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The Poorest Business Man

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When I was a boy, that was taken for granted. It is hardly necessary for me to say that free enterprise and opportunity for individual initiative is quite important for maintaining individual freedom. You, as lawyers, and your fellow lawyers, represent that principle as well as any other class of people. It is only through your individual efforts, through your constant striving, that you can get ahead and get to the top of your profession. If you were under the control of the Government, as are the men of Russia, you would have no liberty. And what is true in your case is true of others. A gradual deprivation of individual enterprise of one class after another will ultimately effect all. A few days ago I read an excerpt from *The Virginia Law Weekly*, reprinted in the *Journal of the American Judicature Society* in August, 1953, as follows:

"An attorney has perhaps the best opportunity of anyone to advance on his own ability, because that ability is the only limitation on the heights which he may achieve. And being leaders in their communities, lawyers should set the example by reaching the very peak of their capabilities.

"In addition, the lawyer has the best opportunity, as a leader, to try to create ambition in others. And it is only a driving ambition to 'beat the game' of life that can make us strong from within. . . . the only real security lies in opportunity. If a man dreams of castles on top of the Rockies, he should have the opportunity to realize his dream. It is only as long as he can realize that dream that he will work for it. And when he cannot, he will cease to make the most of his abilities. The ultimate loser is the nation."

Thus you, as lawyers, have an important part to play in maintaining the American way of life. And we trust that you will not fall down in your duties in the important period which lies before you.

THE POOREST BUSINESS MAN

RICHARD R. BOSTWICK

For a few moments I wish to talk to you today regarding the most important item in any law office—more important than any particular case—more important than any group of cases or any other type of business handled in the office. This importance is basic because the fee is the final result of all work done in a law office. Now in talking about the nature and computation of fees, I want to exclude certain types of fees, namely: the contingent fee, retainer cases, and statutory fees, such as probate. The cases which I am concerned with are the ordinary type of employment that every law office handles.

Question: What Does It Cost You to Open the Office Door?

As in any business, it is first necessary to determine what the product costs before you are able to determine what you may sell it for. Now if you

agree that Lincoln's definition of a lawyer's stock-in-trade is correct, then we must determine what our time costs us and what our advice is worth. The basic commodity which a lawyer sells is an intangible thing. The items with which a lawyer deals are intangible and not subject to visual analysis, or any other physical analysis, such as are the products of other institutions. Therefore, the value of them to the client is sometimes difficult to ascertain. However that may be, in order for a law office to succeed, it is necessary to determine the cost of those items and then place on them the necessary mark-up in order to make a profit. In order to determine this cost two major items are involved: 1) the salaries of productive personnel, including the salaried lawyer in the office if there is one, and 2) the overhead costs which include all other expenses, such as the secretary, telephone, books, stationery, stamps, rent, lights and heat if so involved, and, in fact, every other expenditure made in the course of the operation of a law office. Once these costs are determined, they must then be reduced to an hourly basis, and that hourly basis then determined for each lawyer in the office, so as to determine his pro rata share of the overhead, and, consequently, the charge which he must equalize in each employment that he takes on.

Question: How Do You Determine This Cost?

Various Bar Associations have studied this matter and have come up with a rather simplified formula for determining the cost per hour of operating a law office. I will give you the formula, which is quite brief. First, we know that the year consists of 365 days. From this number of days in a year we must deduct a certain number of days which are unproductive. Throughout the year there are 52 Sundays there are 26 half days, as Saturdays, which we don't work; there are 9 holidays on which the office will be closed; a vacation of 12 days; and a miscellaneous of 12 days for a total of 111 days. Subtracting that figure from the 365 days in the year we find that the fee-earning days per year are 254. The average number of fee-days per month is 21 and the average number of fee-hours per day on a national average is 6. By that I mean that of 8 hours in your office, you are producing on an average not more than 6 hours out of 8. Therefore, the average number of fee hours per month is 126. In a separate column then, enter the average monthly business overhead, enter the total amount of monthly income the firm lawyers require for all reasonable personal and family needs, total that and divide by 126, representing the number of fee hours per month, and you have the resulting dollars per hour all firm members must produce. Depending then, on whether the firm is operated on a 50-50 partnership, or some other percentage basis, or whether a lawyer in a firm is drawing a salary, the result in dollars that each firm member must produce will have to be divided among the members on the basis of their percentage interest in the firm. As an example, let's compute the overhead and the cost per hour of operating a hypothetical law office. Let's assume the following figures:

