are dissatisfied with the decision process in general (leading to their poor rating), the group is meeting its agreed-to standards.

But consensus on the rating is not important. What is important is that, from the information derived in the discussion, a plan evolves to improve the decision-making process of the group. It is the planning process—not the critique—that is vital to the evaluation-planning cycle.

The final step in the evaluation meeting is to develop an action plan for improving functional performance. The plan will read much like the task plan, listing what is to be done by whom and by when. This plan can be monitored throughout the year and reviewed as part of next year's evaluation.

Bringing differences into the open establishes a better understanding of group norms and expectations—and improved operations in the future.

The first time function standards are developed, they should be group standards. This way, the process does not threaten individual members. However, as the board becomes more sophisticated, it can include individual member evaluation as well.

The function standards developed in the retreat are a statement of how the board would like to operate. Those behaviors shown under "Meets Standards" define what is acceptable for group interaction. "Excellent" defines the ideal to which the group strives.

When total emphasis is placed on outcomes, more aggressive board members can overlook others' needs.
Improving Board Effectiveness: Suggestions from a Recent Study

What do executive directors really want from their board members? A new survey uncovers some surprising answers.

By Kathleen Brown Fletcher

There is much written for board members of nonprofit organizations about how to be a good board member, how to run productive meetings, how to avoid conflict of interest, and other instructive topics. However, almost nothing has been written for executive directors on how to work with a board. In fact, we don’t know much about which board behaviors are helpful to executive directors in carrying out their jobs. A recent study sheds light on this topic and also suggests some ways executive directors can help their boards become more productive members of the board–staff partnership.

Which Board Behaviors Are Most Important?

For this study, 200 executive directors of health and human service organizations in the San Francisco Bay area were asked about 25 board behaviors which are commonly considered important for boards to perform. The executives ranked these behaviors on a five-point scale according to how important each behavior was to them in their job performance. The 25 behaviors, drawn from professional literature and everyday practice, were as follows:

1. The board actually makes policy rather than rubber-stamping what the executive suggests.
2. The board participates actively in the budget-making process.
3. The board formally evaluates the executive’s performance.
4. The board stays out of administrative activities.
5. Each board member personally donates money to the organization.
6. Board members open doors to possible funding sources.
7. Each member participates actively on at least one committee.
8. The board participates in solicitation of funds.
9. The board actively promotes the organization in the community.
10. The board president works with the executive to set meeting agendas.
11. The board president runs meetings in an effective way.
12. Board members prepare for meetings by reading material sent to them before the meeting.
13. Board members review financial statements carefully and ask for explanations when needed.
14. Board members stay on the board for two terms or more.
15. Board members are willing to accept leadership positions on the board.
16. The board chooses members with regard to their special skills or connections.
17. Board members are available when the executive needs to confer with them.
18. The board takes an active part in strategic planning.
19. The board holds an annual retreat.
20. The board takes an active part in setting goals and objectives for the organization and evaluates progress toward them.
21. Board members visit the facilities in which the organization delivers its services.
22. The board advocates for the interests of the organization’s clientele.
23. Board members inform the executive ahead of time if they are going to represent the organization formally in the community.
24. Board members understand nonprofit management.
25. The board understands its legal responsibilities as the governing body of the organization.

Out of these 25 board behaviors, the 12 which received the highest score became the definition of a good board from the point of view of these executives. You, the reader, might decide which ones you personally feel are most important, then check your list against the following results. The most crucial board behaviors, in the order of importance given to them by these executives, were as follows:

1. Actively promoting the organization in the community
2. Understanding the legal responsibilities of a governing board
3. Holding effective and efficient meetings
4. Taking an active part in long-range strategic planning
5. Accepting leadership positions on the board
6. Choosing new members with regard to their skills or connections
7. Leaving administration to the executive
8. Evaluating the executive’s performance
9. Opening doors to possible funding sources
10. Preparing for meetings by reading material sent
11. Making policy rather than rubber-stamping
12. Reviewing financial statements carefully and asking for explanations...
This list suggests that executive directors want an active board which understands and carries out its role as the governing, policy-making body of the organization. They want their boards to choose members strategically and to hold effective meetings for which members are prepared. They want to be held accountable by the board, and they want the board to be active in promoting the organization’s interests in the community.

But What About Fundraising?

With so much talk these days about the board’s role in fundraising, one would think that these executives would put fundraising among the top five. Yet only one fundraising-related behavior—opening doors to possible funding sources for staff to pursue—can be found among the top 12. Active solicitation by board members in 16th, and personal donations of money by board members came in dead last! How could this be so?

Boards with more women and more middle-income members scored higher on the “good-board” scale.

What seems to matter most to these executive directors is that their board members make friends for them by representing the organization to the community and by opening doors which staff can then pursue for funding. These executives must have the actual solicitation under control already, either with staff or other non-board volunteers, and must feel relatively comfortable with a board that is not involved in the fundraising process. This could be good news for reluctant board members who are not comfortable with the solicitation role but don’t mind using their contacts to open doors.

But what about the personal donation of money to the organization? Consultants and development directors cringe when they hear board members espouse the view that if you give your time, you don’t have to give your money. Indeed, board giving is usually thought to be the foundation for all private giving from foundations, corporations, and individuals. These executives are obviously not of the “give, get, or get off” school. It could be a matter of concern to those in the development field that these executive directors did not see board giving as very important; certainly the results would have been different had a sample of development directors been asked.

Factors Related to Board Effectiveness

Whether or not we all agree with these executives’ definition of a good board, it is important to know what factors were related to a board’s exhibiting these behaviors. To find out, these same 200 executives were asked to rate their boards on the 12 “good-board” behaviors. That is, how often did their boards actually do the things they thought were important to the job? Scores on the “good-board” scale were then correlated with a list of characteristics of the board, the organization, and the executive director. Among these characteristics were the following:

- board size and composition
- board committees
- board members’ attendance at meetings
- board orientation and training
- organization’s age and size

One Key: The Board President

One final significant factor is something all current executives, regardless of years of experience, can do something about. The more time an executive spent with the board president, the better the board on this scale. “How-to” board books spend a lot of time talking about the relationship of the board president and the executive director; this study confirms the importance of that relationship. Furthermore, just the amount of time the executive spent with the president was important, not the amount of time the executive spent on all board-related matters. Thus we can say that paying more attention to the board president may be one way an executive can improve the board.

The president really is the key to a well-functioning board. The strength of the president usually determines the strength of the entire board during that president’s term. The president’s leadership style determines meeting effectiveness, level of committee activity, and even meeting attendance. Willingness to participate in community outreach, donation of personal funds, and solicitation of funds from others are affected by the president’s example. If the executive does not have a good relationship with the president, the organization suffers.

A much improved board may be a more important legacy for a president to leave behind than any other accomplishment.

Though this study tested only the amount of time spent with the president, not what was done during that time, other research and experience provide...
suggestions. Here are some ideas for how to spend that all-important time with the board president:

- Spend time planning board meetings, working on agendas, deciding how to handle sensitive issues or difficult members. If the president isn’t very good at prioritizing issues or managing discussion, you can help through tactful suggestions. Presidents want to succeed as leaders, and your advice may be needed to improve your president’s leadership skills.
- Consult the president as often as possible on important program or staffing decisions. Use the president as a sounding board for issues you are tackling. The more you involve volunteer leaders in the big picture, the more committed they will become to the organization.
- Discuss how important the president’s example is to getting board members to donate to the organization and to participate in fundraising. If these are important board functions at your organization, ask the president to provide leadership in these areas and to promote total board participation, perhaps through personal calls to each board member.
- Work with the president to involve the board in strategic planning and in monitoring progress toward goals and objectives. Make sure the president takes ownership of these processes and encourages all board members to participate.
- Give the president exposure as a representative of the organization in the community. Take the president along on board performance and make recommendations for improvement. A much improved board may be a more important legacy for a president to leave behind than any other accomplishment.

Other Suggested Strategies

Besides spending time with your board president, the study results suggest the following steps which you may want to consider to improve your board:

- Consider an increase in board size, especially if your board is quite small.
- Increase the number of active board committees.
- Work to increase attendance at board meetings.
- Encourage the board to hold frequent retreats.
- Serve on a board yourself to gain perspective and empathy.
- Seek the advice of more experienced executives on board-related matters.
- As can be said after all studies, much more research needs to be done on how to improve board effectiveness. Meanwhile, this study has some practical suggestions that may help today’s executives become better partners with their boards to more effectively accomplish their organization’s mission.

Selected References
Brown, Kathleen M., Applied Empirical Re-

The benefits of annually breaking routine to mobilize a board toward improved functioning cannot be overstated.

* A case development session, in which the group brainstorms ways to position the organization to attract donors.
* An educational workshop to orient, prepare and inspire the board for necessary fund-raising activities.

The retreat agenda should be tailored to needs. For example, financial projections and service statistics may help create discomfort among the complacent. Many board members have been revitalized by the sight of red flags on the horizon of their organization's dreams. What cannot be purchased or done due to lacking financial or human resources? How might these be used in the session to stimulate bold action?

Education and testimonials concerning donor motivations may develop awareness among the non-givers. These individuals sometimes reconsider their positions when they realize that the community will follow their example. If not the board, then who should support a not-for-profit organization? And who are better askers than the agency's strongest advocates — its board members?

A discussion of organizational charts and practices illustrating disproportionate burdens of responsibility may appease the burned-out. They will appreciate recognition for the lonely jobs they have done. The fund-raising committees, in particular, should welcome an infusion of new recruits following a well-done session which stresses philanthropy's importance and the success and recognition volunteers who participate in asking will enjoy. Once they see enthusiasm building for roles from which they're weary, the burned-out just may recharge their own batteries and forge ahead among good company.

Help Is Available

Board retreats lend themselves to facilitation by professionals outside the organization. Why should an outsider be better able to see the needs and design plans to meet them? Because advisers to not-for-profits witness and remedy similar problems in many settings. Not only do consultants provide a departure from usual spokespersons, they also offer objectivity and experience in conducting such sessions.

Involving counsel in the planning and implementation of a retreat helps assure that its focus is upon critical issues. This focus is difficult for insiders to maintain, given the natural tendency to preserve working relationships and historical practices. The relatively small investment in occasional professional help pays big dividends in surfacing realities, fostering consensus and building new alliances among those responsible for the organization's future.

The benefits of annually breaking routine to mobilize a board toward improved functioning cannot be overstated. A board retreat is certainly not a panacea for all leadership ailments, but it is a proactive means of beginning to address them. By taking steps to challenge detrimental attitudes and poor habits, organizations position themselves to attract the meaningful levels of moral and financial support which render stability and long-range survival.

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Recharging The Board

One way to revitalize a board is a retreat where members confront and conquer their weaknesses.

By Janette M. Quinn, managing partner
J.F. Quinn & Associates, Inc.

Boards of directors are the lifeblood of not-for-profit organizations. Most initially come together to rally behind the meeting of an urgent need. As true believers in the cause, they see that the only way to get something done is to do it themselves. These volunteers assume many operational responsibilities of the organization, including programs creation, marketing, fund raising and, eventually, hiring staff. “Ownership” is never in question.

As organizations mature, so do their boards. Growth becomes a double-edged sword. The hiring of staff professionalizes operations. Some board members breathe sighs of relief upon losing hands-on responsibilities, while others mourn and never quite recover. Unless their energies are carefully guided elsewhere, board members may feel no longer needed, or that they have sold out to staff.

With the exceptions of working with staff on long-range planning, finance and fund raising, board leadership in mature organizations is removed from day-to-day operations. Its function is to set policy and monitor staff performance. The well-informed, collective judgment of the board, therefore, is central to fulfillment of the agency’s mission.

Board members must not be sidestepped or protected from the truth, nor should their quality be compromised. These individuals uphold the credibility of the organization and its right to exist. They ideally provide the endorsements, energy and enthusiasm which keep the organization thriving against all odds.

Above all, board members wield the greatest amount of influence upon the community and constituency, no matter what the caliber of staff. They should, therefore, be representative of those with whom such influence is sought. To deny these facts and to settle for mediocrity and indifference on the board is to accept less than desirable odds for healthy survival.

Challenges

Three common afflictions which plague boards are complacency, non-support and burnout. These contagious diseases may affect a few or the majority of members. If not treated, they may be fatal. Let’s take a look at how these may be in evidence in a typical organization.

Complacent board members have “ho-hum” attitudes. They may be convinced that a strong staff, other board members or a good track record will keep the organization afloat without much effort on their parts. Their approach to decisions is an arm’s length one, and they seem to take little or no responsibility for outcomes. To the complacent, just showing up at some meetings is commitment enough.

Non-supportive or non-giving board members have received the impression that it’s not necessary to support the cause financially. “I give my time,” is a common response to the suggestion to do so. Most often, this seed was planted in an interview with the then board candidate. Representatives of the staff and/or nominating committee probably underplayed the expectation that board members share wealth as well as wisdom to help meet annual and long-term objectives.

Burned-out members say, “I’ve done too much for too long. My family and job have taken back seats. Let someone else take over.” Once enthusiastic board members become less so when they feel they are being taken for granted or when they see little effort to recruit new volunteers for leadership posts. “Burnout” is a common result of failing to adequately recognize volunteers or of calling upon the same few too often.

Boards may suffer from all these maladies, and more! Staff may struggle daily with their symptoms, but be at a loss to address the problems in a positive way.

Solutions

One technique for administering a shot of strategic adrenalin to a board is a retreat. While it is a widely understood concept, retreat is an unfortunate word for this exercise in leadership development. It probably should be named, as one leader coined, an “advance,” as its purpose is to stimulate the board to do just that — to confront and conquer its weaknesses.

The board retreat may take many forms. Here are some examples:

* An orientation for new and continuing members, incorporating an agency overview and highlighting committee and individual staff and volunteer roles as they relate to the organization’s success.
NONPROFIT FORUM

Why Boards Dislike “Self-Development”

Carol has found that organizations do not usually build excellence “from scratch.” Most have help along the way to develop their leadership and planning skills.

Boards need to be developed, however they often resist the notion that they need training or help. This is because board members see themselves as highly skilled, and don’t want to feel inadequate or unsophisticated. As a result, Carol believes that any outside expert must carefully target any intervention with a Board.

One Tool for Board Development

“Because boards can be very sensitive about self-development, and often don’t take time for both board development and strategic planning, we developed a planning process to build board leadership skills,” says Carol. “A few years ago, the Denver Technical Assistance Center received a Lilly Endowment grant to develop a process for board education that was included in strategic planning.

“We built a training process into the strategic planning where we educate the board about its structure, its purpose, and the roles of Board and staff. As we work with boards to consider mission, history, goals, opportunities and constraints, we help them to ask questions about the role of the board and the staff in each area. The strategic planning process involves board members working in small groups, which builds the board’s skill in working together both as a unit and in sub-groups, or committees.”

The process works very well. It builds board leadership and commitment. Because the process is such a good use of time, it serves as an excellent model of time management.

Resista After Planning

Carol has found that even when plans are developed, there is a certain amount of resistance that organizations can expect to find from board and staff. “Carrying out a good strategic plan is a lot of hard work,” she stresses. “And organizations often tell me that they don’t have the time to develop and implement a good plan. However, if they continue to do crisis management, they will never develop into the excellent organizations they could be.

“Time has to be reallocated. This is a painful process, because it generally means giving up something that you enjoy doing in a program area. However, I encourage staff to look at their work and decide what activities can be put aside to a lower priority. Because nonprofit staff are program oriented, this is a very difficult process.”

However, if time is not reallocated, the nonprofit that tries to implement its strategic plan finds itself in a serious bind. As the organization continues to add programs and services without dropping new ones, staff become exhausted simply trying to keep up. The answer is to assess which programs are less important, whether its because they are no longer paying their way or because they are no longer meeting priority needs.

Characteristics of a Healthy Organization

Carol has found that there are a number of things you can look for to see if your organization is healthy.

- For example, communications are better in a healthy organization. They are more frequent and more on-target. Communications are focused on producing results rather than on hashing trivia or gossip. People are well-informed, and kept up-to-date about work that affects them. There are few surprises.
- The healthy organization has the ability to monitor the implementation of the strategic plan. Carol has found that unit goals and staff performance objectives are related
to the strategic plan, and certain staff are responsible for making sure that the units are on-track with meeting the goals. Usually, staff work together, and meetings often focus on reporting progress toward goals.

- The healthy organization is able to quickly recognize what is going wrong and take corrective action to change problems. The unhealthy organization usually denies that there are any problems in the first place. When staff are encouraged to find and correct problems, they will stay on top of things, and won’t let any area slide. They will be able to make mid-course corrections. The monitoring of progress needs to be formalized—built into the structure.

- Unhealthy organizations often look for fund-raising assistance as a solution to the organization’s problems. Healthy organizations develop fund-raising strategies as they clarify their mission and goals—and have fund-raising spring from the organization’s purpose and vision. Fund-raising success comes from the proper identification of these goals, and the stakeholders that are involved with the organization.

- Carol also explains that healthy organizations deal with a great deal of factual information, whereas less healthy organizations deal much more in people’s opinions and power games. “In some cases, executives can be almost paranoid, and afraid to let communication flow among staff members or between staff and board members. This cuts off the organization’s development.”

- Healthy organizations have clearly defined roles for board and staff, and there is little board-staff friction. The presence of board-staff friction should tell you that there is a lack of understanding of roles and responsibilities, and often the lack of a clear plan. Often, good planning can reduce friction and realign the work.

- “I’m all for reasonable channels of communication,” Carol says. “Frequent and well-channeled communication can create a much richer environment by allowing people to contribute ideas and participate in building the decisions. When you allow people to participate, you get greater buy-in. You get better decisions because more people are thinking. You build a stronger esprit de corps.”

The Right Board to Build Excellence

Carol believes that if you have your board constructed properly, it will have important management expertise. Often, in small and mid-sized organizations, the management expertise on the board is much greater than the nonprofit can hire for staff. It is therefore crucial to find board members with expertise in many different fields.

The board nominating committee should work closely with the executive director to see which areas are priorities for the organization. For example, marketing and fund-raising would be key areas for board expertise in an organization with no development staff.

Boards should recruit talent not only for the board, but also for related committees. It is always a good idea to have some people who are not on the board serving on its committees.

What You Can Do Now

Carol recommends that you start by taking a self-assessment, and then work with the board leadership. For example, you might want to ask yourself and the board these questions:

- How well is the board functioning? Does it have the composition I need? What is the right composition?
- How well does the board understand my role?
- Do we have a mission statement that identifies what business we’re in, what market we serve, and the result that will be different if we succeed?
- Do we have a strategic plan that shows exactly how we will develop that mission statement?

Building on Strength

After you and the board have done a simple self-assessment, you might want to ask some other questions that will help you identify your strengths and weaknesses.

- Do people understand what we do?
- Are there things about the organization that are bothering me? How do my concerns relate to questions we are asking about strategic direction?
- What do we need to do structurally to link our strategies and our work with the plan?

Planning that is based on these considerations will strengthen what is already good about the work, and allow board and staff to limit any long-term impact of weak areas.

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EMPLOYMENT LAW
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PART I

OVERVIEW

OF

EMPLOYMENT LAW
A. INTRODUCTION:

THE EMPLOYMENT RELATIONSHIP

A good starting point in the discussion of employment law is to address a few situations which raise the question: is there an employer-employee relationship? Most commonly, this question arises in three contexts:

I. Work Performed by Volunteers

II. Work Performed by Patients/Clients

III. Work Performed by Independent Contractors

It is very important to know who your "employees" are, for several purposes, including:

- Liability for negligence
- Liability for worker’s compensation
- Liability for unemployment contributions
- Liability for minimum wage and overtime pay
- Liability for income tax withholding and payroll taxes

I. VOLUNTEERS

Discussion issues:

A. What is a volunteer? Clearly defining and agreeing on the nature of the relationship, and avoiding wage and hour claims.

B. Use of employees as "volunteers".

C. Use of volunteers to do work employees would otherwise do.

D. Use of students during practicum training; need for clear understandings with students and teaching institutions.

E. Worker’s compensation and liability insurance issues.
II. PATIENTS/CLIENTS

Discussion issues:

A. "Economic realities" test under the FLSA.

B. Who is the primary beneficiary of the work?

C. Does the work have professionally documented therapeutic value?

D. Does the institution derive any economic benefit?

E. Would the work otherwise be done by employees?

III. INDEPENDENT CONTRACTORS

A. INTRODUCTION

Most businesses have relationships with both employees and independent contractors. Understanding the distinction between the two relationships is critical, since classification affects income taxes, payroll taxes, workers compensation, unemployment compensation, liability, and insurance coverage. It is equally important to understand that this is currently an important issue to the Internal Revenue Service, and that the legal test for independent contractor status varies, depending on the legal issue under consideration (taxes, workers’ compensation, unemployment, etc.).

For all industries, the IRS reportedly found employees misclassified as independent contractors in 90% of its employer audits between 1987 and 1991, reclassified 338,000 workers as employees, and assessed employers $468 million.

Additional heat is coming from Congress as well. In a report released October 22, 1992, the House Government Operations Committee:

- Urged the IRS to place a high priority on implementing new initiatives to improve its ability to detect employers who have potentially misclassified workers as independent contractors.

- Expressed support for legislation to cut back on the safe harbors available to employers under Section 530.
Urged Congress to revise federal contracting laws to provide a right to sue for damages to contractors and other parties injured by a competitor's underbid based on misclassification of workers.

Urged Congress to enact legislation allowing debarment of employers found to have misclassified workers, even if the misclassification is protected by Section 530.

The risk of challenge by the IRS to an employer's classification of independent contractors, with potentially serious liability for back income taxes, FICA taxes, penalties and interest, has grown. Employers also must not overlook the possibility that an independent contractor may be treated as an employee for purposes of common law liability and/or worker's compensation, where the potential financial liability can be enormous.

B. THE IRS 20-FACTOR TEST

The Internal Revenue Code generally states that the term "employee" includes any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee. IRS Regulations elaborate on this definition. The regulations make it clear that whether the relationship of employer and employee exists, will be determined upon an examination of the particular facts of each case. With respect to the general common law test, the regulations elaborate as follows:

"Generally the relationship of employer and employee exists when the person for whom services are performed has the right to control and direct the individual who performs the services, not only as to the result to be accomplished by the work but also as to the details and means by which that result is accomplished. That is, an employee is subject to the will and control of the employer not only as to what shall be done but how it shall be done. In this connection, it is not necessary that the employer actually direct or control the manner in which the services are performed; it is sufficient if he has the right to do so. The right to discharge is also an important factor indicating that the person possessing that right is an employer. Other factors characteristic of an employer, but not necessarily present in every case, are the furnishing of tools and the furnishing of a place to work to the individual who performs the services. In general, if an individual is subject to the control or direction of another merely as to the result to be accomplished by the work and not as to the means and methods for accomplishing the result, he is not an employee." § 31.3401(c)-1(b).
In considering whether control exists in a specific case, the Internal Revenue Service considers 20 factors. No single factor is determinative and some factors will not apply to certain occupations. The degree of importance of each factor varies depending upon the occupation. The factors are:

1. **Instructions.** Control is indicated if the employer can require compliance with specific instructions. By contrast, an independent contractor is responsible only for the end result.

2. **Training.** Required training suggests that the worker is an employee. An independent contractor ordinarily uses his or her own methods and receives no training from the purchaser of the services.

3. **Integration.** How integrated are the worker’s services into the total business operation? Close integration suggests employee status.

4. **Services Rendered Personally.** Must services be rendered personally? Independent contractors can usually delegate or subcontract.

5. **Assistants.** A worker’s ability to hire and pay assistants is a strong factor substantiating independent contractor status.

6. **Continuing Relationship.** A continuing relationship indicates an employer-employee relationship.

7. **Set Hours of Work.** The establishment of set hours of work by the employer is a factor indicating control.

8. **Full Time Requirement.** An independent contractor is generally free to work when and for whom he/she chooses.

9. **Work on Employer’s Premises.** If the employer has the right to compel a person to work at a specific place, the worker may be classified as an employee.

