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Lawyers Must Investigate

By CHARLES ROTHENBERG*

The lawyer is too often not well prepared concerning the facts of his case, whereas he is proficient in the knowledge of the legal science to be applied. The fault may lie in the method of teaching law which pays little or no attention to "fact finding" but concentrates on a course in evidence which merely teaches "proof of facts." Or perhaps, the failure may be due to the lawyer's distaste for investigation, which distaste is enhanced by his inclination to work from his office. In addition, both clients and lawyers are neither anxious nor eager to expend funds for investigation unless they are reasonably certain that the investment will prove beneficial.

The average lawyer interviews the client in the office. He examines diligently to determine whether the client is eliminating evidence or neglecting to state facts. He inquires as to witnesses and other possible sources of information. He takes notes of his conference and probably proceeds to brief the law of the case and the pertinent rules of evidence. Some time later on, and too often just before the trial, he proceeds to make an investigation from his office. He telephones witnesses or requests them to call at his office for interview. Very often the client has not consulted the lawyer until long after the incident has occurred and therefore the lawyer is at a disadvantage because the facts are not "fresh."

This type of investigation is inadequate, for the lawyer has keen competition. He is dealing with Government agencies; insurance companies, institutions and organizations which have realized the importance of investigation at the proper time and by trained personnel.

By way of comparison a brief explanation of the methods employed by Government and insurance investigators is set forth.

It is the policy of Government investigating agencies to conduct a complete and thorough investigation of every claim or complaint without limiting the cost of the same except that the agent is instructed to conduct the investigation in the most economical and expeditious manner.

In addition, the government investigation agencies are permanent organizations functioning daily throughout the year. Not only do they

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not wait for complaints to be reported, but they are alert to learn of complaints or irregularities in their routine investigations. Therefore, in the great majority of cases they get to the scene while the case is "hot" and the facts are "fresh" both physically and in the minds of the witnesses. The investigation is completed in a comparatively short time. A detailed report is submitted to the Special Agent in Charge, who edits it, finally affixing his approval when in his opinion the investigation has been completed. The report is then forwarded to the Washington office, where it is again reviewed and if found proper and adequate, released to the proper administrative officers for attention and action. If a prosecution or suit is contemplated a "Summary Report" is prepared based on the detailed investigation report. This "summary" is for the use of the U. S. attorney and consists of a brief, index and details. The brief is a concise resume of the case, usually limited to one typewritten page, which contains all the facts necessary for the drawing of an indictment, complaint or answer. The details list the names, addresses, occupations of the witnesses, the facts to which they can testify, information concerning the prejudice and credibility of the witnesses, documentary evidence, the contents of the documentary evidence, the name, address and title of the person in whose custody they are and who should be subpoenaed.

Most insurance companies have regional and state offices from which their investigators operate. The minor claims are not investigated other than that the soliciting agent may obtain an accident report, an affidavit from the claimant and assured or make a perfunctory investigation, which is forwarded to the regional or state office with his recommendations.

In cases where it is considered that investigation is required, an investigator is dispatched to the scene of the accident, fire, burglary, etc. He usually obtains signed statements from the claimant and any other person who has sufficient knowledge or information concerning the matter which would make him a proper witness. He may take photographs, take measurements and otherwise familiarize himself with all of the physical facts and then proceed to prepare a report on standard forms and transmit it to his office with his recommendations.

The claims attorney or claims examiner reviews the report, confers with the investigator, if necessary, and on the basis of the report and conference makes a decision with reference to the disposition of the case.

By way of summary, it will be noted that Government and insurance investigations are speedy, complete and result in a written report

which purports to set forth all the necessary facts concerning the subject of the investigation.

A comparison of the methods employed by the lawyer and those used by Government and insurance investigators leads but to one conclusion, and that is that the lawyer is dealing at a disadvantage to himself and that the client does not receive the full benefits of the service which he desires and to which he is entitled.

After a case has been lost or an unsatisfactory adjustment made it is too late to say that it might have been won or adjusted or that a better adjustment might have been made had certain additional facts or circumstances been known at the time of trial or adjustment.

It should be obvious that no case can be said to be well prepared unless both the facts and the law have been determined. It is the lawyer's duty to his client to make every reasonable effort to determine all of the facts, the facts available to the other side, and if certain facts are not available, to at least determine the reason for such inaccessibility.

With the vast increase of trained investigators in Government agencies, insurance companies, large corporations, credit agencies, etc., and with the increasing number of transactions the lawyer has with such organizations and institutions, the need for investigation by the lawyer is accentuated and in order to compete on an equal basis the lawyer must resign himself to becoming experienced in the field of investigation or, at least, to employ trained investigators.

COMMITTEES ON NATIONAL DEFENSE

William E. Hutton, president of the State Bar, has announced the appointment of regional chairman within the state to act in conjunction with the American Bar Association committee on the subject.

Frazer Arnold of Denver is the member of the American Bar Association committee from this district.

Mr. Hutton has appointed the president of each local bar association as chairmen of a committee on national defense for the district which he represents. Each member of the state committee is empowered to appoint committees for each of the counties within the district of the local association.