Rent	\$100.00
Stenographer	150.00
Telephone	15.00
Stamps and Stationery	15.00
Chamber of Commerce Dues	2.50
Bar Dues	2.00
Library	15.00
Club Dues, etc.	10.00
Legal Listings	2.50
Donations	2.00
Office Depreciation	15.00

which makes a total of \$429.00 for a month's operation. Applying the above formula, we first find that overhead amounts to \$3.40 per hour, which is the minimum figure just to keep the door open with no profit. Now if we assume that the lawyer operating this office desires to draw \$400.00 per month for his personal needs from his operation, we find that the overhead, plus personal and family needs is \$829.00 for the month. On this basis then, the cost of operation is \$6.57 per hour in order to make a \$400.00-per-month profit, or a yearly income of \$4,800.00. The figures in this formula which I have given you are quite accurate and have been used by Bar Associations and text writers in numerous states. For instance, the miscellaneous item of 12 days in the year would take care of activities that you might engage in for the Chamber of Commerce, Service Clubs such as Lions, Rotary, Kiwanis, and various other activities that a lawyer must engage in on a civic basis. Now when this time is computed, it can effectively be used as a basis for determining the fee in the general employment case. Of course the time spent is not the sole criterion, but you must make enough money on each case to at least equalize the time spent, or you will operate at a loss. There are many things that go into the determination of a fee, but first of all the time spent on each individual file must be determined.

Canon Number 12 of the Canons of Professional Ethics sets out some proper considerations in the determination of a fee.

- (1) The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite properly to conduct the cause.
- (2) Whether the acceptance of employment in a particular case will preclude the lawyer's appearance for others in cases likely to arise out of the transaction and in which there is a reasonable expectation that otherwise he would be employed, or will involve the loss of other employment while employed in the particular case, or antagonisms with other clients.
- (3) The customary charges of the Bar for similar services.
- (4) The amount involved in the controversy and the benefit resulting to the client from the services.
- (5) The contingency or the certainty of the compensation.
- (6) The character of employment—whether casual or for an established and constant client.

It is to be noted that these and many other possible conditions go into the matter of fixing a fee, no one of which would suffice in itself. However, as stated at the beginning, it would be impossible to determine any fee unless the lawyer knows with reasonable certainty the amount of time which he spent on the file and what the time cost him on an overhead basis.

Now for the moment, let's look at the comparison of income between the legal profession and the medical profession. According to national surveys, the medical profession has increased their income 126% in the past 20 years. This is a result of a continuous study by the medical profession regarding their services rendered. During the same period of time lawyers have only increased their income 46% which, according to national statistics, is less than the index of the cost-of-living increase. I do not have any figures for the average income of lawyers in Wyoming, since, as far as I know, no survey has ever been conducted. But in many states there have been surveys and as a result of those surveys, the following states list the average income for lawyers as follows. Incomes are net before taxes.

Georgia	\$8,619.00	Texas	6,298.00
Louisiana	7,976.00	California	8,679.00
North Carolina	8,093.00	Minnesota	5,369.00
Illinois	8,326.00	Massachusetts	6,942.00
Michigan	8,306.00	Pennsylvania	8,731.00
Ohio	7,442.00	Kansas	6,369.00
Connecticut	8,532.00	Oregon	6,427.00
New York	9,024.00		

While I realize that there are many lawyers making considerably more than that, that is an average income in the legal profession in those states. I wouldn't be surprised that Wyoming would fall somewhere in the category of Minesota, Kansas, and Louisiana. It might not be a bad idea that the Wyoming State Bar conduct a survey within our boundaries to determine what the average earnings of the lwayers are in this state and if we find that they are not at least on a par with other states we should do something about it.

I would like to draw a comparison between the legal profession and some non-professional classes of employment. For instance, the income of bricklayer is based on an hourly basis and a journeyman-bricklayer, under the present wage scale is entitled to \$3.50 an hour. On that basis he would make \$140.00 for a 40-hour week, or \$560.00 a month, during a four-week month. While I realize that a bricklayer does not have steady employment the year round, if he were to have steady employment, he would be making well over \$6,000.00 a year. There is nothing wrong with a bricklayer making that much money, but there is one thing to consider in comparing a craftsman with a profesional man, namely: that a craftsman is able to earn money during his apprenticeship. To become a lawyer requires at least five years, and probably seven years, in most college curricula today, in