10. **Order or Sequence.** A person who must perform services in the order or sequence set by the employer, is usually an employee.

11. **Reports.** If the worker is required to provide regular oral or written reports to the employer, the worker is more likely to be considered an employee.
(12) **Payment by Hour, Week or Month.** The payment of a regular amount at a stated interval such as by the hour, week, or month strongly indicates an employer-employee relationship unless this method of payment is merely a convenient way of paying a lump sum agreed upon as the cost of doing a job. Payment made by the job or on a straight commission basis generally indicates the person is an independent contractor.

(13) **Payment of Expenses.** If the employer pays the worker's business or traveling expenses, employment status is suggested.

(14) **Furnishing of Tools and Materials.** If the employer furnishes tools and materials, an employer-employee relationship is suggested.

(15) **Significant Investment.** The IRS considers the amount of investment by a person in the facilities used in performing the services to be an important factor. Lack of investment indicates dependence on the employer and the existence of an employer-employee relationship. The investment must be real, essential, and adequate if it is to be considered a "significant" investment.

(16) **Realization of Profit or Loss.** Another significant control factor to the IRS is whether the individual can realize a profit or a loss. Opportunity for profit or loss may be established by a variety of factors, among the most important of which are:

a. Continuing and recurring liabilities or obligations, with success or failure depending on the relationship of receipts to expenditures.

b. The individual's services (including services of the individual's assistants) establish or affect his or her business reputation and not the reputation of those who purchase the services.

c. The individual has his or her own office, equipment, materials or other work facilities.

As a general rule it is difficult to convince the IRS that an individual who is paid on an hourly or piece-work basis has the opportunity to make a profit or a loss.
(17) **Working For More Than One Firm.** Working for more than one employer or firm at the same time supports independent contractor status.

(18) **Services Available To the General Public.** A worker whose services are made available to the general public (i.e., by advertising, maintaining business listings in telephone directories, maintaining one's own office and assistants, etc.) is more likely an independent contractor.

(19) **Right to Discharge.** An independent contractor generally cannot be fired as long as a result that meets the contract specifications is being produced.

(20) **Right of Termination.** An employee may end the relationship with an employer at any time without incurring liability. An independent contractor is usually legally obligated to make good for failure to complete the job.

C. **OTHER LEGAL ISSUES**

1. **Workers’ Compensation.** Regardless of how a worker is classified under the Internal Revenue Code, employers must consider the risk of a finding of employee status under state workers’ compensation law. Workers’ compensation liability can be catastrophically large. Employers must analyze two separate issues:

   a. How will state law classify the worker? Most states consider many of the same factors as the IRS in its 20-factors approach, with particular emphasis on the right to control, exclusivity of the relationship, method of payment (including tax treatment), duration and termination of the relationship, and contract terms. A written contract clearly describing the relationship as that of independent contractor, and requiring the contractor to carry worker’s compensation insurance for its employees, is particularly important here.

   b. Is the employer insured for all workers who are deemed to be employees, or only for employees/job titles which are specifically scheduled in the policy? Is the employer insured for the "contractor’s" employees, if the employer is found to be statutorily liable because the contractor did not provide coverage?

2. **Unemployment Insurance.** Independent contractor status can be most difficult to achieve for unemployment tax/liability purposes, since the unemployment statutes often supplant the common law test with a specific statutory
test. In Nebraska, for example, a person who provides services for wages is considered to be within the scope of employment, and therefore an employee, unless three factors are proven:

a. The individual has been and will continue to be free from control or direction over the performance of such services, both under his or her contract of service and in fact; and

b. Such service is either outside the usual course of the business for which the service is performed, or such service is performed outside all the places of business of the enterprise for which the service is performed; and

c. The individual is customarily engaged in an independently established trade, occupation, profession, or business.

These three requirements are conjunctive, and each must be met to establish independent contractor status. Iowa law, on the other hand, incorporates the common law test, with particular emphasis on the right to direct or control the worker’s activities.

3. Professional and General Liability. Liability for the negligence of a worker will turn, first and foremost, on whether the worker was an employee under common law. Even if the worker is independent, however, liability may be based on claims of negligent selection of, negligent delegation to, or negligent oversight of the contractor. This is particularly true in health care, where the duty to carefully credential and monitor health care practitioners is well established. Contractual undertakings as to procurement and maintenance of general and professional liability insurance are crucial in any independent contractor relationship.

D. "DO'S and DON'TS": CONTRACTS AND OTHER PRACTICAL CONSIDERATIONS

1. "DO’s": Employers Should:

a. Evaluate current independent contractor relationships;

b. Carefully consider the IRS 20-factor test for each;

c. Be consistent;

d. Re-examine current worker’s compensation coverage for workers treated as independent contractors, who might later claim to be employees;
e. Require ALL contractors to supply current evidence of worker’s compensation, professional liability, and commercial general liability insurance;

f. Carefully develop with legal counsel, thorough written agreements with any independent contractors where the legality of the independent contractor classification is at all doubtful.

g. Obtain the contractor’s tax I.D. number, to avoid a 20% "back-up withholding" obligation.

2. "DON'Ts": Employers Should Not:

a. Take this issue lightly;

b. Treat contractors or others inconsistently;

c. Keep records for independent contractors in employee files;

d. Pay independent contractors on the same day/schedule/system that employees are paid;

e. Refer to the independent contractor as your "employee" or let him or her refer to you as the "boss";

f. Give independent contractors employee benefits;

g. Allow independent contractors to incur debts in the principal’s name;

h. Make advance contract payments without repayment commitments;

i. Impose any more direction or control over the contractor than truly necessary; or

j. Fail to properly report to the IRS, all forms of compensation paid to independent contractors.
B. OVERVIEW OF EMPLOYMENT LAW

I. EMPLOYMENT AT WILL: HISTORICAL PERSPECTIVE

- Freedom to act according to business desires
- No guarantees - employer flexibility in hiring, assigning, firing
- Exceptions to the Doctrine:
  limitations by (1) agreement, (2) court decision, and (3) statute

II. LIMITATIONS BY AGREEMENT

- Individual contract
- Collective bargaining

III. LIMITATIONS BY JUDICIAL DECISION:

Erosion of Employment at Will

- Implied contract rights
  - Job offers - letters or statements
  - Personnel policies
- Public policy violations: Examples:
  - Worker’s compensation filings
  - Child abuse reporting
  - Reporting illegal employer conduct
  - Polygraph exams
- Good cause/fair dealing duty imposed by law?
IV. LIMITATIONS BY STATUTE:

Various statutes regulating employment, only some of which are:

- National Labor Relations Act
- OSHA (State and Federal)
- Fair Labor Standards Act
- Worker’s Compensation Laws
- Unemployment Compensation Laws
- ERISA
- State Wage Payment Act
- Various laws regarding
  - jury service
  - military service
  - wage garnishment
  - medical exams
  - AIDS testing
  - employee bankruptcy
- Last but not least:

  The Discrimination Laws
C. OVERVIEW OF KEY EMPLOYMENT DISCRIMINATION LAWS

I. TITLE VII OF THE CIVIL RIGHTS ACT—RACE, COLOR, RELIGION, SEX, NATIONAL ORIGIN, SEXUAL HARASSMENT

II. SECTION 1981 AND SECTION 1983

III. AGE DISCRIMINATION IN EMPLOYMENT ACT

IV. AMERICANS WITH DISABILITIES ACT

V. CIVIL RIGHTS ACT OF 1991

VI. RELATIONSHIP BETWEEN FEDERAL, STATE AND LOCAL AGENCIES

VII. CURRENT LITIGATION TRENDS
D. WAGE AND HOUR ISSUES

I. WHAT COUNTS AS PAID TIME?

A. IN GENERAL. Generally speaking, the Fair Labor Standards Act (FLSA) provides that employees must be compensated for all times during which the employee is required to be on duty, to be on the employer’s premises, or at a prescribed workplace; as well as for all time during which the employee is permitted to work, even if such work is not required by the employer. Among other things, this means that employees who come to work early, work through lunch, or take work home must be paid for all of their time, even if they are not required to do so and in most cases, even if they are told NOT to do so.

With such a broad definition, it is apparent that when an employee is engaged in incidental activities, such as traveling or waiting, problems in computing compensable hours arise.

B. ON-CALL TIME. On-call time may or may not have to be compensated, depending on the circumstances of an individual situation. If the employee is simply "on-call" and free to engage in non-working activities while awaiting a request for service, these periods are not compensable. This is because the employee is free to spend the time pursuing personal activities. The determinative factor is whether while on call, the employee is free to use his or her time for non-work related activities. If interruptions to personal time are so frequent that the employee is not truly free to use the off-duty time for his or her own benefit, then the intervening periods, as well as the time spent in responding to calls, should be counted as compensable hours of work. When an employee is required to remain on-call on the employer’s premises, or so close to the employer’s premises that he cannot effectively use on-call time for his or her own purposes, the employee is working and should be compensated for all of the "on-call" time.

Examples:

Plant guards of a steel company who were compelled to remain at the plant during a strike, who were on duty for two eight-hour shifts one day and one eight-hour shift the next, and who were subject to call at all times and were sometimes called for service while off duty, performed "work" 24 hours each day within the meaning of the FLSA and were entitled to compensation on that basis. Campbell v. Jones & Laughlin Steel Corp., 70 F. Supp. 996 (W.D. Pa. 1947). Compare with Boehm v. Kansas City Power and Light Co., 868 F.2d 1182 (10th Cir. 1989). In that case, power company linemen who were required to be available on a standby basis to work during storms and other emergencies, who were free to use their off-duty time as they wished, provided they could be contacted and report for work one-third of the time they were called, need not be paid overtime for "on-call" time.
Some courts have compared employees who are "engaged to wait" (compensable) with those who are "waiting to be engaged" (non-compensable). If the on-call time is truly non-compensable under the FLSA, a small amount of "call pay" is permissible without counting the time as working time and without meeting minimum wage requirements.

C. TRAVEL TIME. Employers are not required to compensate an employee for traveling to or from her regular work place. While this is true as a general rule, such travel time may be compensable if provided for in an express contract or by custom or practice which is not inconsistent with such a contract. Examples of this type of travel are the time required to travel underground in a mine in order to arrive at the "place of work," or the time required for an employee to walk from a time clock to the employee’s work bench. See Tennessee Coal, Iron and RR. Co. v. Muscoda Local, 321 U.S. 590 (1946); Anderson v. Mt. Clemens Pottery Co., 328 U.S. 690 (1946). Outside of this exception, ordinary travel time from an employee’s home to work need not be counted as hours worked for purposes of overtime, even if the employer agrees to pay for it.

When an employee is assigned to work at a location that is not the employee’s normal place of work for a very brief period such as one day or one week, such travel time is considered compensable. This travel is performed for the employer's benefit and at his special request in order to meet the needs of the employer. It therefore qualifies as part of the principal activity which the employee was hired to perform.

Other situations in which the employee must be compensated for travel time include situations where an employee has gone home and is recalled to work on an emergency basis. Time spent by an employee in travel as part of his principal job activity, such as traveling between job sites during the work day, must also be counted as hours worked and appropriately compensated.

Examples:

a. The United States Postal Service was correct in not compensating an employee temporarily assigned to a post office some 50 miles away, where the assignment lasted three months and where the employee traveled before and after his normal work hours. Bartlomain v. United States Postal Service, 870 F.2d 657 (6th Cir. 1989). Compare with D. A. & S. Oil Well Servicing, Inc. v. Mitchell, 262 F.2d (10th Cir. 1958). In that case, the court held that employees who transported equipment needed to service producing oil wells must be compensated for their travel time since the employees are performing an activity which is so closely related to the work they and other employees perform, that it must be considered an integral and indispensable part of their principal activities.

b. In health care, travel from a home health care office to the patient’s home, or travel from one clinic to another during the day, would be compensable working time.
Finally, out-of-town travel is compensable except for regular meal breaks, and except for OVERNIGHT travel as a PASSENGER during hours OUTSIDE regular working hours and corresponding hours on non-working days.

D. **TRAINING TIME.** When an employee attends a lecture, meeting, or training program, the employee need not be compensated for her time if all of the following criteria are met: (1) the training takes place outside of the employee's regular working hours; (2) attendance at the training is truly voluntary; (3) the training is not directly related to the employee's job; and (4) the employee does not perform actual productive work during the training.

For the purposes of the criteria cited above, if the employer mandated attendance at the training session, attendance is obviously not voluntary and the training time would be considered compensable. Training is considered "directly related" to the employee's job (and therefore compensable time) if it is designed to make the employee handle his job more effectively (as distinguished from training him for another job or for a new skill). For example, if a computer programmer is given a course in advanced computer programming, that training is an activity to make the individual a better programmer. The time spent in the training course, therefore, is compensable. If the computer programmer takes a course in marketing, however, it may not be directly related to his job. If the computer programmer spends his time voluntarily in taking the marketing course outside of regular working hours, the training time need not be counted as working time. Interestingly, if a training course is instituted for the genuine purpose of preparing an individual for advancement, and it is not primarily intended to make the employee more efficient in his current job, the training is not considered directly related to the employee's job even though the course incidently improves skills in doing that regular work.

If an employee undertakes on her own initiative to seek out training or education after hours, the time is not hours worked and the employer is not required to compensate the individual for this time even if the skills learned are related to the employee's job.

It is possible for employers to reimburse employees for educational expenses without the training time counting as compensable working time, but carefully written policies should be followed.

E. **SLEEP TIME.** In some circumstances, an employee may be considered to be working even though some of the employee's time is spent sleeping. This can be a major consideration, for example, in operating "group homes."

An employee who is required to be on duty for less than 24 hours is working even though he is permitted to sleep or engage in other personal activities when not occupied with work duties. For example, a maintenance worker who is required to be on duty for specified hours is considered to be working, even when she is permitted to sleep when not busy answering maintenance calls. It makes no difference that the employee is furnished facilities for sleep.
When an employee is required to be on duty for 24 hours or more, the employer and employee may agree to exclude meal periods and a regularly scheduled sleeping period of not more than 8 hours from the total hours worked. This assumes that the employer furnishes adequate sleeping facilities in which the employee can usually enjoy a night's sleep. If the employee is able to sleep more than 8 hours, only 8 hours may be credited. Absent this specific agreement, all sleeping time and any meal breaks will constitute hours worked and must be compensated. If the employee's sleep is interrupted by a call to perform work-related tasks, the interruption must be counted as hours worked. If the interruption is significant enough to prevent the employee from getting a reasonable night's sleep, the entire period must be compensated. The general rule is that if the employee cannot get at least 5 hours of sleep during the scheduled period, the entire period is considered work time.

Additional options are available for employees who reside full-time on the premises, or at least 5 consecutive days and nights (120 hours) each week. In such cases, the employer and employee may agree to exclude from working time a set number of "free" hours each day, in addition to sleeping time.

II. "ROUNDING" OF EMPLOYEE HOURS WORKED.

Employers may not fail to count time worked, no matter how small, during an employee's fixed or regular working time or for otherwise compensable time. However, working periods of a few seconds or minutes beyond the scheduled working hours (which cannot be precisely recorded for payroll purposes) may be disregarded as de minimis (too small to make a difference). A regular practice of recording employees' staring and stopping time to the nearest 5 minutes, one-tenth of an hour, or to the nearest quarter hour is acceptable if and only if it does not result in a failure over the course of time to "average out," so that the employees are paid for all the time they have actually worked. It is NOT permissible to pay employees only from the start of the hour when they clock in early, and pay them only to the end of the hour when they clock out late, or to "discipline" employees for clocking in or out late by deducting pay.

III. WHAT IS THE "8/80 RULE"?

The FLSA provides that overtime pay is to be based upon a 7-day work week, with overtime due only for hours worked in excess of 40 during the week. Another option is available, however, for hospitals and other residential health care institutions, under which overtime is based on 80 hours in a 2-week period, but only if the employer ALSO pays overtime for all hours worked in excess of 8 in any work day. Otherwise, daily overtime is not required, even for 10 or 12 hour shifts. This 8/80 option requires advance agreement between employer and employee, and is likely to be advantageous to the employer only where the employee works more than five 8-hour days in a row followed by several days off.
IV. **CAN "COMP TIME" BE GIVEN INSTEAD OF OVERTIME?**

As a general rule, employers may not pay "comp time" (time off) in lieu of overtime pay for non-exempt employees. There are two exceptions. First, "comp time" is permissible if taken during the same pay period as the overtime was worked, and if it is taken at 1-1/2 hours off for each overtime hour worked. Second, public (governmental) employers can use comp time on a broader scale if certain conditions are met. A sample comp time policy for governmental employers is attached.

V. **EXEMPTIONS FROM OVERTIME.**

There are numerous exemptions from the overtime law, the most common of which are for executive, administrative and professional employees. Brief checklists for these exemptions are attached. It is very important to know that (1) these exemptions are narrowly construed, and the burden of proof is on the employer, and (2) only "salaried" employees may be treated as exempt.

Discussion issues:

1. What is a "salaried" employee

2. What is the penalty for improperly classifying an employee as exempt?

VI. **RECORDKEEPING.**

Compliance with FLSA record-keeping requirements is extremely important. See attached summary.
EXECUTIVE EXEMPTION CHECKLIST

If all answers under either A or B are "yes," then the employee may be exempt from the requirements of the Fair Labor Standards Act as an Executive.

A. (Short Test)
1. Is paid on a salary basis at a rate not less than $250.00/week?  

2. Primary duty is managing an enterprise or customarily recognized department or subdivision?  

3. Regularly directs the work of two or more other employees?  

B. (Long Test)
1. Is paid on a salary basis at a rate not less than $155.00/week?  

2. Primary duty consists of the management of the enterprise in which he is employed or a customarily recognized department or subdivision thereof?  

3. Regularly directs the work of two or more other employees?  

4. Has the authority to hire or fire or recommend hiring, firing, promotion, or change in the status of other employees?  

5. Regularly exercises discretionary powers?  

6. Does not devote more than 20% (40% in the case of retail or service establishments) or working hours each week to activities not directly related to those described in 2 through 5 above?
ADMINISTRATIVE EXEMPTION CHECKLIST

If all answers under either A or B are "yes," then the employee may be exempt from the requirements of the Fair Labor Standards Act as an administrative employee.

A. (Short Test)

1. Is paid on a salary basis at a rate not less than $250.00/week? ________

2. Primary duty consists of work described in 2 below? ________

3. Such work requires the exercise of independent judgment? ________

B. (Long Test)

1. Is paid on a salary basis at a rate not less than $155.00/week? ________

2. Primary duty consists of office or nonmanual work directly related to management policies or general business operations of the employer, employer's customers; or the performance of functions in the administration of a school system, or educational establishment or institution, or of a department or subdivision thereof, in work directly related to academic instruction or training? ________

3. Regularly exercises discretion and independent judgement? ________

4. Regularly and directly assists a proprietor, or an employee employed in a bona fide executive or administrative capacity or performs under only general supervision work along specialized or technical lines requiring special training, experience, or knowledge, or executes under only general supervision special assignments and tasks? ________

5. Does not devote more than 20% (40% in the case of retail or service establishments) of hours worked in workweek activities not directly related to those described in 2 through 4 above? ________
PROFESSIONAL EXEMPTION CHECKLIST

If all answers under either A or B are "yes," then the employee may be exempt from the requirements of the Fair Labor Standards Act as a Professional.

A. (Short Test)
   1. Is paid on a salary basis at a rate not less than $250.00/week? Yes/No
   2. Primary work required in 2(a) and (c) below which includes work requiring the consistent exercise of discretion and judgment, or of work requiring invention, imagination, or talent in a recognized field of artistic endeavor?

B. (Long Test)
   1. Is paid on a salary basis at a rate not less than $170.00/week?
   2. Primary duty consists of: (a) work requiring knowledge of an advance type in a field of science or learning acquired by a prolonged course of specialized intellectual instruction and study (as distinguished from a general education), or (b) work that is original and creative in character in a recognized field of artistic endeavor, the result of which depends primarily on the invention, imagination, or talent of the employee, or (c) teaching, tutoring, instructing, or lecturing in the activity of impairing knowledge and who is employed and engaged in this activity as a teacher?
   3. Requires the exercise of discretion and judgment?
   4. Work is predominantly intellectual and nonroutine and is of such character that the output produced or the result accomplished cannot be standardized in relation to a given period of time?
   5. Does not devote more than 20% of yours worked in the workweek to activities which are not an essential part of the above work?
SUMMARY OF
RECORD-KEEPING PROVISIONS
OF THE
FAIR LABOR STANDARDS ACT

Section 11(c) of the Fair Labor Standards Act requires that every employer "subject to any provision of this Act" make, keep, and preserve records of employees' wages, hours, and other conditions and practices of employment, as prescribed by regulation of the Secretary of the Department of Labor. This requirement applies to all employers within the scope of the Fair Labor Standards Act, regardless of whether they ever pay less than minimum wage, or ever pay overtime. The regulations issued by the Department of Labor are equally clear that all employers subject to the Act (regardless of the actual wages paid, or the actual hours worked by the employees) must keep and preserve certain records.

One of the principal benefits of maintaining such records, is to defend the employer's position in the event of a dispute regarding minimum wage or overtime pay requirements. In the event of a dispute regarding hours worked, an employer which has not maintained records required by the Fair Labor Standards Act will be at a substantial disadvantage, and the Wage and Hour Division of the Department of Labor will be considerably more inclined to accept undocumented allegations by an employee.

Also, the Department of Labor has the authority to audit the employer's wage practices and record-keeping practices, without any complaint by an employee. In addition to potential back wage liability to employees claiming to have been denied minimum wage or overtime pay to which they are entitled under the Act, Section 15(a)(5) of the Act makes it unlawful for any employer to violate the record-keeping requirements of Section 11(c), leading to the following possible penalties:

(a) Section 16(a) of the Act imposes criminal sanctions. This section states that any person who willfully violates any of the provisions of Section 15 shall upon conviction thereof be subject to a fine of not more than $10,000.00, or imprisonment for not more than six months, or both (although no imprisonment may be imposed for the first offense).

(b) Section 17 of the Act grants jurisdiction to the federal district courts to restrain and enjoin violations of Section 15.

Record-Keeping Requirements. The Act does not require any specific form of records, and allows that records be maintained in any manner, as long as the records are complete, legible, preserved for the required periods of time, and readily available for inspection by the Department of Labor. If the records are maintained on microfilm or in electronic storage, adequate projection or viewing equipment must be available, reproductions must be clear and identifiable by date or pay period, and extensions or transcriptions of the information must be made available upon request.
The basic record-keeping requirement states that every employer must maintain and preserve payroll records and other records containing the following information with respect to each employee to whom Section 6 of the Act (minimum wage and equal pay requirements) or Section 7(a) of the Act (overtime requirements) applies:

1. Full name as used for Social Security recordkeeping purposes, and any employee identifying symbol or number used by the employer.

2. Home address, including zip code.

3. Date of birth, if under 19.

4. Sex and occupation in which employed.

5. Time of day and day of week on which the employee’s workweek begins. If all employees have the same workweek, a single notation of the time of day and beginning day of the workweek for the entire work force will suffice.

6. Regular hourly rate of pay for any work week in which overtime compensation is due, including an explanation of the basis of pay by indicating the monetary amount paid on a per hour, per day, per week, or other basis, and the amount and nature of each payment which is excluded for calculation of the "regular rate" (such as gifts, reimbursement of travel expenses, irrevocable contributions to a pension plan, and other amounts which need not be included in determination of the "regular rate" for overtime).

7. Hours worked each workday and total hours worked each workweek.

8. Total daily or weekly straight time earnings or wages due for hours worked during the workday or workweek, exclusive of overtime compensation.


10. Total additions to or deductions from wages paid including employee purchases, wage assignments, and so forth.

11. Total wages paid each pay period.

12. Date of payment and the pay period covered by the payment.

The information required by paragraphs 1 through 5 is basic personnel information which should be kept on file, and need not be changed or added to on any regular basis. The information required by paragraphs 8 through 12 is basic payroll information which should be part of your records for each pay period. Paragraph 6 requires a record of the calculation of the
"regular rate" upon which the overtime rate is calculated, but only for weeks when overtime is actually earned. This record should be kept whenever overtime is earned. This leaves only the information required by paragraph 7, which mandates that a record of hours worked each workday and total hours worked each workweek be kept.

The law does not require that a time clock or any specific form of record-keeping be used, to record hours worked. A time clock can, of course, be used. One alternative would be a simple form which each employee is asked to complete and submit weekly (and which will be verified by management upon receipt), which shows the employee’s name, the week in question, and the total hours worked each day during the week.

With regard to employees exempt from overtime (e.g., employees paid on a salary basis in bona fide executive, administrative, or professional capacities, or outside sales), the requirements of paragraphs 6 through 10 need not be met, as long as there is a record of the basis upon which wages are paid in sufficient detail to permit calculation for each pay period of the employee’s total remuneration including fringe benefits.

The Act and the regulations also require that employers post and keep posted in conspicuous places in every establishment where employees are employed, a notice explaining the Fair Labor Standards Act, as prescribed by the Wage and Hour Division.

Sections 516.5 and 516.6 of the Wage and Hour Division regulations, require that most records be kept for either two or three years. Since certain employee lawsuits relating to payroll practices under Nebraska law can be brought as late as four years after the alleged violation (such as actions for unpaid wages under the Nebraska Wage Payment and Collection Act, or actions alleging sex discrimination under the Nebraska Equal Pay Act) all payroll-related records should be maintained for at least four years from the payroll date. These records can be converted to microfilm or other medium at a time which is administratively convenient, as long as the converted records are accessible and complete, and legible copies can be readily made.
SAMPLE - COMP TIME POLICY FOR PUBLIC EMPLOYER

Non-exempt hourly employees may be paid in compensatory time, or "comp time," for a portion of their overtime hours rather than being paid time-and-a-half for overtime hours. This option is available to our employees because the Hospital is a government employer. The comp time system shall work as follows:

a. Comp time shall be available only to employees who "opt in" to the comp time system by completing a written form to be provided by the Hospital. Employees may opt back out at any time in writing, but will not then be allowed to opt back in for at least a year. The following paragraphs will apply only to non-exempt hourly employees while they are currently opted in; all other non-exempt hourly employees will be paid time-and-a-half for overtime hours.

b. For all overtime hours, the employee’s time-and-a-half pay will be divided into one hour of pay and one-half hour of comp time. The employee will be paid one hour at his or her regular rate on the regular pay day, and one-half hour will be credited to the employee’s comp time bank.

c. An employee’s comp time bank may not exceed 240 hours; an employee who is at the maximum will be paid time-and-a-half for all overtime hours, until some comp time is used and the employee’s comp time bank falls below the maximum.

d. Comp time is used in the form of time off with pay. Comp time pay is the employee’s regular rate at the time comp time is used. The comp time hours are "hours worked" for benefit and overtime purposes, only in the week in which they are earned; Comp time does not count as hours worked for benefit or overtime purposes in the week during which comp time is used.

e. Comp time hours shall be used in the form of time off with pay at times designated by the Hospital; or may be used upon request of the employee with at least two weeks advance notice, if the supervisor determines that the requested time off will not unduly disrupt the Hospital’s operations. Comp time may also be used for other approved absences (illness, vacation, etc.) after paid time off benefits are exhausted. Comp time may be taken only in full hour increments.

f. The Hospital may cash out some or all of an employee’s comp time hours at the employee’s regular rate of pay, at any time. Upon termination of employment for any reason, an employee shall be paid for all hours in his or her comp time bank, at his or her regular rate of pay at that time, or the employee’s average regular rate during the last three (3) years of employment, whichever rate is higher.
E. FAMILY AND MEDICAL LEAVE ACT

WHAT ARE THE MOST COMMON PROBLEMS SINCE ITS PASSAGE?

I. WHICH EMPLOYERS ARE COVERED?

The Family and Medical Leave Act (FMLA) became effective on August 5, 1993 and covers any employer who employs 50 or more employees for each working day during each of 20 or more calendar workweeks in the current or preceding calendar year.

- An employer includes a corporation, partnership, and sole proprietorship.
- Calendar workweeks need not be contiguous.
- Employees include all full-time, part-time, and temporary employees, including those on leave of absence.
- An employee hired after the beginning of a workweek, or who terminates employment before the end of workweek, is not counted as employed on "each working day" of that workweek.
- Once an employer has been identified as having to meet the requirements of FMLA, the employer will almost always find it necessary to revamp its leave policy.

i. A recent survey of human resource managers conducted by the Society for Human Resource Management ("SHRM"), released August 3, 1994, indicated that 88% of the respondents had to update their leave policies to comply with the FMLA. (Reported in the Daily Labor Report, August 5, 1994.)

ii. One-third of those respondents noted that it took about three weeks to come into full compliance with the Act, and almost half of the survey respondents stated they relied on "outside help" to comply with the law.

iii. One year after its effective date, approximately 11 percent of the respondents are still not in compliance with FMLA.
• According to the SHRM survey, nearly two-thirds of the respondents believe the law provides little or no benefit; only 19 percent felt the law improved employee morale.

II. WHICH EMPLOYEES ARE COVERED?

An eligible employee is one who has been employed for at least 12 months by the employer and for at least 1,250 hours of service with that employer during the previous 12 months.

• Twelve months of consecutive employment is not required.

• The employee is required to work 1,250 hours within the 12 months immediately preceding the start of leave.

• FMLA does not cover part-time or seasonal employees working fewer than 1,250 hours per year. A part-time employee working slightly more than 24 hours a week during the entire prior year would be eligible for leave.

III. NOTICE REQUIREMENTS

A. Employers

Every employer subject to the FMLA is required to post and keep on its premises a notice explaining the FMLA’s provisions and providing information concerning the procedures for filing complaints or violations of the FMLA.

• A recent study by the National Association of Working Women indicated that only 54% of 275 survey respondents reported receiving any information about the law from their employers, despite the FMLA’s posting requirements. (Reported in the Daily Labor Report, August 4, 1994.)

1. The notice must be posted prominently in conspicuous places throughout employee work sites so that it can be readily seen by employees and applicants for employment.

2. Where an employer’s workforce is comprised of a significant portion of workers who are not literate in English, an employer is also responsible for providing the notice in a language in which the employees are literate.
3. Employers may obtain copies of the notice from local offices of the Wage and Hour Division or may reproduce copies of the notice. A reproduction of the notice may not be smaller than 8 1/2 by 11 inches.

4. Any employer that willfully violates the posting requirement may be assessed a penalty by the Wage and Hour Division of up to $100 per offense.

B. Employees

When leave is foreseeable, the employee is required to give the employer 30 days notice, or in the event the leave is required to begin in less than 30 days, the employee must give notice to the employer as soon as practicable.

- The regulation itself does not specifically identify the form of notice or the procedure the employee must follow in giving notice. Thus, the employer may require that notice be given on a form provided by the employer.

IV. TYPES OF LEAVE AVAILABLE

A. Intermittent/Reduced Leave Schedule

Employees requesting leave to care for a sick family member or for an employee's own serious health condition may request to take their leave intermittently or on a reduced leave schedule.

- "Intermittent leave" is leave taken in separate blocks of time due to a single illness or injury, rather than for one continuous period of time, and may include leave for periods from an hour to several weeks.

- A "reduced leave schedule" is a leave schedule that reduces an employee's usual number of working hours per workweek, or hours per workday. For example form 40 hours a week to 30 hours, or from eight hours per day to six hours per day.

- If an employee takes leave on an intermittent or reduced leave schedule basis, only the amount of leave actually taken may be counted toward the 12 weeks of leave to which an employee is entitled.
For example, if an employee who normally works five days a week takes off one day, the employee would use 1/5 of a week of FMLA leave. Similarly, if a full-time employee who normally works 8-hour days works 4-hour days under a reduced leave schedule, the employee would use 1/2 week of FMLA leave each week that he or she works that schedule.

Where leave is to be taken for the birth or placement of a child for adoption or foster care, the leave may not be taken intermittently or on a reduced schedule basis unless the employee and employer otherwise agree.

B. Part-Time Employees

A part-time employee who has worked an average of 24 hours per week for 12 months prior to requesting leave will be entitled to FMLA leave. Like full-time employees, part-time employees are entitled to take this leave intermittently or on a reduced leave schedule to care for an ill family member or their own serious health condition.

The amount of leave to which the part-time employee is entitled is determined on a pro rata or proportional basis, comparing the employee’s new schedule with his or her normal schedule.

For example, if an employee who normally works 30 hours per week works only 20 hours a week under a reduced leave schedule, the employee’s ten hours of leave would constitute one-third of a week of FMLA leave for each week the employee works the reduced leave schedule.

C. Transfers to Alternative Positions

If an employee requests intermittent leave or leave on a reduced leave schedule basis, the employer may require the employee to transfer temporarily to an available alternative position for which the employee is qualified and which better accommodates recurring periods of leave.

The alternative position must have equivalent pay and benefits, but there is no requirement that it provide equivalent duties.

An employer may increase the pay and benefits of an existing alternative position, so as to make them equivalent to the employee’s regular job in order to satisfy FMLA requirements.
• The employer may also transfer a full-time employee to a part-time job with the same hourly rate of pay and benefits, provided the full-time employee is not required to take more time off his or her regular schedule than is medically necessary.

D. Substituting Paid Leave

The Family and Medical Leave Act permits an employer to require an employee to substitute any of the employee's paid leave for FMLA leave. Similarly, an employee may choose to substitute paid leave for FMLA leave, with certain restrictions.

• Paid vacation or personal leave may be substituted for any qualified FMLA leave, and an employer may not place any limitations on such substitution.

• If the employer agrees, an employee is entitled to substitute paid family leave only under circumstances permitted by the employer's family leave plan. For example, if the employer's leave plan allows use of family leave to care for a child but not for a parent, an employer may but is not required to allow accrued family leave to be substituted for FMLA leave used to care for a parent. Similarly, an employer may but is not required to allow substitution of paid sick or medical leave for unpaid FMLA leave in situations where the employer would not normally allow paid leave.

• An employee has a right to substitute paid medical/sick leave to care for a seriously ill family member only if the employer gives its permission or if the employer's leave plan specifically allows paid leave to be used for that purpose.

• In all cases when paid leave is substituted for unpaid FMLA leave, it may be counted against both the employee's accrued paid benefits and against his or her 12-week FMLA leave entitlement.

V. MEDICAL CERTIFICATIONS

Under the Family and Medical Leave Act, a covered employer may require that an employee's request for leave to care for the employee's seriously-ill family member or due to the employee's own serious health condition be supported by a certification issued by a health care provider.
• An employer is required to give written notice to its employees of this requirement for medical certification, and employees are in turn required to provide the requested certification within the time frame requested.

• The Department of Labor has developed an optional form for employees' use in obtaining medical certification from health care providers. This form, or another form containing the same basic information, may be used and distributed by the employer; however, if the employer develops its own form, no additional information may be requested other than that contained on the Department of Labor's form.

• Once an employee has provided the requested certification, an employer may not request additional information from the employee's health care provider in order to determine whether or not to grant the requested FMLA leave.

• The certification must contain all of the following:

i. The date on which the serious health condition commenced;

ii. The probable duration of the condition;

iii. The appropriate medical facts regarding the condition;

iv. If the leave is based on the care of a spouse, child, or parent, a statement that the employee is needed to provide the care and an estimate of the amount of time that need will continue;

v. If the leave is based on the employee's own serious health condition, a statement that the employee is unable to perform the functions of his or her job;

vi. In the case of an intermittent leave or leave on a reduced schedule for planned medical treatment, the dates the treatment is expected to be given and the duration of the treatment.

• Any additional medical certifications which may be required of an employee before FMLA leave is granted must be from a different health care provider, and may only be required at the employer's own expense.

VI. KEY EMPLOYEE EXEMPTION

The Family and Medical Leave Act allows an employer, under limited circumstances, to deny job restoration at the completion of FMLA leave to an employee who is considered a "key employee" in the company.

• A "key employee" is a salaried FMLA-eligible employee who is among the highest paid 10 percent of all the employees employed by the employer
(determined by year-to-date earnings divided by weeks worked by the employee).

- The regulations are very clear that this exception to restoring employees is not to be taken lightly.

- In order to deny restoration to a key employee, an employer must determine that the restoration of the employee will cause "substantial and grievous economic injury" to the operations of the employer, not whether the absence of the employee will cause such injury.

- Minor inconveniences and costs that the employer would experience in the normal course of doing business does not constitute "substantial and grievous economic injury."

- An employer who believes that reinstatement may be denied to a key employee must give written notice to the employee at the time FMLA leave is requested (or when FMLA leave commences, if earlier) that he or she qualifies as a key employee.

- An employer must also fully inform the employee of the potential consequences with respect to reinstatement at the time leave is requested.

- An employer who fails to provide such timely notice will lose its right to deny restoration even if substantial and grievous economic injury will result from reinstatement.

VII. EMPLOYER'S RESPONSIBILITY TO MAINTAIN HEALTH BENEFITS

Employers are required to maintain coverage under any group health plan under the conditions coverage would have been provided if the employee had continued in employment continuously for the duration of such leave.

- The employer is only required to pay the employer’s share of any contribution to a health plan.

- If there is no plan in existence at the time the employee takes leave but one is established while the employee is on leave, the employer is required to commence contributions at the same point in time the employee would have been eligible for the health benefits had he/she been working.

- An employer may recover the premium that it paid for maintaining group health plan coverage for an employee during unpaid leave if the employee fails to return to work for reasons other than continuation or onset of
serious health conditions, or other circumstances beyond the control of the employee.

- Highly compensated employees who may be denied restoration after conclusion of leave are still entitled to payment of health benefits during the leave term. The employer cannot seek reimbursement from the employee if, after the conclusion of the leave, the employee seeks reinstatement and is denied.

VIII. COMPLIANCE WITH FMLA

Failure to comply with all FMLA's requirements could result in employee complaints and Department of Labor investigations.

- Compliance may be difficult because the law defines "serious health condition" in very broad terms. A "serious health condition" is defined as an illness, injury, impairment, or physical or mental condition that (1) involves inpatient care; (2) requires absence from work, school, or other regular daily activities of more than three days and requires continuing treatment by a health care provider; or (3) requires continuing treatment by a health care provider for a chronic or long-term health condition that is incurable or so serious that, if not treated, would likely result in a period or incapacity of more than three calendar days.

- Over one-third of respondents in the SHRM survey had trouble with the FMLA's definition of "serious health condition".

- The employer has the burden of proving whether an employee's leave qualifies under FMLA.

- The employer must separately track FMLA leave from all other types of leave. A failure to maintain appropriate records will prevent the employer from charging FMLA-qualifying leave against the employee.

  i. Employers will incur significant burdens in tracking intermittent leave for an hour or a day at a time.

  ii. Medical requests must be maintained in a separate file apart from the employee's personnel or supervisor's file.

  iii. The SHRM survey noted that many human resource professionals view the Act as a negative rather than a positive benefit for employees due to the administrative and productivity headaches caused by FMLA.
• All benefits must be restored once an employee returns from FMLA leave, even if employer paid insurance premiums have lapsed due to non-payment of premiums.

   i. Current comments indicate there is a conflict between the FMLA rule requiring immediate benefit restoration upon return from leave and tax code Section 125 which sets certain restrictions on when new benefit choices can be made following withdrawal from cafeteria benefit plans.

   ii. The Consolidated Omnibus Budget Reconciliation Act (COBRA) requires 18 months of continued health coverage for employees who terminate the employment relationship. Problems concern the designation of the qualifying event triggering coverage under COBRA when an employee decides not to return to work after FMLA leave. Commentators suggest employers should begin COBRA benefits after conclusion of the 12 week FMLA leave period.

• The survey conducted by SHRM noted employers were having a difficult time coordinating FMLA with other laws.

   i. The Americans with Disabilities Act (ADA) was the most problematic, followed by workers’ compensation, COBRA, and unemployment insurance.

   ii. Compliance with the ADA centered around fitness to return to duty.

IX. EMPLOYER LIABILITY FOR VIOLATIONS OF FMLA

An employee has two years to file an action against the employer for any violation of FMLA and in the event of a willful violation, the employee has three years.

A. Civil Actions brought by Employees

• Civil actions under FMLA may be brought in state or federal court on either the employee’s own behalf, or on behalf of all similarly situated employees.

• Liability may take the form of damages equal to wages, salary, employment benefits, or other compensation denied or lost by reason of the violation, or where no compensation or benefits have been lost (employee is denied leave and continues to work), damages equal to any actual monetary loses suffered by the
employee due to the violation (such as the cost of providing care to a family member). The employee is also entitled to interest on the above amounts.

- An employer may also be required to pay reasonable attorney fees in the event the employee’s action is successful.

B. Department of Labor Actions

- The employee may also file a complaint with the Department of Labor who may then file suit and seek any damages otherwise available directly to the employee.

- If an employee files a complaint with the Department of Labor, the employee’s ability to file an independent suit against the employer terminates.

- During the first 11 months since FMLA’s passage, the Department of Labor personnel have completed investigations of 965 complaints and have found violations in 591, or 61%, of the complaints.

1. 65% of the valid complaints involved charges that the employer illegally refused to return an employee to the same or an equivalent job.

2. 20% of the valid complaints involved situations where employers refused to grant leave.

3. No law suits have been filed under the law, although the Department of Labor is investigating some unresolved complaints for possible legal action.

X. FINAL RULES AND REGULATIONS

The Department of Labor has targeted August 31, 1994 for publication of final regulations under FMLA.

- Since the law has gone into effect, the Department of Labor has received the greatest number of comments from health care providers seeking inclusion in the definition of "health care provider".

  i. Groups include clinical social workers, family and marriage counselors, therapists, physician’s assistants, chiropractors, and members of various medical disciplines.
ii. Broadening the scope of the "health care provider" definition will help ease the burden on the employee to become eligible for FMLA leave. Currently, certification is required by a doctor or other health care provider who has the authority or is accepted as someone capable of diagnosing the nature of the illness and providing certification to the employer confirming a serious health condition before leave may be granted.

XI. WHAT COMMON TRAPS CAN BE AVOIDED?

A. Determine in advance if the Family and Medical Leave Act (FMLA) is applicable and which employees are eligible for leave under the act.
   - Through the first six months since FMLA’s effective date, the Department of Labor received more than 500 complaints. Approximately 40 percent were ruled invalid because the employer was exempt from the law or the employee did not qualify as a covered employee under FMLA.
   - Valid complaints involved employer refusals to grant leave, alleged failure to restore employees to their jobs following leave, discrimination charges, continuation of health benefits, and a failure to return employees to equivalent jobs after leave was terminated.

B. Conspicuously post the "Notice" requirement explaining the provisions of FMLA and procedures for filing complaints.

C. Establish procedures for eligible employees to give notice of intended leave.

D. Maintain adequate recordkeeping of leave taken under FMLA.
   - FMLA leave must be accounted for separately from all other leave which could lead to recordkeeping nightmares in the event of hourly or daily intermittent leave requests.
   - Medical leave requests cannot be incorporated into and employees personnel or supervisor’s file.

E. Establish policies identifying the type of leave eligible employees are authorized to take, e.g. intermittent, reduced schedule leave, substituting paid leave, or transfers to alternative positions.
   - Policies should be written in such a way as to avoid employee abuse of intermittent leave which may help to alleviate some of the recordkeeping problems.
F. If medical certification is required prior to granting FMLA leave, certification forms in compliance with the regulation should be readily available to the employee.
PART II

MINIMIZING LEGAL RISK
A. PERSONNEL POLICIES

I. WHY EVERY EMPLOYER SHOULD HAVE THEM

A. "Mandatory" policies. Examples:
   • Sexual Harassment
   • Family and Medical Leave Act

B. "Highly Beneficial" policies. Examples:
   • Employment at Will
   • Management rights
   • Equal employment opportunity
   • Corrective action
   • Benefits

II. WHAT SHOULD BE INCLUDED (SEE LIST)

III. COST-BENEFIT

B. AVOIDING COMMON LEGAL TRAPS IN HIRING, DISCIPLINE AND DISCHARGE

I. THE HIRING PROCESS

A. Legal Issues at the Hiring Stage
   • Discrimination
   • Contracts/Promises
   • References to job security, longevity, etc.
   • Attempts to summarize/verbalize personnel policies or practices
B. Interviewing and Selecting

- What questions can you ask?
  (What will you do with the answer?)

- The importance of written questions
  and/or standards

- Disabled individuals--identifying work abilities and possible
  accommodations--avoiding over-accommodation

C. Proper/Improper Questions (See List)

II. CORRECTIVE ACTION AND PERFORMANCE APPRAISALS: AVOIDING COMMON MISTAKES

A. Counseling and Disciplining

- To "write up" or not

- Haste makes waste

- "Piling on" and editorializing

- Probationary period

- Forced resignations and constructive discharge

- Secret files

B. Performance Appraisals

- Objective performance standards

- Behavior vs. personality

- The curse of grade inflation

III. PREVENTING POST-TERMINATION CLAIMS


- Do not breach the "contract," if indeed there is one
• Do not orally offer more than the policies provide--at time of hire, at discharge, or at any time in-between

• If policies don't work, get them changed

• Never establish contrary practice, or say "well, we don't really do it that way."

• Do not loosely or casually interpret policies/practices for employees or applicants--go to the policies themselves, or to Human Resources Department.

B. Observe Sound Termination Procedures

• Never make termination decision quickly

• Get a second opinion

• Make sure Human Resources has all the facts

• Consider these questions before discharging:

  1. Did employee know conduct could result in discharge--was fair warning given?

  2. Is reason for discharge valid and business related?

  3. Would any lesser action be appropriate?

  4. Are employee's conduct and prior warnings well documented?

  5. Have procedural and substantive rules of policies all been complied with?

  6. Have all other employees in similar circumstances been treated the same way?

  7. Is there any reason for employee to claim malice, unfairness, discrimination?

• Be honest with employee about reasons for discharge, and inform employee face to face
• Document reasons for discharge--consistent with what employee is told

• Protect employee’s privacy and dignity

• Be humane

• Stay out of view or earshot of co-workers

• Do not allow termination interview to turn into angry/hostile confrontation

• But find appropriate time/place for employee to ask questions and be heard

• Make it clear your decision is final and is supported by top management

• Do NOT try to force employee to "resign"

• Do NOT offer a "favorable reference" if it is not deserved

• Channel all reference requests through human resources

• Do NOT try to prevent former employee from getting work elsewhere

IV. SOME COMMON DISCRIMINATION MISTAKES

Many discrimination problems result more from carelessness or misunderstanding of the law, than from an intent to discriminate. Following are some common mistakes which can and should be avoided:

1. REJECTING WOMEN, MARRIED WOMEN, OR MOTHERS BECAUSE:

   • "The job is too dangerous for a woman"

   • "There is too much heavy lifting for women"

   • "Women are too emotional"

   • "Women do not want overtime and weekend work"
2. IMPOSING DIFFERENT STANDARDS FOR MEN THAN FOR WOMEN:
   - "She is too assertive"
   - "She doesn’t dress [talk] like a lady"
   - "She is too masculine"

3. ASSUMING A WOMAN CANNOT DISCRIMINATE AGAINST A WOMAN, OR A BLACK AGAINST A BLACK, ETC. THE EMPLOYEE’S CLASSIFICATION IS THE ISSUE, NOT THE SUPERVISOR’S.

4. ASSUMING YOU CAN FOOL ANYONE BY MAKING SUPERFICIAL CHANGES. IF THE "HEAD WAITRESS" AND "MAITRE D’" HAVE THE SAME DUTIES, THEY MUST HAVE THE SAME PAY SCALE.