order to get an LL.B. During these years of study, the lawyer has no income. The only money he handles is money which he pays out. This also should be kept in mind in fixing a fee—that a lawyer has spent many hours of study and much money out of his pocket in order to acquire the knowledge necessary to practice. A lawyer is one of the best educated men in any community. As a result of that his social position is such that it requires him to maintain at least a dignified living standard. The net income which he makes from his law office is further depleted by the fact that in the conduct of his daily affairs he must wear clothes that are at least of a quality commensurate with his position. By that I mean he will usually have to wear a dress shirt every day of the week and this necessitates a laundry bill; he will have to buy at least two suits of clothes a year—at least that is my personal experience—and his shoes and all other incidentals to his personal appearance are expensive. On the contrary, a brick mason can work for many days in the same pair of overalls and the same shirt, if necessary. The cost of the overalls is about two dollars to three dollars, ninety-eight cents, and his shirt for about the same price, as against fifty, sixty, and even more for a suit of clothes, usually more, four or five dollars for a shirt, ten to twenty dollars for shoes, and many others items are expensive. The same is true of any other craft and I have taken the bricklayer because he is, of course, the highest paid of the craftsmen; plumbers, carpenters, painters, and various other craftsmen make varying amounts that approximate that of a bricklayer. Common labor makes \$1.81 an hour and that is net. So it appears to me that any lawyer in this state under the present cost of living would be operating at a loss to charge anything less than \$4.00 to \$6.00 per hour for any type of work. He should be entitled to one dollar for his services for every dollar paid out in overhead.

For instance, let's take a look at the drawing of a will. A simple-form will not requiring any trust set-up nor containing a large amount of property, nevertheless, require some time in determining the assets of the testator and what he desires to do with them. It would be difficult in most instances to do this in much less than thirty minutes. Any attorney would have to sit down, make a draft of the will, or if he is familiar enough with it he could dictate it directly to his secretary and she would transcribe it, which, in all probability would take another thirty minutes at least. He would have to call the client to execute the will and this would use up another fifteen minutes at the minimum. Therefore, it appears that it would be highly improbable that most any will could be drawn in less than 1:15 time. In most instances, in the drafting of a will the attorney can save the estate some money by providing that the executor serve without bond. On a time basis, then an attorney would have at least 1½ hours time involved in it. Assuming that it cost him \$6.00 an hour to operate his office he would have \$9.00 worth of time invested in it. So it appears that if the attorney were to charge a fee of \$15.00 for drafting such a will, he would

only be making \$6.00 for an hour and a half's work, or a net of \$4.00 per hour to himself. This doesn't put him on a par for take-home pay with the bricklayer. Remember, the craftsman has social security, employment compensation, and other Governmental help. It would, therefore, appear that a fee of some figure higher than \$15.00 would be necessary in the drafting of a simple will. Considering all the aspects of the case and what might be saved to the client by providing for the executor to serve without bond, the drafting of a simple will would be worth at least \$25.00. The same thing can be said for the preparation of a simple warranty deed on a form. It is necessary to secure the information from the client regarding the description of the property, assuming, of course, that the drafting of a deed does not follow the examination of an abstract of title concerning the property. There would be some discussion regarding the payment of revenue stamps and in all, time consumed would be an approximate half hour; some dictation of the matter would be necessary of the secretary for the deed to be typed. It appears that in the preparation of a simple warranty deed an hour's time can easily be used in a law office and under existing conditions I doubt that any attorney in Wyoming is operating his office on less than \$5.00 an hour. Some attorneys have been charging as little as \$5.00 for the preparation of a warranty deed, so it appears that they are operating at a loss on that item.

Once the overhead is pro-rated and the hourly time determined, it is readily seen that very little work could be done on a basic charge of \$5.00. If an attorney is to realize any profit from his profession, he must at least make enough money over and above the overhead to compensate himself for the time spent in learning his profession.

In conclusion, let me say to you that the fixing of a fee for a client is not a matter to be passed over lightly, but, being the culmination of all the effort in the lawyer's office, it should be given due consideration. Considering all of the items that go into the determination of the fee, as mentioned before, even though the particular work done may seem of a minor nature, it deserves real consideration, before submitting the bill to the client. Minimum fee schedules are a good guide. They should not amount to the maximum chargeable in each instance, but should merely act as an advisory listing of the items which they cover. Each of you has a particular situation in his own office; therefore, mere generalities may or may not be applicable to your particular case. However, I believe that if each of you were to use the formula which I suggested at the opening of this talk, and compute the cost of your time, that you would be somewhat amazed to find how many things you are doing for nothing and allowing the few big fees which you are able to secure during the year to pay for the operation of your office and give you what marginal profit you are able to attain.