5. REJECTING OLDER WORKERS BECAUSE:
   - "We need someone energetic/flexible/aggressive/fresh/etc."
   - "You can’t teach an old dog new tricks"
   - "He’ll be retiring by the time he learns the job"
   - "This job is too physical for someone his/her age"
   - "This is a training position—we need to develop someone for the next 20 years"
   - "We need a changing of the guard"
6. Failing to evaluate older employees honestly. Poor performance gets worse, not better, when ignored.

7. Allowing co-workers or others to discriminate, harass, tell racial or ethnic or age jokes. Supervisors must not only avoid discrimination, they must stop it.

8. Using titles such as "Mr." or "Ms." for one race but not another, or terms such as "Boy" or "Girl" when referring to minority employees.

9. Assuming that all minorities are "lumped together." Fair treatment of one black employee does not offset unfair treatment of another; fair treatment of all blacks does not justify discrimination against Hispanics.

10. Ignoring any complaint of harassment, ever.

11. Taking any of these positions regarding sexual, racial, age, disability or other harassment:

   • "You need to learn to handle these things yourself"
   
   • "It's all just in fun--ignore it"
   
   • "This department has its own culture--it comes with the job"
   
   • "You tell jokes like everyone else"
   
   • "You're egging them on, it's your own fault"
   
   • "You're talking about a customer [or volunteer, board member, etc.], what am I supposed to do about it?"

V. Respecting Employee Privacy and Dignity

Even the most justifiable employee criticism, discipline or discharge can lead to legal problems if the employee's dignity or confidentiality is seriously
compromised. Lawsuits based on defamation, breach of privacy, or infliction of emotional distress are not uncommon even when there was good cause for the action taken. On the other hand, employees with legitimate grievances often choose not to press their claims if they feel they have been dealt with fairly.

Whenever dealing with a problem employee, do so in a courteous, professional manner, whether the employee deserves such treatment or not. Follow these suggestions whenever possible:

- Discuss the situation only with essential personnel
- Stick to the facts
- Remain calm—take a few hours or days to put it in perspective before acting, if necessary
- Never confront the employee in public or before coworkers
- Never yell, belittle, or physically touch the employee
- Use positive, constructive, goal-oriented discipline. Define the improvement needed, and the timetable
- Be confident, do not "waffle" or suggest that the decision may change
- Never state or imply that you disagree with your superiors about the decision
- Whenever in doubt, get assistance from another experienced supervisor
- Be firm, but compassionate. However much deserved, discipline or discharge is emotionally difficult for any employee.

VI. SUGGESTIONS FOR EFFECTIVE SUPERVISION

The following guidelines should assist the supervisor in achieving personal goals as well as becoming a more efficient supervisor.

1. Contribute to a positive environment. Develop a climate of understanding where an employee can make a reasonable number of mistakes and learn from constructive criticism.
2. **Sensitize yourself to people's abilities.** For new employees and for changes in assignments, select people who are capable of performing or learning to perform the assignment successfully.

3. **See the whole picture.** Make sure that every person is assigned to a job that clearly contributes to the goals of the organization--then be sure each understands what is expected of him or her.

4. **Set high standards.** Make sure, also, that the standards are reasonably attainable by those working under them.

5. **Share authority.** Be willing to delegate so that your people share and appreciate responsibility.

6. **Evaluate continually.** Evaluate individuals in how well they meet standards of performance in predetermined areas of responsibility on an ongoing basis.

7. **Communicate.** Make certain that open dialogue is the rule and not the exception. Also, be certain that employees understand the evaluation process, and that the reason for it is to help them become the best they can be.

8. **Let people know where they stand.** If there is a problem, discuss it and talk about how employees can improve themselves.

9. **Encourage continuing education.** Develop a climate conducive to ongoing training and growth.

10. **Take a stand and make the hard decisions.** Have the courage to deal with those who continue to perform below standards after you have given them sufficient training and coaching; and to release employees, if necessary, after sufficient warning.

**VII. SOME TRAITS OF THE INEFFECTIVE SUPERVISOR**

The following questions can be used as a simple self-examination for supervisors and managers. The questions reflect characteristics which have a negative impact on employees.

1. **Am I ever unfair when I deal with my staff?**

2. **Have I ever not treated others the way I would treat myself or my superiors?**
3. Do I sometimes give directions and assignments that are unclear, vague, and incomplete?

4. Do I communicate with others only when absolutely necessary, and avoid explaining reasons for decisions?

5. Am I disorganized?

6. Do I avoid letting employees know where they stand—tell employees about mistakes only at the annual evaluation?

7. Do I lose my temper?

8. Am I uncooperative when I deal with staff?

9. Do I criticize employees in front of their peers?

10. Do I hold back when I should be giving praise?

11. Do I fail to tolerate criticism or questioning of my decision making?

12. Do I tend to get "rattled" in pressure situations?

13. Do I fail to establish clear priorities or fail to help employees do the same?

14. Do I avoid making decisions until the last moment?

15. Am I unable to back down from a decision if it was the wrong decision?

16. Do I find myself making excuses for mistakes rather than admitting that I made a mistake?

17. Do I demand that my orders be followed without comment or question?

18. Do I feel it is a waste of time to listen to employees’ personal problems?

19. Do I have the attitude that people are here to work and get paid, and that’s all?

20. Do I set a good example, or do I expect others to follow the rules and procedures even if I don’t?
INTERVIEW QUESTIONS

There is an unlimited number of possible pre-hire interview questions, depending on what you really need to know about the applicant. Questions are proper if the answer would be a valid basis upon which to base your decision. Questions are improper if they do not relate to legitimate, business-related needs of the employer and the answer could identify an applicant’s protected status or have a disparate impact on a protected class. Following are a few examples of questions which are generally considered proper or improper.

PROPER QUESTIONS

Questions About Experience:

1. Describe your educational background. Do you feel you were successful as a student? In what ways?

2. Did you find school (college) work hard or easy? What kinds of courses did you have the most success with? Which gave you the most difficulty?

3. What kinds of activities did you participate in while in school? What positions did you hold? What honors did you win?

4. Describe your work experience. What sort of work did you do? Did you usually work independently or under close supervision? Did you ever supervise other people? Explain.

5. How did you like the work? What, specifically, were your likes and dislikes on that job? Compare these likes and dislikes with other jobs you have held.

6. How successful were you in this job? How are you measuring success? Were you satisfied with your salary progress? Why or why not?

7. Why did you leave this job when you did? Did you leave on good terms? Do you think you could return to that company if you wanted?

Questions About Work Attitudes:

1. What duties and responsibilities do you think will be involved in the position we have open?

2. Why do you think you would like this type of work?
3. What type of qualities do you think you need to be successful in this line of work?

4. I am interested in some of your thoughts about our type of business. What do you see as the role of (banks, hospitals, etc.) in our society today?

5. Generally speaking, why do you think people work? What are the important things you expect to get out of a job?

Questions Calling for Self-Evaluation

1. What qualifications or characteristics go together to make a good supervisor (or nurse, or teller, or whatever)?

2. What do you see as your own biggest strengths? How about limitations? Where do you feel you need the most growth and development?

3. Suppose I asked your boss to describe your job performance: what would he/she say? Your strengths? Your weaknesses?

4. What sort of people do you most enjoy working with in your job? On the other hand, what sort of people make you uncomfortable or annoy you?

5. Do you like to work sitting at a desk or are you the sort of person who prefers to be up and around -- physically active?

6. Are you a person who enjoys working behind the scenes, or would you rather be in a public contact job?

7. Are you satisfied with your career progress to date? Why/Why not?

Miscellaneous Questions

1. Have you had a chance to read over the job description?

2. Can you perform all of the essential functions of this job?

3. What is your current position?

4. Describe a typical day in your present position.

5. What have you found easiest in your current position?

6. What have you found most difficult in your current position?
7. What do you enjoy the most in your current position?
8. What do you expect of your supervisor?
9. What do you expect to gain personally from this position?
10. What do you expect to gain professionally from this position?
11. What personal goals would you set for yourself should you receive this job?
12. What types of innovative ideas would you like to incorporate into this position?
13. What do you plan to be doing in five years?
14. What are your educational plans?
15. Do you have any additional questions for me?

**IMPROPER QUESTIONS**

**Gender-Related**

1. Do you have plans of having children/family?
2. What are your marriage plans?
3. What does your husband/wife do?
4. What happens if you or your husband/wife gets transferred or needs to relocate?
5. Who will take care of your children while you are at work?
6. How would you feel working for a woman/man?
7. Are you supplementing the household income?
8. Can you handle working with men who swear a lot?
9. What was your maiden name?
Age-Related

1. How old are you?

2. How would you feel working for a person younger than you?

3. What are your retirement plans?

4. When did you graduate from high school? College?

National Origin-Related

1. Where were you born?

2. Where were your parents born?

3. Of what country are you a citizen?

4. You have an unusual name, what nationality is it?

Race/Color-Related

1. What race are you? (or any variation of the question)

2. How do you feel about working with members of a different race?

3. Any problem working for a white/black/asian/hispanic boss?

4. Have you ever been arrested?

5. Did you receive an honorable discharge from the military?

Disability-Related

1. Do you have any handicaps?

2. How severe is your problem? How did it occur?

3. What medical specialists do you go to?

4. Do you have health insurance?

5. Do you need much sick leave?
6. Have you ever seen a psychiatrist?

7. How much sick leave did you take in your last job?

Religion-Related

1. What religion are you?

2. What church do you attend?

3. Are you active in any church group?

Do not ask questions because you will need the information after you hire the applicant (marital status, number and age of dependents, birth date, etc.). You can get that information later. Do not ask different sets of questions to different applicants. And, of course, do not intimidate, harass, anger, tease, or make the applicant defensive— the interview is not a stress test, and part of the interviewer’s job is to recruit by selling the applicant on the desirability of the job.
LAWS DIRECTLY REGULATING
THE EMPLOYER-EMPLOYEE RELATIONSHIP

A. FEDERAL

1. United States Constitution, 1st, 4th, 5th and 14th Amendments. Free speech, privacy and due process rights (generally limited to public employees).

2. 42 U.S.C. Section 1983 (Civil Rights Act of 1866). Prohibits deprivation of civil rights (generally limited to public employees).


6. Age Discrimination in Employment Act. Prohibits discrimination against anyone 40 years of age or older.
7. **Older Workers Benefit Protection Act.** Modifies the Age Discrimination in Employment Act with respect to certain benefit issues, and establishes standards for waivers of age discrimination claims.

8. **Americans With Disabilities Act.** Prohibits discrimination in employment against individuals with disabilities, and requires reasonable accommodation.

9. **Vocational Rehabilitation Act.** Prohibits discrimination in employment against individuals with disabilities, and requires reasonable accommodation and affirmative action (applies to government contractors; note that "government contractors" includes depositories of government funds and financial institutions which are issuing and paying agents for U.S. savings bonds and savings notes).


11. **Civil Rights Act of 1991.** Modifies the burdens of proof under most of the statutes described above, and provides for jury trials and general compensatory and punitive damages in federal discrimination lawsuits.


13. **Executive Order 11246 and its progeny.** Prohibit discrimination in employment and require affirmative action programs for minorities and women (government contractors).

14. **Executive Order 12954.** Bars the permanent replacement of lawfully striking employees (government contractors).

15. **Employee Polygraph Protection Act.** Prohibits use of lie detector tests by employers in all but the most limited circumstances.

17. **National Labor Relations Act and Labor Management Relations Act.** Establish the framework for union organizing, collective bargaining and protected concerted activity under federal law.

18. **Davis Bacon Act.** Regulates wages for government contractors.

19. **Occupational Safety and Health Act.** Regulates workplace safety.

20. **Family and Medical Leave Act.** Requires up to 12 weeks of unpaid time off per year for serious health conditions, childbirth and adoptions.


22. **Federal Agency Drug Testing Regulations.** Require drug testing and fitness-for-duty programs in a number of regulated industries, including transportation, nuclear power, and pipelines, and establish extensive drug testing standards.

23. **Immigration Reform and Control Act.** Regulates the employment of immigrants.

24. **Uniformed Services Employment and Reemployment Rights Act.** Regulates time off and reemployment rights for active duty and reserve duty in the armed forces.

25. **WARN Act.** Requires periods of paid notice for mass layoffs and plant closings.

26. **ERISA.** Establishes minimum standards for certain employee benefit plans.
27. **COBRA.** Requires continued group insurance following termination from employment or other loss of eligibility.

28. **Consumer Credit Protection Act.** Regulates employer garnishments and credit-related background checks.

29. **Bankruptcy Code.** Prohibits discharge of an employee for seeking bankruptcy protection.

30. **Anti-Retaliation Provisions.** Most of the statutes listed above, and numerous others, contain anti-retaliation provisions.

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**B. STATE**

31. **Parallel Statutes.** Most states (and many municipalities) have statutes (or ordinances) which supplement or parallel most of the federal statutes described above. Many are more restrictive.

32. **Privacy Statutes.** Many states have statutes specifically granting privacy rights which would be applicable to the employer-employee relationship.

33. **Whistleblower.** Most states have some form of whistleblower protection for employees.

34. **Workers Compensation.** All states have workers compensation laws.

35. **Unemployment Compensation.** All states have unemployment compensation laws.

36. **Garnishment.** Most states have laws prohibiting termination or other adverse action resulting from garnishment of wages.
37. **Civic Duty.** Most states have laws requiring time off with pay for jury duty, election board duty, and other civic duties.

38. **Drug Testing.** Most states have laws regulating circumstances under which employers can require employee drug testing, and establishing scientific standards for such testing.

39. **Minority Languages.** Many states have laws imposing specific duties on employers who have a workforce which contains a substantial number of employees whose primary language is other than English.

40. **Wage Payment and Collection Acts.** Most states have laws specifically regulating the payment of wages, including deadlines for payment upon termination of employment.

41. **Use of Lawful Products.** Some states prohibit employers from interfering with employees’ use of lawful products or other lawful activities off duty.

42. **Smoking.** Many states directly regulate smoking in the workplace and smokers’ (or non-smokers’) rights.

43. **Electronic Monitoring.** Some states prohibit or regulate an employer’s monitoring of employees by phone, computer or security devices.

44. **Direct Deposit.** Some states prohibit mandatory direct deposit of payroll.

45. **Nepotism.** Many state laws regulate nepotism or other conflicts of interest in places of public employment.

46. **Personnel Records.** Some states regulate an employee’s right of access to his or her personnel record; many public employers are also governed by specific public record requirements.
47. **Service Letters.** Some state laws require service letters upon demand by former employees.

48. **Employee Conscience.** Some state laws prohibit employers from requiring employees to engage in acts which offend their conscience.

49. **Rest Breaks.** Some state laws require minimum rest breaks in some or all industries.

50. **Trade Secrets.** Most states define trade secret protection available to employers.

51. **Reporting of Licensees.** Some states require employers to report infractions by employees who maintain professional licenses.

52. **Common Law.** In most states, the following issues in the employer-employee relationship are regulated in the common law, and sometimes by statute:

   a. Wrongful discharge (usually contract, quasi-contract, public policy, or "tortious discharge" theories).

   b. Defamation.

   c. Invasion of privacy.

   d. Intentional or negligent infliction of emotional distress.

   e. Covenants not to compete.
C. MISCELLANEOUS

In addition, a number of other laws which are not designed primarily to regulate the employer-employee relationship nevertheless have that effect. For example, the Internal Revenue Code directly impacts the question of whether an individual will be treated as an employee or an independent contractor, affects payroll systems and various employee benefits, and affects the structure of employment litigation settlements. Numerous other statutes regulating specific industries have provisions affecting the employer-employee relationship (for example, the National Banking Act specifically states that officers of national banking associations serve at the pleasure of the board, thereby preempting state wrongful discharge law; statutes regulating fraud and abuse in the health care industry directly impact the type of compensation which a health care employer can pay to physicians; similar provisions are likely to be found in the laws regulating virtually every industry).
LIST OF CONSIDERATIONS FOR PERSONNEL POLICIES

A. THE BASICS

1. Employment at Will/Interpretation
2. Management Rights to Modify Policies
3. Equal Opportunity Statement
4. Prohibition of Harassment
5. Employee Classifications
6. Workweek/Pay Period/Office Hours/Overtime
7. Probationary/Introductory Period (if applicable)
8. Performance Evaluations, Salary/Wage Administration Policy, Promotions
9. Paid Time Off Plans
10. Family and Medical Leave
11. Other Leaves of Absence and Furloughs
12. Holidays and Holiday Pay
13. Insurance and Other Benefits
15. Tardiness/Absenteeism Policy
16. Grievances and Grievance Procedures
17. Resignation and Termination and Benefits
18. Non-Solicitation/Distribution Rules
19. Employee Receipt and Acknowledgement
B. OTHER POSSIBLE CONSIDERATIONS

1. Employee Policies

a. Advances on payroll
d. Break time/meal time
d. Callback and reporting pay
f. Conflicts of interest/ethics
h. Criminal background checks
i. Criminal records
k. Customer service
l. Deductions from pay
n. Emergency procedures
p. Employee assistance program
q. Employee discounts
o. Flex time/job sharing
r. Garnishments
s. Identification cards/badges
t. Job posting
u. Jury/Executive Board service
v. Military service
w. Moonlighting
x. OSHA policies
y. Organizational structure
z. Parking
aa. Patents/trade secrets/confidentiality
bb. Personal appearance/dress code/uniforms
cc. Personal telephone calls/visitors
dd. Personnel records
e. Redundancy in force/call-backs
ff. Reemployment
hh. Safety equipment programs
ii. Security/lockers/packages/searches & inspections
jj. Snow days
kk. Subpart abuse/drug testing/drug-free workplace
ll. Employee personnel
mm. Transfers/relocations
nn. Tuition reimbursement
oo. Union philosophy
pp. Work-related injuries--reporting, etc.

2. Administration

a. Advertising procedures
b. Interviewing & hiring process
c. Reference checks/credit checks
d. Applicant flow data
e. Exit interviews
f. Access to personnel file
g. New employee orientation
New EEOC Guidance Defines "Disability" Under The ADA

The United States Equal Employment Opportunity Commission (EEOC) recently issued a new section of its Compliance Manual that is intended to provide its investigators with guidance concerning the term "disability" for purposes of the Americans with Disabilities Act (ADA). The new guidance does not have the effect of law, but it is important because it demonstrates the EEOC's position regarding the meaning of "disability" under the ADA.

The new guidance in the Compliance Manual joins the ADA, its regulations, and the EEOC's Technical Assistance Manual in providing a definition of "disability" under the ADA. It was issued because of the EEOC's concern that current language in the ADA is "too broadly defined." Surprisingly, the EEOC's new guidance may, in fact, expand the meaning of "disability" under the ADA.

The ADA provides that an individual has a disability if he or she (1) has a physical or mental impairment that substantially limits a major life activity, (2) has a record of such an impairment, or (3) is regarded as having such an impairment. The EEOC's new guidance focused specifically on the concepts of "impairment," "major life activity," and "substantial limitation."

The guidance defines "impairment" as a physiological disorder affecting one or more body systems or a mental or psychological disorder. Specifically excluded from the definition of "impairment" are:

- Environmental, cultural, and economic disadvantages
- Homosexuality and bisexuality
- Pregnancy
- Physical characteristics
- Normal personality traits, e.g., a quick temper, being rude and arrogant
- Normal deviations in height, weight, or strength that are not the result of a physiological disorder.

Employers are cautioned that while the above conditions may not constitute "impairments" that establish an ADA-protected disability, technical distinctions may exist which create traps for the unwary. For example, an inability to read may be due to an impairment...
such as dyslexia. Likewise, pregnancy is not an impairment—but complications arising during pregnancy may constitute an impairment. Additionally, covered psychological impairments may cause the above-noted personality traits.

"Major life activities" was previously defined in the regulations to include activities such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, etc. The new guidance has added several new activities to the existing list. Specifically, "thinking," "concentrating," and "interacting with other people" are now considered by the EEOC to constitute major life activities. This expanded definition is intended to clarify that learning disabilities, as well as mental or emotional impairments, may constitute disabilities under the ADA.

According to the new guidance, the initial focus concerning "substantial limitation" should be on life activities other than working because the impact of an impairment may be more pervasive outside the workplace. It need not be determined whether an impairment substantially limits an individual's ability to work if the impairment substantially limits another major life activity. If, however, the individual is not substantially limited with respect to any other major life activity other than working, the focus should then be on whether the individual is significantly restricted in the ability to perform either a class of jobs or a broad range of jobs in various classes as compared to the average person having comparable training, skills, and abilities. Thus, the inability to perform a single, particular job does not constitute a substantial limitation in the major life activity of working.

The above are highlights from the EEOC's new guidance which cover over 50 pages and is extremely detailed and complex. For more information about the new guidance, call any of the attorneys in Baird Holm's Labor and Employment Section.

R.J. (Randy) Stevenson

Defamation--Actions May Speak Louder Than Words

Escorting a newly terminated employee from the premises, after witnessing him clean out his desk, may give rise to a defamation action against the employer. In *Bolton v. Department of Human Resources*, the Minnesota Court of Appeals permitted a claim by a terminated employee that he was defamed when, during the middle of the work day, his employer accompanied him to his desk and then to the building entrance with all of the employee's belongings following his termination from employment.

Malcom Bolton was a social work specialist who was terminated following an investigation which identified a conflict of interest between Bolton's duties as a specialist and his appointment as a guardian of one of his patients. On Bolton's final day, he was accompanied to his office by his supervisor, who stayed while Bolton packed his belongings and "then, in full view of other employees, accompanied [Bolton] to the main entrance of the treatment center." Bolton sued, listing numerous claims against his former employer. The employer filed for summary judgment on all claims, and the trial court granted a motion.

On appeal, the Minnesota Court of Appeals rejected the trial court's determination that the actions Bolton complained of did not constitute a "statement" for defamation purposes. According to the appellate court "[l]anguage may include gestures; communication is not a captive of the voice." The court cited numerous cases in which gestures or conduct have formed the basis of a defamation action. Accordingly, the Court of Appeals decided Bolton's defamation action survived the motion for summary judgment because Bolton presented:

"... sufficient evidence that [the supervisor's] actions conveyed a 'statement' of the reason's for Bolton's discharge. The statement conveyed was that Bolton was dishonest and was not to be trusted to leave the building unaccompanied.... Bolton was not discharged for theft or accused of other dishonest behav-
ior. Any fears that he might steal company property were not based upon fact. Under other circumstances it might have been appropriate to accompany an employee to the door. Under these circumstances, however, respondents' actions may have been unwarranted."

It is important to note that the decision did not find the actions of the supervisor per se defamatory. In other words, the employee still has to show he was defamed. Remarkably, the court allowed the claim to continue, despite the lack of any outward statements or actions by the employer, other than serving as escort. The importance of the case, and the ramifications of the decision are obvious. Employers' actions in reprimanding and terminating employees will be closely scrutinized, and employers will need to analyze carefully any actions, in advance, to minimize their potential litigation exposure.

Carol C. Knoepfle

ADA Does Not Require Lowering Production Standards

In Milton v. Scribner, Inc., the United States Court of Appeals for the Tenth Circuit has ruled that an employer did not violate the Americans with Disabilities Act when two previously injured employees were terminated because they were unable to meet new production standards. The court held that the workers were not qualified individuals with disabilities because they could not perform the essential functions of their jobs under the production standards.

The employees argued that the employer could have accommodated them by modifying the production standards, assigning them lighter workloads, or giving them opportunities to bid for other jobs for which they were qualified. The court found that the accommodations requested by the employees were not reasonable and went beyond the requirements imposed by the ADA. As the court noted, under the ADA an employer is not required to reallocate job duties which have the effect of changing the essential functions of a job.

The case also reveals the elements courts review in determining whether work rules or production standards are part of the essential functions of the job. First, the company clearly established and defined the new production standards. Second, the court noted that the standards were implemented to improve the employer's competitiveness in the marketplace, thus having a reasonable business objective. Third, the standards were evenly applied to all employees engaged in the same job.

In contrast, a federal district court in Nebraska recently determined that a certain level of attendance was not an essential element of the job where the employer failed to formulate and publish a policy on unscheduled absences. (Carlson v. Inacom Corp.)

Mark D. Theisen

Successorship Liability May Exist Under FLSA

The United States Court of Appeals for the Ninth Circuit recently held that a successor company may be held liable for its predecessor's violations of the Fair Labor Standards Act (FLSA). In determining whether successorship liability has attached, courts will consider whether there is a bona fide successor, whether the successor had notice of the alleged violations, the extent to which the predecessor is able to provide relief for the violations, and whether fairness considerations support a finding of successorship liability.

In Steinbach v. Hubbard, a case of first impression, a group of former employees of Hubbard Ambulance Services, Inc. brought suit in June 1991 alleging that Hubbard failed to pay them in accordance with FLSA's minimum wage and overtime provisions. In 1987, Hubbard filed for bankruptcy but continued to operate. Subsequent to the filing of this lawsuit, Care Ambulance and Hubbard negotiated a one-year lease of Hubbard's assets to Care and an agreement for Care to purchase Hubbard's assets upon receipt of bankruptcy

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court approval. Hubbard ceased operations on October 31, 1991, and Care began operations the next day. Care rehired Hubbard's nine employees (one of whom was a plaintiff in this suit), provided ambulance services in the same offices as Hubbard, retained the operations manager of Hubbard, continued to use a vehicle and equipment leased from Hubbard, and made a down-payment on the purchase agreement. After the bankruptcy court failed to approve the sale to Care, Care terminated its lease with Hubbard. Subsequently, the plaintiffs amended their complaint to add Care as a defendant, alleging that Care was a successor to Hubbard and thus liable for the alleged FLSA violations. The district court granted Care's motion for summary judgment and the Ninth Circuit Court affirmed.

The court first determined that successorship liability may exist under the FLSA. Although the FLSA does not address whether an employer's liabilities may be passed on to successor employers, the court found that the fundamental purpose of the FLSA in protecting workers' standards of living through the regulation of working conditions was as deserving as the purposes of those other employment laws to which successorship liability has been applied. The court considered the following factors in determining whether successorship liability attached to Care: (1) whether Care was a bona fide successor; (2) whether Care had notice of the potential liability; (3) the extent to which Hubbard was able to provide adequate relief to the plaintiffs; and (4) certain fairness considerations. Based on the application of the above factors, the court concluded that it could not impose successorship liability on Care.

First, the court found that Care was not a bona fide successor. Although many aspects of Care and Hubbard were identical, the court found dispositive the fact that no permanent transfer ever occurred between the parties. The court noted that a determination of liability on the facts of this case would have a severe impact on distressed companies and their potential suitors. Second, the court stated that, although Care had notice of the lawsuit, Care was not in a position due to Hubbard's pending bankruptcy to protect itself from liability by negotiating with Hubbard for a lower price or an indemnity clause. Finally, fairness considerations tipped the court's decision in favor of Care. The court stated that, if found to be a successor, Care would be potentially liable for at least $100,000 in uncertain claims when it paid only three or four $600 lease payments.

This is especially important for employers that are considering an acquisition of stock or assets, a merger or consolidation, or merely a lease of assets. The Ninth Circuit specifically noted that the form of the transaction is irrelevant—the determinative factor is whether there is "continuity in the employing industry." Thus, employers should realize that if they purchase or lease assets, they may be subjecting themselves to the FLSA liability of the seller/lessor if the other factors noted by the court are present.

Tiffany L. Severs

Striker Replacement Executive Order

On March 8th, President Clinton signed Executive Order 12954, which bars the permanent replacement of lawfully striking employees by federal contractors. The Order asserts that the economy and efficiency of government procurement are generally advanced by contracting with employers that do not permanently replace lawfully striking employees.

The rationale for this assertion is that the use of permanent replacements can adversely affect the contractor's ability to reliably provide high quality goods and services, thereby adversely affecting the Federal Government's efficiency and cost of operations. Apparently having "temporary" replacements or no employees at all, as a result of not replacing striking employees, has no such undesirable result.

The Order establishes a mechanism, based on a case-by-case determination, to identify those contractors who may be violating the Executive Order. The Secretary of Labor is authorized to conduct investigations, either on the basis of a complaint or on his or her own initiative, and to hold hearings as he or she
deems advisable in order to determine whether an organizational unit of a federal contractor has permanently replaced lawfully striking employees. If the Secretary finds that such activity has occurred, two options may be exercised. First, he or she may find that existing contracts should be terminated for convenience; the head of the contracting agency may object to that finding in writing, and the termination for convenience shall not be issued. Second, the Secretary may find that it is appropriate to debar the employer from future contracts and renewal of existing contracts until the labor dispute is resolved. However, the contracting agency may enter into a contract with the employer if there is a compelling reason to do so.

On March 29th, proposed rules for implementing the Executive Order were published in the Federal Register. "Contract," is defined as a mutually binding agreement between the Government as a buyer, represented by a contracting agency, and a seller, where the seller agrees to furnish supplies or services (including construction) and the Government agrees to pay for them. For purposes of the Executive Order the definition is limited to contracts in which the Government agrees to pay an amount in excess of the Simplified Acquisition Threshold of $100,000, specified in Section 4(11) of the Office of Federal Procurement Policy Act. The regulations also define "contracting agency" as any executive department or independent establishment in the executive branch of the Government, including any wholly owned government corporation, and define "contractor" as a prime contractor.

The proposed regulations also allow opportunities and procedures for hearings should a proposed debarment and/or termination involve material facts that are in dispute; define the scope of any debarment as normally being limited to the organizational unit of a federal contractor; provide that any debarment will not extend beyond the date when the labor dispute precipitating the permanent replacement of lawfully striking employees has been resolved; and state which factors or conditions which may be considered in determining when a labor dispute is resolved.

Mark D. Theisen

Supervisor/Coworker Liability

The Nebraska Court of Appeals has held that a supervisor or coworker may be personally liable to an individual who is discharged from employment if the supervisor or coworker brought about the discharge through malicious intent or improper means.

In Hoschler v. Kozlik, decided April 11, 1995, a discharged employee sued her former boss for damages resulting from the discharge. The defendant moved to dismiss on the ground that a supervisor cannot be personally liable for damages resulting from a discharge. The trial court agreed, and dismissed the lawsuit. The Nebraska Court of Appeals reversed, holding that the plaintiff's petition alleged sufficient facts to allow the case to go forward.

Specifically, the plaintiff alleged that the supervisor acted outside the scope of her authority in firing her, intentionally disregarded the employer's handbook policies and procedures, and acted "with malice to inflict harm." It appears to be the latter allegation which led to the court's decision. The plaintiff was an at-will employee, and therefore could be discharged without cause under Nebraska law. The court recognized that Nebraska has rejected the broad exception to employment-at-will known as "malicious discharge," but pointed out that Nebraska does recognize a cause of action for "tortious interference with a business relationship or expectation." The court held that because the plaintiff alleged that her supervisor acted "with malice to inflict harm," she alleged sufficient facts to proceed on the theory of "tortious interference with a business relationship or expectation." Of particular note is the following statement by the Court of Appeals:

"... the fact that a relationship is at the will of the employer and employee does not make it at the will of others who wrongfully interfere with the relationship.

... the fact that an at-will contract may be terminated by the parties without liability does not necessarily privilege another individual, business, or entity, in other
words, a 'third person' to unjustifiably induce the termination."

The supervisor argued that she was acting for and on behalf of the corporation and not acting individually. The court recognized that this could provide a defense if the facts support the argument. The plaintiff, however, was alleging that the supervisor acted with malicious intent to harm her individually; if true, that fact could make her conduct personal and not corporate.

Individuals who become directly involved in the discharge of an employee, even an at-will employee, must recognize that their actions could result in personal liability if it can be shown that they were acting "improperly." Under Hoschler v. Kozlik, this may even be true for supervisors who are charged with the responsibility to make discharge decisions. Under the court's decision, it appears that the plaintiff in such a case will have to prove that the defendant (1) had malicious intent to harm the individual personally, or (2) acted for personal reasons, rather than in the best interest of the corporation. While this may be difficult to prove in an individual case, it may not be difficult to allege. The court's decision in Hoschler v. Kozlik may increase the risk that supervisors will be sued individually when involved in the discharge of an employee; at a minimum it demonstrates the importance of documenting that the action was based on legitimate business reasons and not on personal animosity or for personal gain.

Jonathan R. Breuning

Baird Holm Expands Labor and Employment Law Group

Baird Holm is pleased to announce the addition of Tiffany L. Seever to its practice group of labor and employment law attorneys. Tiffany is a 1993 graduate of the University of Nebraska College of Law and a 1990 graduate of the University of Nebraska-Lincoln. Tiffany will practice primarily in the areas of preventive employment counseling, employment litigation, and labor relations law. Baird Holm now has twelve attorneys in its labor and employment practice group.

Baird Holm Labor and Employment Law Attorneys

Mark D. Theisen
David M. Pedersen*
Jonathan R. Breuning*
R.J. (Randy) Stevenson
Gary W. Radil
Kirk S. Blecha*
Gary N. Clatterbuck
Trudy S. Bredthauer
Carol C. Knoepfler*
David J. Kramer
Cynthia A. Rismiller**
Tiffany L. Seever

All attorneys admitted to practice in Nebraska.
*Also admitted to practice in Iowa.
**Also admitted to practice in Kansas and Missouri.

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LEADERSHIP STYLE INVENTORY*

This inventory is designed to assess your method of leading. As you fill out the inventory, give a high rank to those words that best characterize the way you lead and a low rank to the words that are least characteristic of your leadership style.

You may find it hard to choose the words that best describe your leadership style because there are no right or wrong answers. Different characteristics described in the inventory are equally good. The aim of the inventory is to describe how you lead, not to evaluate your leadership ability.

INSTRUCTIONS

There are nine sets of four words listed below. Rank order each set of four words, assigning a 4 to the word which best characterizes your leadership style, a 3 to the word which next best characterizes your leadership style, a 2 to the next most characteristic word, and a 1 to the word which is least characteristic of you as a leader. Be sure to assign a different rank number to each set. Do not make ties. Now, total the columns, using only the sets numbered below in the scoring section.

1. __ Forceful  __ Negotiating  __ Testing  __ Sharing
2. __ Decisive  __ Teaching  __ Probing  __ Unifying
3. __ Expert  __ Convincing  __ Inquiring  __ Cooperative
4. __ Resolute  __ Inspirational  __ Questioning  __ Giving
5. __ Authoritative  __ Compelling  __ Participative  __ Approving
6. __ Commanding  __ Influential  __ Searching  __ Collaborating
7. __ Direct  __ Persuasive  __ Verifying  __ Impartial
8. __ Showing  __ Maneuvering  __ Analytical  __ Supportive
9. __ Prescriptive  __ Strategical  __ Exploring  __ Compromising

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*Developed by J. P. Viega, University of Connecticut
LEADERSHIP STYLE

(for use with the Leadership Style Inventory)

TELL - The manager identifies a problem, considers alternative solutions, chooses one of them, and then reports this decision for implementation. S/he may or may not give consideration to what s/he believes subordinates will think or feel about the decision. In any case, there is no opportunity for them to participate.

SELL - As with tell, the manager takes responsibility for identifying the problem and arriving at a decision. But rather than simply announcing it, s/he takes the additional step of persuading subordinates to accept the decision. The manager recognizes possible resistance and seeks to reduce resistance by his/her actions.

CONSULT - The manager identifies the problem, consults with subordinates for possible solutions, and then makes the final decision. This manager recognizes the need to effectively cull from subordinates their ideas to give them a sense of ownership and therefore commitment to the final decision (his/hers) as well as to discover other possible solutions subordinates might be aware of.

JOIN - The manager defines the problem and its limitations, and then passes to the group (including him/herself as a member) the right to make the final decision. S/he feels subordinates are capable of making decisions which are as good as or better than his or her own. This manager feels that human resources are best utilized by allowing them equal decision-making authority.
The above chart can be developed into a profile of your leadership style. Shade in the area which corresponds to your score on each dimension. For example, if you scored 15 on the TELL scale, then shade the area up to the 15 under TELL on the above chart. The ruled-in percentile provides you a way of comparing yourself to others who have taken the inventory. The percentiles are keyed to style scores to indicate the number of people who scored below a particular score. For example, a score of 15 on the TELL style means you scored higher than almost 65 percent of the people tested.

*Developed by J. F. Veiga, University of Connecticut*
Financial Management

Stewardship, Accountability, and Terminology
LEARNING OBJECTIVES FOR THIS SESSION

I. Define and understand the concept of stewardship and accountability in the not-for-profit environment.

II. Understand the stewardship role and the community's expectation of sound management and fiscal accountability.

III. Be able to identify key indicators of sound management practices.

IV. Understand the terms fiduciary responsibility, reasonably prudent person, and the principle of good faith.

V. Know the actions that demonstrate accountability.

VI. Understand the legal obligations associated with not-for-profit organizations.

VII. Have a working understanding of key terms and events related to not-for-profit organization formation, taxation issues, and general administration.
In the space below diagram your organizational structure.

STEWARDSHIP is defined as the act of managing another’s property, finances or affairs. The concept of stewardship is critical in understanding the not-for-profit’s role in the community. Board members serve as stewards for all resources of the agency. They are responsible for managing the resources so that they can be used in the best interest of the community. The board is also accountable and carries a legal responsibility for the management and control of the not-for-profit organization.
ACCOUNTABILITY is the act of being responsible and liable for the outcomes and condition of that with which one has been given charge over (stewardship). The person who is accountable may be called upon to explain the performance outcomes and the current condition of the stewardship.

- Not-for-profit boards are accountable to a variety of constituencies: funding sources, governmental bodies, and the public at large. In contrast, board members of for-profit organizations are accountable to the stockholders (owners). In a very real sense, the community has an ownership interest in the not-for-profit organization (they provide the working capital).

SUMMARY POINT

Not-for-profit organizations use funds from the community to operate; therefore the community expects that an organization will be managed effectively and that board members and other “member employees” will work diligently to ensure that the organization’s resources are used to provide the greatest benefit to the people served. As competition for donations increases, donors are likely to provide the majority of funds to only the best managed organizations. Therefore:

Sound management and fiscal accountability are a must!
WHAT ARE THE INDICATORS OF SOUND MANAGEMENT?

1. 
2. 
3. 
4. 
5. 
6. 
7. 
8. 
9. 
10.
LEGAL OBLIGATIONS
CONDUCT THAT DEMONSTRATES ACCOUNTABILITY

Individuals

In carrying out the fiduciary responsibilities of board membership, each member is required by law to conduct him/herself as a reasonably prudent person. (Remember that as a "member employee" of the organization the board has delegated certain responsibilities and accountability to you as part of your job)

DEFINITIONS

FIDUCIARY RESPONSIBILITY is

A REASONABLY PRUDENT PERSON avoids

- Mismanagement -

- Non-Management -

- Self-Dealing -
The PRINCIPLE OF GOOD FAITH is based on honesty in fact as well as honesty in conduct (similar to the concept of an honest day's work for an honest day's pay and doing one's duty).

ILLUSTRATIONS OF GOOD FAITH

Board Members should........

- Attend all board and committee meetings regularly
- Have a thorough knowledge of the organization's charter and bylaws
- Heed corporate affairs and keep informed of general organizational activities
- Ensure that the minimum legal/technical requirements are met
- Record personal conduct and register dissents officially
- Avoid any semblance of self-dealing
- Make no profit except as provided for in bylaws

Member employees should.......:

- Attend to all duties in a responsive and professional manner
- Understand the organization's mission, objectives, and purpose
- Understand the basic programs offered and the constituent community served
- Know the major funding sources of the organization
- Know and follow the personnel and administrative policies of the organization
- Avoid any semblance of self-dealing
LEGAL OBLIGATIONS
CONDUCT THAT DEMONSTRATES ACCOUNTABILITY

Board as a policy making body

Question: What are four key actions that demonstrate fiscal accountability of the board?

1. Short and long-range program and financial planning -

2. Ongoing evaluation of program quality and the agency's financial health -

3. Responsiveness to donors/funding sources -

4. Risk management -
SUMMARY POINT

Planning and budgeting are the most important expressions of the board’s stewardship role!

LEGAL OBLIGATIONS OF THE NOT-FOR-PROFIT

There are various legal requirements and obligations of the not-for-profit organization with respect to formation, program related laws and regulations, grant requirements, donor restrictions, employment issues, taxation, and the law in general. An in-depth treatment of all aspects of the legal obligations of the not-for-profit organization is not possible in this session. We have limited our discussion to those items related to financial management and reporting.

Legal Reporting Requirements

Federal Form 990 - Return of Organization Exempt From Income Tax

Provides information on public support and revenue, expenses and changes in fund balances. Also includes information about program activity and various questions regarding the organization. Organizations with gross receipts of less than $25,000 are not required to file. A form 990 - EZ is also available and may be used under certain conditions. The form is due and must be filed by the 15th day of the fifth month after the end of the organization's fiscal year. Penalties are imposed for late filing but extensions are granted for sufficient reasons.

Federal Form 990 - T - Exempt Organization Business Income Tax Return

Only relates to organizations that have activity which generates business income that is “unrelated” to the organization’s exempt purpose. If an organization has unrelated business income this form is required. The filing dates are the same as the Form 990.
Employment related tax returns

Even though the organization may be exempt from income tax, generally all not-for-profits are subject to taxation and filing requirements with respect to payroll and related taxes. This includes the filing of Form 941, W-2, W-3, W-3N (Nebraska), 1099, 1096, DE-11 (Nebraska unemployment contributions), and 940 (excepting IRC Sec. 501(c)(3) organizations that are exempt under IRC Sec. 501(a)).

In addition if the organization has a pension, deferred compensation plan maintained by the employer, Form 5500 must be filed by the last day of the seventh month after the close of the plan year.

Other related tax issues

Most not-for-profit organizations are subject to sales taxation on purchases which are not for resale; the notable exceptions being churches and educational institutions. If the organization has a retail store, they must collect appropriate sales taxes and remit them to the state (in Nebraska via Form 10).

Real estate and personal property taxes may be exempted for some organizations. Mainly depends on what type of exempt organization (i.e., section of the internal revenue code that provided the exempt status). Best to check with the appropriate taxing authority.

Other legal matters

Organizations are required by law to adopt and follow their articles of incorporation and bylaws. Organizations are also required to follow laws and regulations related to federal and state financial assistance.
DEFINITIONS

The ARTICLES OF INCORPORATION is

The BYLAWS are

Question: Is obtaining articles of incorporation and bylaws in accordance with state law for exempt organizations all that is required for my organization to be fully taxed exempt?
CONCLUSION AND FINAL THOUGHTS

Management of the not-for-profit organization is especially challenging and often complex. The community may often praise the efforts of the organization, while simultaneously criticizing the leadership. Those who have the stewardship to guide the organization must understand the mission and be firmly resolved to discharge their responsibility to the community effectively and efficiently. Planning and budgeting are the most important expressions of the board’s stewardship role!

Successful not-for-profit managers do not do it all by themselves. They are proactive and routinely consult with advisors and professionals who have the expertise to assist them in solving complex management problems. We encourage you to engage consultants when needed and surround yourself with trusted advisors.
Financial Management

Budgeting, Planning, and Fiscal Control
LEARNING OBJECTIVES FOR THIS SESSION

I. Define and understand the concept of budgeting and its relationship to the planning process.

II. Understand the four basic types of budgets utilized in the not-for-profit environment.

III. Understand the system orientation to budgeting, planning and fiscal control.

IV. Understand the process and the necessity of a budget plan.

V. Become familiar with the four elements necessary for a budget to provide fiscal control.

VI. Understand the basics of budget analysis.

VII. Understand the factors that lead to failures in the budgeting process.

VIII. Understand how a good system of procurement, along with consideration of actual costs of providing service, can be excellent tools for providing fiscal control.
THE BUDGET CONCEPT

Budgeting is a mechanism of fiscal planning and fiscal control. The budget must be representative of the mission, goals, and objectives approved by the board. The organization's staff and volunteers must be familiar with and work towards the accomplishment of the mission, goals, and objectives.

DEFINITION

A BUDGET is a quantitative plan of activities and programs expressed in monetary terms the revenues and expenses that will be involved in carrying out the plan. A budget is a tool used for both planning and control. It expresses the organizational goals in terms of specific financial and operating objectives. Advantages of budget preparation are planning, communicating organization-wide goals, and control by evaluating actual results to the budget projections, thereby assisting management to take action to improve future performance.

Question: What are the four basic types of budgets utilized in the not-for-profit environment?

1. LINE ITEM - based entirely on "line item" expenditures (e.g. salaries, equipment, travel, etc.) and the increases or decreases thereof. Assumes that what has been done in past should be left "as is" and that past patterns of expenditures are fair and appropriate. It is simple and easy to use and comprehend, but does not fully consider changes in goals or programs and makes evaluation of goals or program results difficult.

   (NOTE: All budgets use line items for presentation, however in line item budgeting this is the only perspective in which budget information is presented.)
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July 10-14, 1995

2. FUNCTIONAL (Performance or Program Budgeting) - based upon functional accounting. Focuses on organizational outputs and their measurement and costs. Distributes objective expense categories among programs. It does provide a means for measuring program outputs and cost and a rational basis for allocating resources, but does not incorporate the planning and priority setting process.

3. P.P.B.S. (Program-Planning-Budgeting-System) - Centrally coordinated system. Expenses are identified by program and summarized for the organization as a whole. Strategic planning (mission and long range goals) occurs prior to the budgeting phase. Both existing and newly developed programs are evaluated in terms of cost benefit, organizational priorities, etc. Numerous advantages in terms of evaluating performance and incorporating goals and objectives. The main disadvantage is that it is rather time consuming and does not consider the factors which effect the decision making process.

4. ZERO BASED - Every program is evaluated annually without concern for historical performance. Managers and department heads are very much involved in the process. Main advantage is the focus is on effectiveness of the programs, with all programs being evaluated in the same way. An obvious disadvantage is that it involves a significant amount of time and ignores the political process.

THE SYSTEMS ORIENTATION

When planning, budgeting, and exercising fiscal control, one is essentially dealing with systems designed to ensure that the planning, budgeting, and control procedures are executed to achieve their designed purposes. There are many components or aspects to each of these management systems. When the systems are designed well and the components work effectively together the greatest benefit is obtained. Management systems may involve documents, tasks, routines, meetings, and procedural controls. If the system is designed poorly, or, if a well designed system is not followed or fully implemented, the desired results will not be obtained.

HAYES & ASSOCIATES
CERTIFIED PUBLIC ACCOUNTANTS
OMAHA, NEBRASKA
Question: What are the key elements for the effective management of a system?

1. 
2. 
3. 
4. 
5. 
6. 

BUDGET PLANNING OVERVIEW

As the board of directors carries out its responsibility for directing the organization and appraising organizational performance, it seeks assistance from policy influencing groups, constituencies, and staff. The board is usually the only policy making element but other interested parties (advisory councils, constituents, and paid staff) can give the board valuable insight. The board establishes and approves policy, which the staff then implements. The acquisition, development, and disposition of resources are the responsibilities of the board. The executive director and staff assist the board in determining the goals, objectives and priorities of the organization in addition to the determining the most appropriate use of the organization’s resources. Hence, the persons having the responsibility for carrying out the plans are also involved in making them. In this way critical issues can be identified and addressed throughout the process.

HAYES & ASSOCIATES
CERTIFIED PUBLIC ACCOUNTANTS
OMAHA, NEBRASKA
DEVELOPING THE PLAN

1. The board adopts goals that support the mission statement.

2. The board develops long-range strategies for acquisition and stewardship of critical resources to support the goals.

3. The board assigns the responsibility for management of operations to the executive director.

4. Goals are used by the executive director to determine or modify operations (e.g. staffing levels, facilities, etc.)

5. Operating objectives with proposed costs as well as proposed sources of funding are formulated by the executive director and the staff and presented to the board for consideration and approval.

6. The board deliberates and proposes changes if necessary.

7. The board adopts the annual budget, which is based on the integrated operating objectives.

8. A management reporting system is in place that includes regular written management reports to the board of directors from the executive director.

9. A financial reporting system is in place that includes timely preparation of internal financial statements and budget reports. The financial reports are reviewed by the executive director and forwarded to the board for approval.

10. An annual organizational performance review based on the integrated operating objectives and the performance of the board is conducted by the board of directors.
11. The staff have performance goals related to the annual integrated operating objectives.

12. Volunteers are actively involved in the process when applicable.

Before you develop your budget you need to have a strong plan that can guide you in the budget process.

Sensitive issues or concerns may impact the planning-budget process. Consequently, persons who become aware of these issues have the responsibility to share their knowledge appropriately. It is essential that the executive director and the president or chairperson of the board work together to ensure that the communication channels are firmly established and remain open during the process.

**BUDGETING AND FISCAL CONTROL**

**Question:** What are the four elements necessary for a budget to provide fiscal control?

**FOUR ELEMENTS NECESSARY FOR A BUDGET TO PROVIDE CONTROL**

1. 

2. 

3. 

HAYES & ASSOCIATES
CERTIFIED PUBLIC ACCOUNTANTS
OMAHA, NEBRASKA
NOTE: The budgeting process will become a useless chore unless (1) it is realistic and embraced by the board, (2) it is understandable, (3) it is compared to actual results regularly and timely, and (4) variances are investigated, explained and acted upon.

BUDGET ANALYSIS

Budget analysis is a ke brand tool in maintaining fiscal control and ensuring that the budgeting and planning process is effective. One of the key benefits of quantifying goals and plans in financial terms is the relative ease in which results can be measured. In addition, financial results can be often be explained in nonfinancial terms. Many times variations between the budget and actual results can be explained by information outside of the financial reporting system. When you get right down to it, financial results must make sense and be consistent with the operations of the organization.

HAYES & ASSOCIATES
CERTIFIED PUBLIC ACCOUNTANTS
OMAHA, NEBRASKA
Procedure for the Comparison of Actual to Budget Amounts

1.

2.

3.

4.

5.

6.

7.

Question: If budgeting is so useful and necessary and reflects perhaps the most important facet of the board’s stewardship role, why does the budgeting process so often fail to provide the information not-for-profit managers need to achieve the mission of the organization? In other words, why does the budgeting process fail?
MIDLANDS INSTITUTE FOR NON-PROFIT MANAGEMENT
BUILDING A SOLID FOUNDATION
July 10-14, 1995

Why Budgeting Fails

1. LACK OF COMMITMENT -

2. NO RESPONSIBILITY CENTERS -

3. LACK OF CONTROL PROCEDURES -

4. TOO "TIGHT" A BUDGET -

5. FAILURE TO REVISE THE BUDGET WHERE NEEDED -

6. FAILURE TO REPORT FINANCIAL INFORMATION ON A TIMELY BASIS -
THE SYSTEMS ORIENTATION - REVISITED

An effective fiscal control system (often called the internal control structure) must be designed well and operating effectively to ensure that the control objectives are met. The obvious place to start is the procurement process.

DEFINITION

PROCUREMENT is the process of obtaining goods and services for use by the organization in a rational and systematic manner. The initial request for goods and services begins the procurement process. The payment for the goods and services concludes the process.

KEYS TO EFFECTIVE PROCUREMENT

1. Written request
2. Proper authorization and approval
3. Verification of receipt
4. Physical control of goods and monitoring of services
5. Accurate and prompt recording
6. Signing of checks limited to those with fiscal responsibility and authority and who are separate from the accounts payable function
7. Requirement for two signatures and/or dollar limitations on checks
8. Careful examination and cancellation of supporting documents for the disbursement (check) at the time of signature
9. Prenumbered and special safety paper check stock
10. Physical control over blank, voided, and signed checks

HAYES & ASSOCIATES
CERTIFIED PUBLIC ACCOUNTANTS
OMAHA, NEBRASKA
CONCLUSION

It is very important to exercise fiscal control and have a sound understanding of the organization’s actual costs of providing services. The community demands fiscal accountability and expects that the not-for-profit managers will utilize the organization's resources wisely and provide the necessary services to the greatest number of people. The increased competition for funding has made efficiency and fiscal management a key factor in determining the awarding of grants, endowments, and donations. Have a true and accurate picture of the actual cost of providing services assists in making a variety of important decisions.
## Types of Budgets

<table>
<thead>
<tr>
<th>Type</th>
<th>Characteristics</th>
<th>Advantages</th>
<th>Disadvantages</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Line Item</strong></td>
<td><em>Based entirely on &quot;line item&quot; expenditures (e.g., salaries, equipment, travel, etc.) and increases or decreases thereof.</em>&lt;br&gt;Assumes what has been done in past should be left &quot;as is&quot; and past patterns of expenditures are fair and appropriate.&lt;br&gt;(NOTE: All budgets use line items for presentation, however in line item budgeting this is the only perspective in which budget information is presented.)</td>
<td><em>Simple and easy to comprehend.</em>&lt;br&gt;<em>Provides consistent means of presentation &amp; analysis.</em>&lt;br&gt;<em>Does not threaten anyone.</em></td>
<td><em>Changes in organizational goals are not automatically reflected in budget.</em>&lt;br&gt;<em>Expenditures are not broken down by program function, making it difficult to analyze performance, set priorities, etc.</em>&lt;br&gt;<em>Program evaluation is not integral element of process.</em>&lt;br&gt;<em>Tendency to &quot;guesstimate&quot;.</em>&lt;br&gt;<em>Tendency to perpetuate obsolete programs or devote resources to lower priority activities.</em>&lt;br&gt;<em>Does not encourage team effort or cooperation.</em></td>
</tr>
<tr>
<td><strong>Functional</strong></td>
<td><em>Based upon functional accounting.</em>&lt;br&gt;<em>Focuses upon organizational outputs and their measurement and costs.</em>&lt;br&gt;<em>Distributes object expense categories among programs.</em></td>
<td><em>Provides means for measuring program outputs and costs.</em>&lt;br&gt;<em>Provides more rational basis for allocating resources.</em>&lt;br&gt;<em>Focuses upon priorities.</em></td>
<td><em>Does not incorporate planning and priority setting.</em>&lt;br&gt;<em>May be more threatening.</em>&lt;br&gt;<em>Difficult to measure and compare outputs.</em></td>
</tr>
<tr>
<td>TYPE</td>
<td>CHARACTERISTICS</td>
<td>ADVANTAGES</td>
<td>DISADVANTAGES</td>
</tr>
<tr>
<td>-------------------</td>
<td>--------------------------------------------------------------------------------</td>
<td>-----------------------------------------------------------------------------------------------</td>
<td>----------------------------------------------------------------------------------</td>
</tr>
</tbody>
</table>
| PPBS (Program-Planning-Budgeting-System) | - Centrally coordinated system. Expenses are identified by program and summarized for the organization as a whole.  
- Strategic planning (mission and long range goals) occurs prior to budgeting phase.  
- Both existing and newly developed programs are evaluated in terms of cost-benefit, organizational priorities, etc. | - Program budgets give clear idea of where money is being spent.  
- Provides rational model for allocating resources.  
- Improves planning and coordination and "team spirit".  
- Goals, objectives and priorities are continually evaluated.  
- Program performance and program alternatives are analyzed in terms of benefit, cost and effectiveness.  
- Provides means for performance measurement.  
- Program directors are responsible for developing budgets which should lead to greater commitment.  
- Flexibility of system. | - Time-consuming.  
- Requires fairly sophisticated accounting system.  
- Concentrates on ends without adequate attention to means.  
- May overemphasize quantity at expense of quality.  
- Emphasizes rational scientific decision-making process, when in fact, resource allocation is a political process heavily influenced by human factors.  
- Centralization of decision-making may contradict the political structure and tradition of organizations.  
- Organizational autonomy of funding sources and service agencies may mean priorities are already set. |
<table>
<thead>
<tr>
<th>TYPE</th>
<th>CHARACTERISTICS</th>
<th>ADVANTAGES</th>
<th>DISADVANTAGES</th>
</tr>
</thead>
<tbody>
<tr>
<td>ZERO-BASED</td>
<td>• Every program is evaluated each budget year and no historical base is recognized.</td>
<td>• More emphasis on effectiveness of programs, less on incremental increases.</td>
<td>• Great deal of time and paperwork.</td>
</tr>
<tr>
<td></td>
<td>• &quot;Bottoms-up&quot; process that requires every manager to reexamine every program from the ground up before funds are allocated.</td>
<td>• Systematic examination of alternatives.</td>
<td>• Fails to recognize political process.</td>
</tr>
<tr>
<td></td>
<td>• Managers prepare &quot;decision packages&quot; for each program detailing purpose, actions, costs and benefits, workload and performance measures, alternative means of accomplishing and various levels of effort.</td>
<td>• Gives program managers a significant role in budgeting.</td>
<td>• Relies upon presentation of decision packages (important program may not be well presented and, as such, lost).</td>
</tr>
<tr>
<td></td>
<td>• Management then ranks the various decision packages and allocates funds based upon rankings.</td>
<td>• Emphasizes rational decision-making.</td>
<td>• Threatening.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• All programs evaluated in same way.</td>
<td>• May lead to increased competition and &quot;cut-throat&quot; mentality.</td>
</tr>
<tr>
<td>ACCOUNT</td>
<td>PROGRAM SERVICES</td>
<td>FUND RAISING</td>
<td>ADM.</td>
</tr>
<tr>
<td>---------</td>
<td>-----------------</td>
<td>--------------</td>
<td>------</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>REVENUE</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>CONTRIBUTION</td>
<td>4010</td>
<td>18,000</td>
<td>18,000</td>
</tr>
<tr>
<td>ANNUAL GIVING</td>
<td>4020</td>
<td>10,000</td>
<td>10,000</td>
</tr>
<tr>
<td>FOUNDATIONS</td>
<td>4030</td>
<td>1,000</td>
<td>100</td>
</tr>
<tr>
<td>GRANTS</td>
<td>4050</td>
<td>1,000</td>
<td></td>
</tr>
<tr>
<td>UNSOLICITED GIFTS</td>
<td>4050</td>
<td>200</td>
<td></td>
</tr>
<tr>
<td>RESTRICTED CONTR.</td>
<td>4060</td>
<td>500</td>
<td></td>
</tr>
<tr>
<td>GOVERNMENT GRANTS</td>
<td>5000</td>
<td>500</td>
<td></td>
</tr>
<tr>
<td>PROGRAM FEES</td>
<td>6200</td>
<td>10,000</td>
<td></td>
</tr>
<tr>
<td>SALES OF MERCHANDISE</td>
<td>6300</td>
<td>600</td>
<td></td>
</tr>
<tr>
<td>INVESTMENTS</td>
<td>6500</td>
<td>0</td>
<td></td>
</tr>
<tr>
<td>RENTAL INCOME</td>
<td>6920</td>
<td>0</td>
<td></td>
</tr>
<tr>
<td>MISCELLANEOUS</td>
<td>6990</td>
<td>0</td>
<td></td>
</tr>
<tr>
<td>TOTAL INCOME</td>
<td></td>
<td>13,600</td>
<td>28,300</td>
</tr>
</tbody>
</table>

| EXPENSE (DIRECT) | | | | |
| SALARIES | 7000 | 5,000 | 500 | 6,000 | 11,500 |
| BENEFITS | 7100 | 500 | 60 | 600 | 1,150 |
| PAYROLL TAXES | 7200 | 700 | 70 | 800 | 1,570 |
| PROFESSIONAL FEES | 8000 | 500 | 50 | 550 |
| SUPPLIES | 8100 | 100 | 100 | 19 | 219 |
| TELEPHONE | 8200 | 10 | 36 | 15 | 61 |
| POSTAGE | 8300 | 15 | 580 | 656 | 1,261 |
| OCCUPANCY | 8400 | 1,000 | 500 | 500 | 2,000 |
| EQUIPMENT MAINT | 8500 | 10 | 10 | 10 | 30 |
| OUTSIDE PRINTING | 8600 | 50 | 50 | 50 | 150 |
| PUBLICATIONS | 8607 | 5 | 7 | 64 | 145 |
| TRANSPORTATION | 8700 | 600 | 50 | 90 | 739 |
| STAFF TRAINING | 8800 | 100 | 100 | 100 | 300 |
| CONFERENCE/MEETINGS | 8801 | 50 | 50 | 50 | 150 |
| DUES TO OTHER ORGAN. | 9000 | 500 | 500 | 75 | 625 |
| INSURANCE | 9300 | 1,000 | 700 | 600 | 2,300 |
| MISCELLANEOUS | 9400 | 50 | 50 | 50 | 150 |
| TOTAL DIRECT EXPENSE | | 10,180 | 2,991 | 9,729 | 22,900 |
| INDIRECT EXPENSE | | 5,000 | 6,000 | 8,000 | 19,000 |
| TOTAL EXPENSE | | 15,180 | 8,991 | 17,729 | 41,900 |
| ALLOCATIONS | | 1,580 | (19,300) | 17,729 | 0 |
| INCOME OVER/UNDER EXPENSE | | 0 | 0 | 0 | 0 |
FAMILY SERVICE AGENCY OF UTOPIA, INC.
PROGRAM EXPENDITURES SUMMARY
FOR PERIOD ENDING, JUNE 30, 19X3

<table>
<thead>
<tr>
<th>Actual</th>
<th>CURRENT PERIOD</th>
<th>Variance**</th>
<th>Programs*</th>
<th>Actual</th>
<th>YEAR TO DATE</th>
<th>Variance**</th>
</tr>
</thead>
<tbody>
<tr>
<td>$22,800</td>
<td>$21,400</td>
<td>$(1,400)</td>
<td>Counseling</td>
<td>$120,250</td>
<td>$130,500</td>
<td>$10,250</td>
</tr>
<tr>
<td>6,300</td>
<td>6,600</td>
<td>300</td>
<td>Adoption</td>
<td>37,620</td>
<td>39,750</td>
<td>1,930</td>
</tr>
<tr>
<td>16,000</td>
<td>15,400</td>
<td>(600)</td>
<td>Foster Care</td>
<td>88,100</td>
<td>92,500</td>
<td>4,320</td>
</tr>
<tr>
<td>$45,100</td>
<td>$43,400</td>
<td>$(1,700)</td>
<td></td>
<td>$216,250</td>
<td>$262,750</td>
<td>$16,500</td>
</tr>
</tbody>
</table>

Supporting Services

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th>Management and general</th>
<th>23,760</th>
<th>26,600</th>
<th>2,920</th>
</tr>
</thead>
<tbody>
<tr>
<td>4,200</td>
<td>4,175</td>
<td>(25)</td>
<td>Fund raising</td>
<td>6,406</td>
<td>6,500</td>
<td>94</td>
</tr>
<tr>
<td>526</td>
<td>500</td>
<td>(26)</td>
<td>Due to national</td>
<td>2,900</td>
<td>2,900</td>
<td></td>
</tr>
<tr>
<td>4,726</td>
<td>4,675</td>
<td>(51)</td>
<td>Total administrative</td>
<td>33,066</td>
<td>36,080</td>
<td>3,014</td>
</tr>
<tr>
<td>$49,826</td>
<td>$48,075</td>
<td>$(1,751)</td>
<td>Total agency expenses</td>
<td>$279,316</td>
<td>$298,830</td>
<td>$19,514</td>
</tr>
</tbody>
</table>

* Summarization of operating statistics (cost/unit of services) should normally be attached. This is excluded for Financial Management Workshop.

** Variance: Favorable (unfavorable)

NOTE: Accountability Reports can and probably should include revenue. If so, then the "Total Agency" line will be the profit/loss line and will equal the bottom line on the Summary Revenue and Expense (excluded for this workshop).
Financial Management

Financial Reporting Basics and the New Financial Reporting Model for Not-for-Profit Organizations
LEARNING OBJECTIVES FOR THIS SESSION

I. Define and understand the differences between internal and external financial reporting.

II. Understand the differences between the cash and accrual method of accounting and which basis is acceptable under generally accepted accounting principles.

III. Define and understand the terms Generally Accepted Accounting Principles - “GAAP”, Generally Accepted Auditing Standards - “GAAS”, and Generally Accepted Government Auditing Standards - “GAGAS”.


V. Become familiar with the audited financial statements of a not-for-profit organization and the Independent Auditor’s Report.

VI. Understand the various types of audits and the organization’s role in the audit process.

VII. Have a basic understanding of key terms and requirements related to the new not-for-profit financial reporting model instituted by Statement of Financial Accounting Standards No. 116 “Accounting for Contributions Received and Contributions Made” and Statement of Financial Accounting Standards No. 117 “Financial Statements of Not-for-Profit Organizations”.

HAVES & ASSOCIATES
CERTIFIED PUBLIC ACCOUNTANTS
OMAHA, NEBRASKA
FINANCIAL REPORTING BASICS

Financial reporting involves the recording and summarization of financial and economic transactions or events. Reports and financial statements may be generated in various forms and may be subject to audit by an independent certified public accountant. A distinction must be made between internal financial reporting and external financial reporting.

DEFINITIONS

<table>
<thead>
<tr>
<th>INTERNAL FINANCIAL REPORTING is</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>EXTERNAL FINANCIAL REPORTING is</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
</tr>
</tbody>
</table>

NOTE:

In general, external financial statements are required to be presented on the *accrual basis of accounting*, as opposed to the *cash basis of accounting*. In practice many organizations prepare internal financial statements and reports on the cash basis during the year, with year-end financial statements prepared on the accrual basis often in conjunction with the annual audit.
**Basis of Accounting Comparison**

<table>
<thead>
<tr>
<th>CASH</th>
<th>ACCRUAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>Revenue</td>
<td>Recognized when received.</td>
</tr>
<tr>
<td>Public Support</td>
<td>Recognized when received.</td>
</tr>
<tr>
<td>Expenses</td>
<td>Recognized when paid.</td>
</tr>
<tr>
<td>Receivables</td>
<td>Not recorded.</td>
</tr>
<tr>
<td>Payables</td>
<td>Not recorded.</td>
</tr>
</tbody>
</table>

When an external financial statement is to be prepared in conformity with *generally accepted accounting principles*, the accrual basis of accounting is required.

**DEFINITION**

**GENERALLY ACCEPTED ACCOUNTING PRINCIPLES (GAAP)** are/is

Most third parties who rely on the financial statements, (ie. donors, grantors, sponsoring organizations) require financial statements to be in conformity with GAAP.
AUDITS, AUDITS, AUDITS........WHY DO I NEED THIS AUDIT ANYWAY?

Question: What is an audit?

A financial audit is the examination of an organization's financial statements and accounting records by an independent certified public accountant. The purpose of the examination is to render a professional opinion as to whether the amounts, disclosures, and overall presentation of the financial statements conforms with generally accepted accounting principles in all material respects. A compliance audit is the process of ascertaining an organization's compliance with specified rules and regulations. A grant audit is the process of ascertaining the financial and compliance status of a particular grant program or contract.

Question: What are the audits used for?

An audit is often required by third parties, such as the Federal government, national organizations, and significant donors or funding agencies. Officers and directors, as well as management, often desire an audit when seeking an in-depth examination of an organization's financial reporting. Because an audit must be performed in accordance with uniform standards, the audited financial statements represent the highest level of assurance.

DEFINITIONS

GENERALLY ACCEPTED AUDITING STANDARDS (GAAS) are broad rules and guidelines established by the American Institute of Certified Public Accountants' Auditing Standards Board. Certified Public Accountants must employ these standards in preparing for and auditing financial statements. Failure to do so is a violation of the AICPA's Code of Professional Ethics. There are general standards, fieldwork standards, and reporting standards supported by detailed interpretations.

GENERALLY ACCEPTED GOVERNMENT AUDITING STANDARDS (GAGAS) are additional auditing standards required to be followed in audits performed under the Single Audit Act of 1984 and Office of Management and Budget Circular A-133.
DEFINITIONS - CONTINUED

GAGAS (Continued) - The standards are issued by the Comptroller General of the United States. In conjunction with audits performed under these standards, the auditor must report on (1) compliance with laws and regulations, and (2) internal controls.

SINGLE AUDIT ACT OF 1984 is a law (P.L. 98-502) that requires governmental recipients and subrecipients of federal financial assistance to have an organization-wide financial and compliance audit on an annual basis. To implement the Single Audit Act, the Office of Management and Budget (OMB) developed and issued Circular A-128, "Audits of State and Local Governments". Congress considered including colleges and universities, hospitals and other not-for-profit organizations with in the scope of the bill. OMB urged that these entities not be covered and that the situation be addressed by an administrative policy that would parallel the act. For this purpose OMB Circular A-133 was developed.

OMB CIRCULAR A-133, "AUDITS OF INSTITUTIONS OF HIGHER EDUCATION AND OTHER NONPROFIT INSTITUTIONS" was issued in March 1990 and established audit guidance for not-for-profit organizations that receive federal financial assistance. There are certain minor differences between the Single Audit Act and OMB Circular A-133, however the overall concept is essentially the same.

Question: What is the organizations role in the audit?

The financial statements and the accompanying financial reporting and internal control systems are the responsibility of the organization's management. The auditor's responsibility is to express an opinion on the financial statements based on the audit. Participation by the organization which reduces professional time will generally result in a more competitive fee.

The organization is encouraged to provide the auditor with the following information:

HAYES & ASSOCIATES
CERTIFIED PUBLIC ACCOUNTANTS
OMAHA, NEBRASKA
A DRAFT OF THE FINANCIAL STATEMENTS*
A BALANCED TRIAL BALANCE OR GENERAL LEDGER*
WORKPAPERS IN SUPPORT OF BALANCE SHEET ACCOUNTS
AND MATERIAL INCOME AND EXPENSE ITEMS*
THE MINUTES OF THE BOARD OF DIRECTORS,
AND SIGNIFICANT CORRESPONDENCE
COPIES OF ARTICLES OF INCORPORATION, BY-LAWS,
TAX EXEMPT DETERMINATION, AGREEMENTS,
CONTRACTS, LEASES, AND OTHER SIMILAR INFORMATION
ACCESS TO SOURCE DOCUMENTS AND OTHER INFORMATION

*Auditors can assist with the preparation of these items in conjunction with the audit or through a separate engagement. The fee estimate will reflect the additional professional time.

The organization also assists the auditor by:

TYPING ALL CONFIRMATION LETTERS REQUESTED
LOCATING AND PULLING SUPPORTING DOCUMENTATION, (INVOICES,
CANCELED CHECKS, RECEIPTS, BANK STATEMENTS) SELECTED
FOR TESTING
PROVIDING CLARIFICATION AND OTHER ASSISTANCE AS REQUESTED

OVERVIEW OF AUDITED FINANCIAL STATEMENTS
AND INDEPENDENT AUDITOR’S REPORT

Basic Financial Statements

<table>
<thead>
<tr>
<th>Balance Sheet</th>
</tr>
</thead>
<tbody>
<tr>
<td>Statement of Activity and Changes in Fund Balances</td>
</tr>
</tbody>
</table>
INDEPENDENT AUDITOR’S REPORT

This report is rendered by the independent CPA at the end of the audit investigation. The auditor reports on the nature of the work performed and the degree of responsibility assumed. A standard auditor’s report has an introductory paragraph, a scope paragraph, and an opinion paragraph.

THE NEW FINANCIAL REPORTING MODEL FOR NOT-FOR-PROFIT ORGANIZATIONS

I. Background and Historical Development of FAS 116 and 117

A. Role of FASB and its Conceptual Framework in Establishing Accounting Principles

B. Industry developments which brought about the issuance of FAS 116 and 117

C. Comparability, Relevance, Understandability
D. Comparison of "Now" versus "New Rules"

E. Observations

1. Concepts are different from fund accounting and represent a dramatic change in classification and presentation in the financial statements, a move toward total resources concept and aggregation of financial information

2. Represents minimum standards, there is some flexibility

3. Definitions and classifications are key, systems must obtain appropriate information

4. General shift from restricted to unrestricted resources

5. Form and character of the financial statements will be similar in many respects to for-profit enterprises

6. Focus is on overall management of the resources

II. Overview of Basic Provisions of Two Documents

A. FAS No. 116, Accounting for Contributions Received and Contributions Made

1. Definition of contribution

2. Classification of contributions

3. Recognition of contributions
4. Expiration of donor restrictions

5. Disclosures of promises and other communications of intended giving

B. FAS No. 117, Financial Statements of Not-For-Profit Organizations

1. Basic Financial Statements
   a. Statement of financial position
   b. Statement of activities
   c. Statement of cash flows
   d. Notes to financial statements
   e. Statement of functional expenses (voluntary health and welfare organizations)

2. Examples of Financial Statements - Minimum Requirements
   a. Total assets, total liabilities and total net assets
   b. Totals for permanently, temporary and unrestricted net assets
   c. Display of change in each of the three classes of net assets
d. Information about liquidity

e. All organizations must report expenses on functional basis at least on the face of the statement of activities

C. Overall effective dates

1. Fiscal years beginning after December 15, 1994

2. Fiscal years beginning after December 15, 1995 for organizations with assets less than $5 million and expenses less than $1 million

III. Effect on Financial Statements of Implementation

A. Greater comparability between not-for-profit organizations

1. Certain minimum disclosures create consistency

2. Total resources of the entity are easier to identify

B. Organizations appear wealthier under the new standards

1. Treatment of gains on permanently restricted funds

2. Recording unconditional promises to give, including pledges

IV. Conclusion

A. Implementation Issues

1. Project orientation

2. Planning is critical

HAYES & ASSOCIATES
CERTIFIED PUBLIC ACCOUNTANTS
OMAHA, NEBRASKA
3. Utilize consultants

B. Impacts of failure to comply

V. Conclusion
APPENDIX 12B-2

SFAS NO. 117 FORMAT

GRAYSON PERFORMING ARTS CENTER

FINANCIAL STATEMENTS

Year Ended March 31, 19X4

## Table of Contents

**Contents**

- Statement of Financial Position .............................................. 1
- Statement of Activities ......................................................... 2
- Statement of Cash Flows ......................................................... 3
- Notes to the Financial Statements ............................................. 4
- Schedule of Functional Expenses ............................................... 8

---

Appendix 12B-2

(Continued)
GRAYSON PERFORMING ARTS CENTER
STATEMENT OF FINANCIAL POSITION
March 31, 19X4

<table>
<thead>
<tr>
<th>ASSETS</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Cash and cash equivalents</td>
<td>$96,398</td>
</tr>
<tr>
<td>Accounts receivable</td>
<td>2,474</td>
</tr>
<tr>
<td>Unconditional promises to give, net</td>
<td>96,097</td>
</tr>
<tr>
<td>Inventory</td>
<td>197,137</td>
</tr>
<tr>
<td>Property and equipment, at cost or fair</td>
<td></td>
</tr>
<tr>
<td>market value at date of donation</td>
<td>15,821,675</td>
</tr>
<tr>
<td>Unconditional promises to give, restricted</td>
<td></td>
</tr>
<tr>
<td>for long-term purposes</td>
<td>458,870</td>
</tr>
<tr>
<td>Investments, at donated value</td>
<td>223,843</td>
</tr>
<tr>
<td>Other assets</td>
<td>64,350</td>
</tr>
<tr>
<td><strong>TOTAL ASSETS</strong></td>
<td>$16,960,844</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>LIABILITIES</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Accounts payable</td>
<td>$433,695</td>
</tr>
<tr>
<td>Accrued and other liabilities</td>
<td>126,399</td>
</tr>
<tr>
<td>Deferred revenue—tickets</td>
<td>1,031,484</td>
</tr>
<tr>
<td>Capital lease obligations</td>
<td>27,234</td>
</tr>
<tr>
<td>Long-term debt</td>
<td></td>
</tr>
<tr>
<td><strong>TOTAL LIABILITIES</strong></td>
<td>3,671,055</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>NET ASSETS, as restated</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Unrestricted</td>
<td>9,380,497</td>
</tr>
<tr>
<td>Temporarily restricted</td>
<td>1,249,092</td>
</tr>
<tr>
<td>Permanently restricted</td>
<td>2,660,200</td>
</tr>
<tr>
<td><strong>TOTAL NET ASSETS</strong></td>
<td>13,289,789</td>
</tr>
</tbody>
</table>

| TOTAL LIABILITIES                          |       |
| AND NET ASSETS                             | $16,960,844|

The accompanying notes are an integral part of these financial statements.
GRAYSON PERFORMING ARTS CENTER  
STATEMENT OF ACTIVITIES  
For the Year Ended March 31, 19X4

<table>
<thead>
<tr>
<th></th>
<th>Unrestricted</th>
<th>Temporarily Restricted</th>
<th>Permanently Restricted</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Revenue and other support:</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Contributions</td>
<td>$ 1,495,712</td>
<td>$ 65,000</td>
<td>$ 205,200</td>
<td>$ 1,765,912</td>
</tr>
<tr>
<td>Admissions</td>
<td>2,674,493</td>
<td>—</td>
<td>—</td>
<td>2,674,493</td>
</tr>
<tr>
<td>Concessions and other support</td>
<td>398,298</td>
<td>—</td>
<td>—</td>
<td>398,298</td>
</tr>
<tr>
<td>Donated equipment</td>
<td>—</td>
<td>600,000</td>
<td>—</td>
<td>600,000</td>
</tr>
<tr>
<td>Donated materials, facilities, and services</td>
<td>375,187</td>
<td>—</td>
<td>—</td>
<td>375,187</td>
</tr>
<tr>
<td>Interest and other investment income</td>
<td>908</td>
<td>—</td>
<td>—</td>
<td>908</td>
</tr>
<tr>
<td>Net assets released from restrictions:</td>
<td>363,904</td>
<td>(363,904)</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>TOTAL REVENUE AND OTHER SUPPORT</td>
<td>5,308,502</td>
<td>301,096</td>
<td>205,200</td>
<td>5,814,798</td>
</tr>
<tr>
<td>Expenses:</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Production costs</td>
<td>5,055,337</td>
<td>—</td>
<td>—</td>
<td>5,055,337</td>
</tr>
<tr>
<td>General and administrative</td>
<td>968,145</td>
<td>—</td>
<td>—</td>
<td>968,145</td>
</tr>
<tr>
<td>Fund-raising</td>
<td>441,728</td>
<td>—</td>
<td>—</td>
<td>441,728</td>
</tr>
<tr>
<td>TOTAL EXPENSES</td>
<td>6,465,210</td>
<td>—</td>
<td>—</td>
<td>6,465,210</td>
</tr>
<tr>
<td>CHANGE IN NET ASSETS</td>
<td>(1,156,708)</td>
<td>301,096</td>
<td>205,200</td>
<td>(650,412)</td>
</tr>
<tr>
<td>NET ASSETS, beginning of year, as restated</td>
<td>10,537,205</td>
<td>947,996</td>
<td>2,455,000</td>
<td>13,940,201</td>
</tr>
<tr>
<td>NET ASSETS, end of year</td>
<td>$ 9,380,497</td>
<td>$ 1,249,092</td>
<td>$ 2,660,200</td>
<td>$ 13,289,789</td>
</tr>
</tbody>
</table>

The accompanying notes are an integral part of these financial statements.

Appendix 12B-2  
(Continued)
GRAYSON PERFORMING ARTS CENTER
STATEMENT OF CASH FLOWS
For the Year Ended March 31, 19X4

CASH FLOWS FROM OPERATING ACTIVITIES
Decrease in net assets $ (650,412)
Adjustments to reconcile decrease in net assets to
net cash used in operating activities:
Depreciation 583,418
Donated equipment (600,000)
Contributions restricted for long-term purposes (270,200)
Decrease in accounts receivable 79,127
Decrease in unconditional promises to give 215,581
Decrease in inventory 33,856
Decrease in other assets 34,777
Increase in accounts payable 154,083
Decrease in accrued and other liabilities (23,569)
Increase in deferred revenue—tickets

NET CASH USED IN OPERATING ACTIVITIES (245,589)

CASH FLOWS FROM INVESTING ACTIVITIES
Net additions to property and equipment (69,905)
Net proceeds from sale of investments 3,500

NET CASH USED IN INVESTING ACTIVITIES (66,405)

CASH FLOWS FROM FINANCING ACTIVITIES
Proceeds from contributions restricted for:
Investment in permanent endowment 205,200
Investment in property and equipment 65,000
Net proceeds from borrowings 579,478
Repayments of debt and capital leases (627,153)

NET CASH PROVIDED BY FINANCING ACTIVITIES 222,525

NET DECREASE IN CASH AND CASH EQUIVALENTS (89,469)

CASH AND CASH EQUIVALENTS, beginning of year
185,867

CASH AND CASH EQUIVALENTS, end of year $ 96,398

The accompanying notes are an integral part of these financial statements.
GRAYSON PERFORMING ARTS CENTER
NOTES TO FINANCIAL STATEMENTS

NOTE A—DESCRIPTION OF THE CENTER

The Grayson Performing Arts Center (the Center) is a not-for-profit organization incorporated in Ohio in 1966. Its stated purpose is to conduct cultural, charitable, and educational activities. Currently, the Center operates the Travis Theater.

NOTE B—SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Basis of Accounting

The financial statements of the Center have been prepared on the accrual basis.

Basis of Presentation

Financial statement presentation follows the recommendations of the Financial Accounting Standards Board in its Statement of Financial Accounting Standards (SFAS) No. 117, Financial Statements of Not-for-Profit Organizations. Under SFAS No. 117, the Center is required to report information regarding its financial position and activities according to three classes of net assets: unrestricted net assets, temporarily restricted net assets, and permanently restricted net assets.

Contributions

The Center accounts for contributions in accordance with the recommendations of the Financial Accounting Standards Board in SFAS No. 116, Accounting for Contributions Received and Contributions Made. In accordance with SFAS No. 116, contributions received are recorded as unrestricted, temporarily restricted, or permanently restricted support, depending on the existence and/or nature of any donor restrictions.

All other donor-restricted support is reported as an increase in temporarily or permanently restricted net assets depending on the nature of the restriction. When a restriction expires (that is, when a stipulated time restriction ends or purpose restriction is accomplished), temporarily restricted net assets are reclassified to unrestricted net assets and reported in the statement of activities as net assets released from restrictions.

Promises To Give

Unconditional promises to give, less an allowance for uncollectible amounts, are recognized as revenues in the period received and as assets, decreases of liabilities, or expenses depending on the form of the benefits received. Conditional promises to give are recognized when the conditions on which they depend are substantially met.

Property and Equipment

Depreciation of buildings and equipment is provided over the estimated useful lives of the respective assets using the straight-line basis.

Donated equipment is recorded at fair market value at the date of the donation. Purchased equipment is recorded at cost.
Ticket Sales

Ticket sales received prior to the fiscal year to which they apply are not recognized as revenues until the year earned.

Investments

Donated investments are recorded at fair market value at the date of donation, which approximates the current market value, and consist of U.S. Treasury bills.

Cash and Cash Equivalents

For purposes of the statement of cash flows, cash equivalents include time deposits, certificates of deposit, and all highly liquid debt instruments with original maturities of three months or less.

Donated Materials, Facilities, and Services

Significant services, materials and facilities are donated to the Center by various individuals and organizations. Donated materials, facilities and services were $328,832 in 19X4, recorded at fair market value at the date of donation, and have been included in revenue and expenses for the respective years. In addition, approximately 16,500 hours of service in 19X4 were not recognized in the financial statements because they did not meet the criteria for recognition under SFAS No. 116.

Inventory Valuation

Inventories are stated at the lower of cost, determined by the first-in, first-out method, or market.

Credit Risk

Financial instruments that potentially subject the Center to concentrations of credit risk consist principally of temporary cash investments and pledge receivables. The Center places its temporary cash investments with high credit quality financial institutions and, by policy, limits the amount of credit exposure to any one financial institution. Concentrations of credit risk with respect to pledge receivables are limited due to the Center's large number of donors and their dispersion across multiple geographic areas. As of March 31, 19X4, the Center had no significant concentrations of credit risk.

Income Tax Status

The Center is classified as a Section 501(c)(3) Organization under the Federal Internal Revenue Code and Section 13.2210(e) of the State Revenue and Taxation Code. As a result, it has been determined to be exempt from federal income and state franchise taxes.
GRAYSON PERFORMING ARTS CENTER
NOTES TO FINANCIAL STATEMENTS (Continued)

NOTE C—PROMISES TO GIVE

Unconditional promises to give at March 31, 19X4, are as follows:

- Receivable in less than one year $ 589,300
- Less allowance for uncollectible promises receivable _____ (34,333)
- Net unconditional promises to give at March 31, 19X4 $ 554,967

Conditional promises to give at March 31, 19X4, consist of promises to:

- Contribute to the permanent endowment $ 35,000
- Underwrite production costs _____ 25,000
- Total conditional promises to give at March 31, 19X4 $ 60,000

NOTE D—PROPERTY AND EQUIPMENT

See Note E of Appendix 12B-1.

NOTE E—ADVANCE COLLECTIONS OF TICKET SALES

See Note F of Appendix 12B-1.

NOTE F—LONG-TERM DEBT

See Note G of Appendix 12B-1.

NOTE G—LEASES

See Note H of Appendix 12B-1.

NOTE H—RESTRICTIONS ON NET ASSETS

Temporarily restricted net assets are available for the following purposes or periods:

- Equipment $ 600,000
- Purchase of property and equipment 459,870
- For periods after March 31, 19X4 _____ 190,222
- Total $ 1,249,092

Permanently restricted net assets are restricted to:

- Permanent endowment, with no restrictions on the use of income $ 2,660,200

NOTE I—FUNCTIONAL ALLOCATION OF EXPENSES

See Note I of Appendix 12B-1.
NOTE J—INTEREST PAID

See Note J of Appendix 12B-1.

NOTE K—CHANGE IN ACCOUNTING PRINCIPLES

Change for New Pronouncements

The Center elected to adopt SFAS No. 116, Accounting for Contributions Received and Contributions Made, in 19X4. In accordance with SFAS No. 116, contributions received are recorded as unrestricted, temporarily restricted, or permanently restricted support, depending on the existence and/or nature of any donor restrictions. As permitted by SFAS No. 116, the Center has retroactively applied the provisions of this new Statement by restating net assets as of March 31, 19X3. The adjustment of $947,996 made to net assets as of March 31, 19X3, represents time and purpose-restricted contributions previously reported as deferred revenue. Under SFAS No. 116, such contributions are required to be reported as temporarily restricted support and are then reclassified to unrestricted net assets upon expiration of the time restriction or compliance with the purpose restriction. The effect of this new Statement on the Center’s change in net assets for 1994 was a decrease of $303,661.

In 19X4, the Center also elected to adopt SFAS No. 117, Financial Statements of Not-for-Profit Organizations. Under SFAS No. 117, the Organization is required to report information regarding its financial position and activities according to three classes of net assets: unrestricted net assets, temporarily restricted net assets, and permanently restricted net assets. As permitted by this new Statement, the Center has discontinued its use of fund accounting and has, accordingly, reclassified its financial statements to present the three classes of net assets required. This reclassification had no effect on the change in net assets for 19X4.
GRAYSON PERFORMING ARTS CENTER
SCHEDULE OF FUNCTIONAL EXPENSES
For the Year Ended March 31, 19X4

<table>
<thead>
<tr>
<th></th>
<th>Production Costs</th>
<th>General and Administrative</th>
<th>Fundraising</th>
<th>Totals</th>
</tr>
</thead>
<tbody>
<tr>
<td>Salaries, payroll taxes, and employee benefits</td>
<td>$1,013,357</td>
<td>$490,603</td>
<td>$92,634</td>
<td>$1,596,594</td>
</tr>
<tr>
<td>Artist and professional fees</td>
<td>2,540,395</td>
<td>30,755</td>
<td>91,474</td>
<td>2,662,624</td>
</tr>
<tr>
<td>Supplies</td>
<td>210,384</td>
<td>19,571</td>
<td>47,432</td>
<td>277,387</td>
</tr>
<tr>
<td>Utilities and telephone</td>
<td>155,983</td>
<td>18,399</td>
<td>—</td>
<td>174,382</td>
</tr>
<tr>
<td>Postage and shipping</td>
<td>—</td>
<td>51,704</td>
<td>10,641</td>
<td>62,345</td>
</tr>
<tr>
<td>Maintenance, repairs, and equipment rentals</td>
<td>109,496</td>
<td>7,962</td>
<td>867</td>
<td>118,325</td>
</tr>
<tr>
<td>Marketing, promotions, and special events</td>
<td>194,895</td>
<td>7,305</td>
<td>133,193</td>
<td>335,393</td>
</tr>
<tr>
<td>Conferences, conventions, and meetings</td>
<td>—</td>
<td>15,380</td>
<td>16,295</td>
<td>31,675</td>
</tr>
<tr>
<td>Donated materials and services</td>
<td>313,314</td>
<td>15,518</td>
<td>46,355</td>
<td>375,187</td>
</tr>
<tr>
<td>Depreciation</td>
<td>458,036</td>
<td>125,382</td>
<td>—</td>
<td>583,418</td>
</tr>
<tr>
<td>Miscellaneous and other</td>
<td>59,477</td>
<td>185,566</td>
<td>2,837</td>
<td>247,880</td>
</tr>
<tr>
<td>Total</td>
<td>$5,055,337</td>
<td>$968,145</td>
<td>$441,728</td>
<td>$6,465,210</td>
</tr>
</tbody>
</table>

Appendix 12B-2
(Continued)
APPENDIX 12C-1

SOP 78-10 FORMAT

GREENHILL PRIVATE SCHOOL

FINANCIAL STATEMENTS

Year Ended June 30, 19X4

INDEPENDENT AUDITOR'S REPORT

Board of Directors
Greenhill Private School

We have audited the accompanying balance sheet of Greenhill Private School (a not-for-profit organization) as of June 30, 19X4, and the related statement of revenues, expenses and changes in fund balances and statement of changes in cash flow for the year then ended. These financial statements are the responsibility of the Organization's management. Our responsibility is to express an opinion on these financial statements based on our audit.

We conducted our audit in accordance with generally accepted auditing standards. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of Greenhill Private School as of June 30, 1994, and the results of its operations and cash flows for the year then ended in conformity with generally accepted accounting principles.

Omaha, Nebraska
November 18, 1994
GREENHILL PRIVATE SCHOOL
BALANCE SHEET
June 30, 19X4, with Comparative Totals For 19X3

**ASSETS**

<table>
<thead>
<tr>
<th></th>
<th>Operating Funds</th>
<th>Property Fund</th>
<th>Totals</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Unrestricted</td>
<td>Restricted</td>
<td>19X4</td>
</tr>
<tr>
<td>Current assets:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cash</td>
<td>$ 234,400</td>
<td>$ 17,200</td>
<td>$ 251,600</td>
</tr>
<tr>
<td>Accounts receivable,</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>deemed fully collectable</td>
<td>11,400</td>
<td>—</td>
<td>11,400</td>
</tr>
<tr>
<td>Other current assets</td>
<td>13,200</td>
<td>—</td>
<td>13,200</td>
</tr>
<tr>
<td>Total current assets</td>
<td>259,000</td>
<td>17,200</td>
<td>275,200</td>
</tr>
<tr>
<td>Land</td>
<td>—</td>
<td>—</td>
<td>25,000</td>
</tr>
<tr>
<td>Buildings, equipment and</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>improvements, net</td>
<td>—</td>
<td>—</td>
<td>247,900</td>
</tr>
<tr>
<td>Other assets</td>
<td>5,300</td>
<td>—</td>
<td>4,400</td>
</tr>
<tr>
<td>Total</td>
<td>$ 264,300</td>
<td>$ 17,200</td>
<td>$ 277,300</td>
</tr>
</tbody>
</table>

**LIABILITIES AND FUND BALANCES**

<table>
<thead>
<tr>
<th></th>
<th>Operating Funds</th>
<th>Property Fund</th>
<th>Totals</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Unrestricted</td>
<td>Restricted</td>
<td>19X4</td>
</tr>
<tr>
<td>Current liabilities:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Current portion of</td>
<td>$ 20,000</td>
<td>—</td>
<td>$ 15,300</td>
</tr>
<tr>
<td>long-term debt</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Accounts payable</td>
<td>14,900</td>
<td>—</td>
<td>14,900</td>
</tr>
<tr>
<td>Deferred revenue</td>
<td>177,600</td>
<td>17,200</td>
<td>194,800</td>
</tr>
<tr>
<td>Accrued liabilities</td>
<td>3,200</td>
<td>—</td>
<td>3,900</td>
</tr>
<tr>
<td>Total current liabilities</td>
<td>215,700</td>
<td>17,200</td>
<td>248,900</td>
</tr>
<tr>
<td>Long-term debt, less</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>current portion</td>
<td>—</td>
<td>—</td>
<td>164,500</td>
</tr>
<tr>
<td>Commitment</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fund balances:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Operating</td>
<td>48,600</td>
<td>—</td>
<td>48,600</td>
</tr>
<tr>
<td>Plant</td>
<td>—</td>
<td>96,800</td>
<td>96,800</td>
</tr>
<tr>
<td>Total fund balances</td>
<td>48,600</td>
<td>96,800</td>
<td>145,400</td>
</tr>
<tr>
<td>$ 264,300</td>
<td>$ 17,200</td>
<td>$ 277,300</td>
<td>$ 558,800</td>
</tr>
</tbody>
</table>

See accompanying notes and accountant's report.

Appendix 12C-1
(Continued)
GREENDHILL PRIVATE SCHOOL  
STATEMENT OF REVENUES, EXPENSES AND CHANGES IN FUND BALANCES  
Year Ended June 30, 19X4, with Comparative Totals for 19X3

<table>
<thead>
<tr>
<th></th>
<th>Operating Funds</th>
<th>Property Fund</th>
<th>Totals</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Unrestricted</td>
<td>Restricted</td>
<td>19X4</td>
</tr>
<tr>
<td><strong>Revenues:</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Academic program</td>
<td>$1,144,500</td>
<td>—</td>
<td>$1,144,500</td>
</tr>
<tr>
<td>Auxiliary programs</td>
<td>74,800</td>
<td>—</td>
<td>74,800</td>
</tr>
<tr>
<td>Other</td>
<td>19,000</td>
<td>—</td>
<td>19,000</td>
</tr>
<tr>
<td>Student activities</td>
<td>60,400</td>
<td>—</td>
<td>60,400</td>
</tr>
<tr>
<td></td>
<td>1,298,700</td>
<td>—</td>
<td>1,298,700</td>
</tr>
<tr>
<td><strong>Expenses:</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Academic programs</td>
<td>90,000</td>
<td>18,000</td>
<td>108,000</td>
</tr>
<tr>
<td>Advertising</td>
<td>16,200</td>
<td>—</td>
<td>16,200</td>
</tr>
<tr>
<td>Auxiliary programs</td>
<td>46,700</td>
<td>—</td>
<td>46,700</td>
</tr>
<tr>
<td>Depreciation</td>
<td>—</td>
<td>40,100</td>
<td>40,100</td>
</tr>
<tr>
<td>General and administrative</td>
<td>61,800</td>
<td>700</td>
<td>62,500</td>
</tr>
<tr>
<td>Insurance</td>
<td>54,400</td>
<td>—</td>
<td>54,400</td>
</tr>
<tr>
<td>Interest</td>
<td>1,500</td>
<td>—</td>
<td>28,300</td>
</tr>
<tr>
<td>Maintenance</td>
<td>169,000</td>
<td>700</td>
<td>169,700</td>
</tr>
<tr>
<td>Payroll benefits</td>
<td>123,400</td>
<td>2,000</td>
<td>130,400</td>
</tr>
<tr>
<td>Staff payroll</td>
<td>193,500</td>
<td>—</td>
<td>193,500</td>
</tr>
<tr>
<td>Student activities</td>
<td>74,700</td>
<td>7,200</td>
<td>81,900</td>
</tr>
<tr>
<td>Teachers payroll</td>
<td>428,400</td>
<td>—</td>
<td>428,400</td>
</tr>
<tr>
<td></td>
<td>1,264,600</td>
<td>28,600</td>
<td>1,361,600</td>
</tr>
<tr>
<td>Excess (deficiency)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>of revenue over</td>
<td>34,100</td>
<td>(28,600)</td>
<td>(62,900)</td>
</tr>
<tr>
<td>expenses before support and other income</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

| Support and other income: | | | |
| Donations                | 27,500          | 28,600        | 62,200    | 215,900  |
| Fund-raising, less fund- raising expenses | | | |
| (19X4, $34,000; 19X3, $23,700) | 51,700          | —             | 51,700    | 77,400   |
| Excess (deficiency) of revenue over expenses | 113,300         | —             | 51,000    | 163,300  |
| Fund balances, beginning | 20,500          | 73,900        | 94,400    | (68,900) |

| Property and debt service payments financed from operating funds | | 85,200 | | |
| Fund balances, ending | $48,600 | — | $96,800 | $145,400 | $94,400 |

See accompanying notes and accountant's report.
GREENHILL PRIVATE SCHOOL
STATEMENT OF CASH FLOWS
Year Ended June 30, 19X4, with Comparative Totals for 19X3

<table>
<thead>
<tr>
<th>Cash flows from operating activities:</th>
<th>Operating Funds</th>
<th>Property Fund</th>
<th>Totals</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sources (uses) of cash:</td>
<td>Unrestricted</td>
<td>Restricted</td>
<td>19X4</td>
</tr>
<tr>
<td>Donations</td>
<td>$ 27,500</td>
<td>$ 33,800</td>
<td>$ 61,300</td>
</tr>
<tr>
<td>Fund-raising activities</td>
<td>85,900</td>
<td>—</td>
<td>85,900</td>
</tr>
<tr>
<td>Insurance settlement</td>
<td>9,600</td>
<td>—</td>
<td>9,600</td>
</tr>
<tr>
<td>Interest</td>
<td>1,900</td>
<td>—</td>
<td>1,900</td>
</tr>
<tr>
<td>Student functions</td>
<td>1,292,700</td>
<td>—</td>
<td>1,292,700</td>
</tr>
<tr>
<td>Cash paid to:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Employees and related benefits</td>
<td>(732,600)</td>
<td>(2,000)</td>
<td>(734,600)</td>
</tr>
<tr>
<td>Interest</td>
<td>—</td>
<td>(25,900)</td>
<td>(25,900)</td>
</tr>
<tr>
<td>Suppliers</td>
<td>(566,400)</td>
<td>(26,600)</td>
<td>(593,000)</td>
</tr>
<tr>
<td>Cash flows provided by</td>
<td>118,500</td>
<td>5,200</td>
<td>97,900</td>
</tr>
<tr>
<td>(used in) operating activities</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Uses of cash:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Acquisition of equipment</td>
<td>—</td>
<td>—</td>
<td>(52,400)</td>
</tr>
<tr>
<td>Security deposit</td>
<td>—</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Cash flows used in investing activities</td>
<td>—</td>
<td>—</td>
<td>(52,400)</td>
</tr>
<tr>
<td>Sources (uses) of cash:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Interfund transfers</td>
<td>(85,200)</td>
<td>—</td>
<td>85,200</td>
</tr>
<tr>
<td>Payment of long-term debt</td>
<td>—</td>
<td>(6,900)</td>
<td>(6,900)</td>
</tr>
<tr>
<td>Cash flows provided by</td>
<td>(85,200)</td>
<td>—</td>
<td>78,300</td>
</tr>
<tr>
<td>(used in) financing activities</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Increase in cash</td>
<td>33,400</td>
<td>5,200</td>
<td>38,600</td>
</tr>
<tr>
<td>Cash, beginning of year</td>
<td>201,000</td>
<td>12,000</td>
<td>213,000</td>
</tr>
<tr>
<td>Cash, end of year</td>
<td>$ 234,400</td>
<td>$ 17,200</td>
<td>$ 251,600</td>
</tr>
</tbody>
</table>

Appendix 12C-1
(Continued)
GREENHILL PRIVATE SCHOOL
STATEMENT OF CASH FLOWS (Continued)
Year Ended June 30, 19X4, with Comparative Totals for 19X3

<table>
<thead>
<tr>
<th>Operating Funds</th>
<th>Property Fund</th>
<th>Totals 19X4</th>
<th>Totals 19X3</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unrestricted</td>
<td>Restricted</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Reconciliation of excess (deficiency) of revenue over expenses to cash flows provided by (used in) operating activities:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Excess (deficiency) of revenue over expenses</td>
<td>$ 113,300</td>
<td>$ —</td>
<td>$ (62,300)</td>
</tr>
<tr>
<td>Adjustments to reconcile excess (deficiency) of revenue over expenses to cash flows provided by (used in) operating activities:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Depreciation</td>
<td>—</td>
<td>—</td>
<td>40,100</td>
</tr>
<tr>
<td>Changes in assets and liabilities:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Accounts receivable</td>
<td>4,800</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Other current assets</td>
<td>7,000</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Other assets</td>
<td>(4,700)</td>
<td>—</td>
<td>(4,400)</td>
</tr>
<tr>
<td>Accounts payable</td>
<td>12,000</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Deferred revenue</td>
<td>(16,800)</td>
<td>5,200</td>
<td>—</td>
</tr>
<tr>
<td>Accrued liabilities</td>
<td>3,000</td>
<td>—</td>
<td>700</td>
</tr>
<tr>
<td>Total adjustments</td>
<td>5,300</td>
<td>5,200</td>
<td>36,400</td>
</tr>
<tr>
<td>Cash flows provided by (used in) operating activities</td>
<td>$ 118,600</td>
<td>$ 5,200</td>
<td>$ (25,900)</td>
</tr>
</tbody>
</table>

See accompanying notes and accountant's report.
GREENHILL PRIVATE SCHOOL
NOTES TO FINANCIAL STATEMENTS

NOTE A—SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Basis of Accounting

Greenhill Private School (the School) prepares its financial statements in accordance with generally accepted accounting principles. This basis of accounting involves the application of accrual accounting; consequently, revenues and gains are recognized when earned, and expenses and losses are recognized when incurred.

Fund Accounting

In order to ensure observance of limitations and restrictions placed on the use of the resources available to the School, the accounts are maintained in accordance with the principles of fund accounting. This is the procedure by which resources for various purposes are classified, for accounting and reporting purposes, into funds established according to the specified activities or objectives of the School.

Separate accounts are maintained for each fund; however, in the accompanying financial statements, funds that have similar characteristics have been combined into fund groups. Accordingly, all financial transactions have been recorded and reported by fund group.

The assets, liabilities, and fund balances of the School are reported in three self-balancing fund groups as described below:

The unrestricted fund reflects the student tuition and fees paid by the parents of the students. Expenditures are directed to those activities associated with the day-to-day operation of the School.

The restricted fund reflects those funds restricted by the Donors for use for their intended purposes and are distinguished from unrestricted funds designated for specific purposes by the board of directors.

The property fund records resources restricted for all expenditures that are capital in nature as they relate to the real and personal property of the School and the applicable depreciation thereon. Amounts charged to the property fund shall include, but not be limited to, depreciation, amortization of loan costs, and payment of interest on long-term debt.

Buildings, Equipment, Improvements, and Depreciation

Buildings, equipment, and improvements are stated at cost less accumulated depreciation. Depreciation is being provided by use of the straight-line method over the estimated useful lives of the related assets ranging from five to forty years.

Donated Equipment and Services

Donated equipment is reflected as contributions in the accompanying financial statements at their estimated values at the date of receipt. No amounts have been reflected in the statements for donated services as no objective basis is available to measure the value of such services.

Deferred Revenue

Deferred revenue in the unrestricted fund results from the School recognizing registration and tuition revenue in the period in which the related educational instruction is performed. Accordingly, registration and tuition fees received for the next school term are deferred until the instruction commences.

Appendix 12C-1
(Continued)
GREENHILL PRIVATE SCHOOL
NOTES TO FINANCIAL STATEMENTS (Continued)

Deferred revenue in the restricted fund results from contributions for a specific purpose. Revenue in the restricted fund is recognized only to the extent that related expenditures have been incurred.

Income Taxes

Greenhill Private School is a not-for-profit organization exempt from federal income taxes under Internal Revenue Code Section 501(c)(3). Accordingly, no provision for federal income taxes has been made.

NOTE B—ORGANIZATION AND BUSINESS

Greenhill Private School is a not-for-profit organization incorporated on May 24, 1976, under the laws of the state of Alabama. The School operates a private elementary and secondary school, which teaches subjects usually taught in public schools. The School is accredited through the Alabama Association of Private Schools.

NOTE C—BUILDINGS, EQUIPMENT, AND IMPROVEMENTS

<table>
<thead>
<tr>
<th></th>
<th>19X4</th>
<th>19X3</th>
</tr>
</thead>
<tbody>
<tr>
<td>Buildings</td>
<td>$250,000</td>
<td>$250,000</td>
</tr>
<tr>
<td>Equipment</td>
<td>108,200</td>
<td>68,400</td>
</tr>
<tr>
<td>Furniture</td>
<td>89,000</td>
<td>76,400</td>
</tr>
<tr>
<td>Improvements</td>
<td>58,600</td>
<td>58,600</td>
</tr>
<tr>
<td>Vehicles</td>
<td>44,200</td>
<td>44,200</td>
</tr>
<tr>
<td></td>
<td>550,000</td>
<td>497,600</td>
</tr>
<tr>
<td>Less accumulated depreciation</td>
<td>(302,100)</td>
<td>(262,000)</td>
</tr>
<tr>
<td></td>
<td>$247,900</td>
<td>$235,600</td>
</tr>
</tbody>
</table>

Substantially all buildings, equipment, and improvements are pledged to collateralize long-term debt.

NOTE D—OTHER ASSETS

<table>
<thead>
<tr>
<th></th>
<th>19X4</th>
<th>19X3</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cash surrender value of life insurance</td>
<td>$4,700</td>
<td>—</td>
</tr>
<tr>
<td>Loan origination costs</td>
<td>4,400</td>
<td>—</td>
</tr>
<tr>
<td>Utility deposits</td>
<td>600</td>
<td>600</td>
</tr>
<tr>
<td></td>
<td>$9,700</td>
<td>$600</td>
</tr>
</tbody>
</table>

NOTE E—DEFERRED REVENUE

<table>
<thead>
<tr>
<th></th>
<th>19X4</th>
<th>19X3</th>
</tr>
</thead>
<tbody>
<tr>
<td>Registration</td>
<td>$56,400</td>
<td>$67,100</td>
</tr>
<tr>
<td>Tuition</td>
<td>121,200</td>
<td>127,300</td>
</tr>
<tr>
<td>Restricted</td>
<td>17,200</td>
<td>12,000</td>
</tr>
<tr>
<td></td>
<td>$194,800</td>
<td>$206,400</td>
</tr>
</tbody>
</table>
GREENHILL PRIVATE SCHOOL  
NOTES TO FINANCIAL STATEMENTS (Continued)

NOTE F—LONG-TERM DEBT

Mortgage note, bank, interest at 1.5% over bank's prime rate (7.5% at June 30, 19X4) payable monthly through June, 20Y1 with a balloon payment in the amount of approximately $107,600, collateralized by real and personal property.  

$ 160,000 $ —

Mortgage note, bank, interest at 11.75% per annum, principal and interest payable monthly at $1,867, with a balloon payment of approximately $155,500 due in July, 19X4. Collateralized by real property.

— 157,700

Installment loan, bank, interest at 12.0% per annum, paid monthly, collateralized by equipment, maturing in March, 19X6.

19,800 29,000

Notes payable, Corporation members, unsecured, interest at 6% per annum, payable monthly, maturing through April 19X5.

20,000 20,000

199,800 206,700

35,300 33,200

$ 164,500 $ 173,500

Less current portion

Maturities of long-term debt subsequent to June 30, 19X4, are as follows:

<table>
<thead>
<tr>
<th>Years ending June 30</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>19X5</td>
<td>$35,300</td>
</tr>
<tr>
<td>19X6</td>
<td>16,000</td>
</tr>
<tr>
<td>19X7</td>
<td>6,900</td>
</tr>
<tr>
<td>19X8</td>
<td>7,400</td>
</tr>
<tr>
<td>19X9</td>
<td>8,000</td>
</tr>
<tr>
<td>20Y0–20Y1</td>
<td>125,200</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>199,800</strong></td>
</tr>
</tbody>
</table>

NOTE G—COMMITMENT

The school has a five-year contract with the school administrator, which matures June 30, 19X6. The contract can be terminated by either party at any time for reasons sufficient to the party making the termination.

Appendix 12C-1  
(Continued)
CURRENT REPORTING ISSUES
NOT-FOR-PROFIT ORGANIZATIONS
OVERVIEW OF FAS 116 AND 117

I. FAS 116, Accounting for Contributions Received and Contributions Made

A. Scope of the statement

1. Applies to contributions of cash and other assets, including promises to give

2. Does not apply to:

   a. Transfers of assets that are in substance purchases of goods or services

   b. Transfers of assets in which the reporting entity acts as an agent, trustee, or intermediary, rather than as donor or donee

   c. Tax exemptions, tax incentives, or tax abatements, or transfers of assets from governmental units to business enterprises

B. Definitions

1. Contribution

   a. Unconditional transfer of cash or other assets (including services and the use of assets)

   b. Unconditional promise to give those assets in the future to an entity

   c. Settlement or cancellation of one entity’s liabilities in a voluntary nonreciprocal transfer by another entity other than as owner

2. Nonprofit (not-for-profit)

   a. Entity that possesses following characteristics that distinguish it from business enterprise

      (1) Contributions of significant amounts of resources from resource providers who do not expect commensurate or proportionate pecuniary return

HAYES & ASSOCIATES
CERTIFIED PUBLIC ACCOUNTANTS
OMAHA, NEBRASKA
(2) Operating purposes other than to provide goods or services at a profit

(3) Absence of ownership interests like those of business enterprises

3. Promise to give
   a. Written or oral agreement to contribute cash or other assets to another entity
   b. May be either conditional or unconditional

4. Unconditional promise to give
   a. Promise to give that depends only on passage of time or demand by promisee for performance

5. Conditional promise to give
   a. Promise to give that depends on occurrence of specified future and uncertain event to bind promisor

6. Restricted support
   a. Donor-restricted revenues or gains from contributions that increase either temporarily restricted net assets or permanently restricted net assets

7. Unrestricted support
   a. Revenues or gains from contributions that are not restricted by donors

C. Contributions received

1. Statement requires that contributions received shall be recognized as revenues or gains in the period received and as assets, decreases of liabilities, or expenses depending on the form of benefits received

2. Contributions shall be measured at their fair values
3. Contributions received by nonprofit organizations shall be reported as restricted support or unrestricted support

D. Contributed services

1. Recognize if services received
   a. Create or enhance nonfinancial assets
   b. Require specialized skills and are provided by individuals that would otherwise be paid for by the nonprofit if not provided by donation

2. Recorded at fair value

3. Disclosure requirements
   a. Describe programs or activity for which services received, including nature and extent of services and amount recognized as revenues
   b. Encouraged to disclose value of services received but not recognized

E. Collections

1. Definition
   a. Works of art, historical treasures, or similar assets that are
      (1) Held for public exhibition, education, or research in furtherance of public service rather than financial gain
      (2) Protected, kept unencumbered, cared for, and preserved
      (3) Subject to organizational policy that requires the proceeds from sales of collection items to be used to acquire other items for collection

2. Recognition criteria
   a. If assets meet definition of collection criteria (1), (2) and (3), organization need not recognize contribution

3. Capitalization
a. May capitalize either retroactively or prospectively, selective capitalization is precluded

4. Contributed collection items should be recognized as revenues or gains if collections are capitalized and should not be recognized as revenues or gains if collections are not capitalized

5. Entity that does not recognize and capitalize its collections or that capitalizes collections prospectively must disclose additional information

F. Reporting by not-for-profit organizations

1. Not-for-profit organizations shall distinguish between contributions received with permanent restrictions, those received with temporary restrictions, and those received without donor-imposed restrictions

   a. Permanent restriction

      (1) Donor-imposed restriction that stipulates that resources be maintained permanently but permits organization to use up or expend part or all of income (or economic benefits) derived from donated assets

   b. Temporary restrictions

      (1) Part of net assets of a nonprofit organization resulting

          (a) From contributions and other inflows of assets whose use by the organization is limited by donor-imposed stipulations that either expire by passage of time or can be fulfilled and removed by actions of the organization under those stipulations

          (b) From other asset enhancements and diminishments subject to same kinds of stipulations

          (c) From reclassification to (or from) other classes of net assets as consequence of donor-imposed stipulations, their expiration by passage of time, or their fulfillment and removal by action of organization under those stipulations
2. Receipts of unconditional promises to give with payments due in future periods shall be reported as restricted support, unless explicit donor stipulations or circumstances surrounding receipt of promise make it clear that donor intended it to be used to support activities of current period.

3. Gifts of long-lived assets received without stipulation about how long the donated asset must be used shall be reported as restricted support if the organization’s accounting policy is to imply time restriction that expires other the useful life of donated assets.

   a. In absence of policy and other restrictions on use, gifts or long-lived assets shall be reported as unrestricted support.

   b. Accounting policy regarding long-live assets should be disclosed.

G. Expiration of donor-imposed restrictions.

1. Lapsing

   a. Restriction is deemed to be met when expense has been incurred for that purpose.

2. Reclassification

   a. Expiration of restrictions must be recognized as reclassification to or from one class of net assets to another (temporarily to unrestricted net assets).

H. Contributions made

1. Contributions made are recognized as expenses in the period made and as decreases of assets or increases of liabilities depending on form of benefits given.

   a. Contributions made are measured at fair values of assets given or, if made in form of settlement or cancellation of donee’s liabilities, at fair value of the liabilities canceled.

2. Statement indicates that quoted market prices are best evidence of fair value of monetary and nonmonetary assets, including services.

   a. However, if not available, fair value may be estimated based on quoted market prices for similar assets, independent appraisals, or
valuation techniques, such as present value of estimated future cash flows.

3. Contributions of services may be measured by referring to either fair value of services received or fair value of asset or of asset enhancement resulting from such services.

4. Present value of estimated future cash flows using discount rate commensurate with risks involved is an appropriate measure of fair value of unconditional promises to give cash.
   a. Statement indicates that entity may estimate future cash flows of portfolio of short-term promises resulting from mass fund-raising appeal by using experiences it gained from similar appeals.

5. Unconditional promises to give that are expected to be collected or paid in less than one year may be measured at net realizable value.

6. Conditional promised to give shall be recognized when conditions on which they depend are substantially met, when the conditional promise becomes unconditional.

7. Conditional promise to give is considered unconditional if possibility that condition will not be met is remote.

8. Promise containing stipulations that are not clearly unconditional shall be presumed to be a conditional promise.

9. Disclosures of promises to give:
   a. Recipients of unconditional promises to give shall disclose:
      (1) Amounts or promises receivable in less than one year, in one to five years, and in more than five years.
      (2) Amount of allowance for uncollectible promises receivable.
   b. Recipients of conditional promises to give shall disclose:
      (1) Total of amounts promised.
      (2) Description and amount for each group of promises having similar characteristics, such as amounts of promises.

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Omaha, Nebraska
conditioned on establishing new programs, completing a new building, and raising matching gifts by a specified date

I. Effective date and transition

1. Fiscal years beginning after December 15, 1994

2. Except for nonprofit organizations with less than $5 million in total assets and less than $1 million in annual expenses, the effective date is for fiscal years beginning after December 15, 1995

3. May be applied retroactively or by cumulative effect

4. Transition

   a. In period first applied, disclose nature of any restatement and its effect on change in net assets for each period presented

II. FAS 117, Financial Statements of Not-for-Profit Organizations

A. Purpose

1. Establishes standards for general-purpose external financial statements provided by nonprofit organizations

2. Statement provides

   a. For a high level of aggregation

   b. Requirements generally no more stringent than those for for-profit organizations

   c. Guidance on how to report assets, liabilities, net assets, revenues, expenses, gains, and losses in financial statements; however, it does not specify when to recognize or how to measure those elements

B. States that complete set of financial statements of a nonprofit organization should include

1. Statement of financial position as of end of reporting period

2. Statement of activities for reporting period
3. Statement of cash flows for reporting period

4. Accompanying notes to financial statements

5. Statement of functional expenses (voluntary health and welfare organizations)

C. Statement of financial position

1. Statement should focus on organization as a whole

2. Statement should report amounts of its total
   a. Assets
   b. Liabilities
   c. Net assets

3. Classification of assets and liabilities
   a. Aggregation by similar characteristics into homogeneous groups
   b. Liquidity

4. Classification of net assets as donor restricted or unrestricted
   a. Unrestricted net assets
      (1) These assets generally result from revenues from providing services, producing goods, unrestricted contributions, dividends and interest from income-producing assets less applicable related expenses
   b. Temporarily restricted net assets
      (1) Information concerning these assets may be included on face of statement or in notes to the financial statements
   c. Permanently restricted net assets
(1) Information concerning these assets may be included on face of statements or in notes to the financial statements

D. Statement of activities

1. Statement should focus on nonprofit organization as a whole

2. Statement should report amount of change in net assets for period

3. Changes in classes of net assets
   a. Statement shall report amount of change in permanently restricted net assets, temporarily restricted net assets, and unrestricted net assets for the period
   b. Revenues, expenses, gains, and losses increase or decrease net assets
   c. Events that simultaneously increase one class of net assets and decrease another (reclassification) shall be reported as separate items
   d. Revenue increases unrestricted net assets unless use of assets is limited by restrictions
   e. Expenses decrease unrestricted net assets
   f. Statement 116 indicated that in absence of donor's explicit stipulation or circumstances surrounding receipt of contribution that make clear donor's implicit restriction on use, contributions are reported as unrestricted revenues or gains which increase unrestricted net assets
   g. Donor-restricted contributions are reported as restricted revenues or gains which increase temporarily restricted net assets or permanently restricted net assets depending on the type of restriction
   h. Donor-restricted contributions whose restrictions have been met in reporting period may be reported as unrestricted support
i. Statement 117 requires that the statement of activities shall report gains and losses on investments and other assets/liabilities as increases or decreases in unrestricted net assets unless their use is temporarily or permanently restricted

j. Statement does not preclude incorporating additional classifications within the statement of activities

k. To help explain the relationships of nonprofit organization’s ongoing major or central operations and activities, the statement of activities shall report the gross amounts of revenues and expenses

(1) However, investment revenue may be reported net of related expenses if properly disclosed on the face of the statement or in the notes to the financial statements

l. Statement of activities may report gains and losses as net amounts if they result from peripheral or incidental transactions or from other events and circumstances that may be largely beyond control of the organization and its management

m. Statement 117 requires that statement of activities or notes to financial statements shall provide information about expenses reported by their functional classification, such as major classes of program services and supporting activities

n. Voluntary health and welfare organizations must report information in m. above as well as information about expenses by their natural classification, such as salaries, rent, electricity, interest expense, depreciation, awards and grants to others, and professional fees, in matrix format in a separate financial statement

o. Statement 117 encourages other nonprofit organizations to provide information about expenses by their natural classification (schedule)

E. Statement of cash flows

1. Statement 117 amends FASB Statement 95 to extend its provisions to nonprofit organizations
2. Donor-restricted cash for long-term purposes is classified as financial activities
   a. Endowment
   b. Buildings

F. Effective date and transition

1. Fiscal years beginning after December 31, 1994

2. Except for nonprofit organizations with less than $5 million in total assets and less than $1 million in annual expenses, the effective date is for fiscal years beginning after December 15, 1995

3. Earlier application is encouraged

4. If comparative statements are presented, they should be reclassified or restated to reflect retroactive application

5. Disclosure is required of restatements and their effects on net assets in year of implementation