# *What Is a Reasonable Legal Fee?*

By Harry Hibschman

The pickings of certain lawyers, favored of fortune and of big business, have been so rich of late as to fill less lucky members of the profession with envy, and the man on the street with resentment. The latter reads, for instance, of such cases as that of Arthur Mullen, attorney and high politico of Nebraska, who demands $175,000 of the PWA for services rendered in connection with two irrigation projects in his home state; he recalls how he himself had first to qualify for home relief before being allowed to earn even $17 weekly; and he asks, what stupendous tasks do these legal moguls perform that their services for a few months' labor are worth more than those of a thousand ordinary citizens? In fact, he may well ask is the time of any man, professional or otherwise, worth such a vast sum?

If, however, the bewildered layman appeals to a lawyer for information, he receives only evasive generalities. For the truth is that of all the mysteries of the law, one of the most profound is that which involves the basis for computing legal compensations. Thus, according to testimony offered recently before the Senate Interstate Commerce Committee by the elusive Hopson and others, scores of the country's most eminent barristers were employed to fight the enactment of the Wheeler-Rayburn utilities bill, and received retainers of from $12,500 to $75,000. The above-mentioned Mullen of Nebraska was paid $25,000, while John W. Davis, erstwhile candidate for the Presidency, was expected to charge more than $50,000 for an opinion that the act was unconstitutional. At about the same time, Mr. Justice Dore of New York City allowed the firm of Hays, Podell, and Schulman and associates $477,773 for their services in a suit of stockholders of the National City Bank and its subsidiary, the National City Company, against a group of directors. This was approximately one-fourth of the amount recovered. So, if the judgment had been twice as much, the lawyers would have been entitled on the same basis to almost $1,000,000, while if the recovery had totaled $100,000, their fee would have been a mere $25,000. Yet the labor performed in either case would have been precisely the same. Now, asks the layman, is there any reason to this?

Of course, there are occasions when a learned judge is called upon to decide what constitutes a reasonable fee, this procedure offering the sole recourse for clients who feel they are being overcharged. As recently as October 23, 1935, Federal Judge Alfred C. Coxe in New York City ruled against "vicarious generosity" with stockholders' money and against payments to a "multiplicity" of lawyers and committees. In his decision, he drastically reduced nearly all claims in the receivership of the Paramount-Publix Corporation. Of the $3,239,828 asked by fifty-three petitioners, including some of the most prominent legal firms in Manhattan, Judge Coxe allowed only $1,026,711, or less than one third. He reduced fees for services from $2,841,031 to $766,426, and expenses from $398,796 to $260,284. Eighteen claims totaling $815,750 were denied entirely. Including $458,029 previously allowed, the total cost of the proceedings amounted to $1,484,739.

Fifty years ago, there was a case somewhat similar to that of the National City

Bank, in which the amount recovered from the trustees of a defunct bank was $115,000, and the plaintiff's attorney was allowed twenty per cent of that amount as his fee; but he had been compelled to prosecute eleven separate actions to earn it. Still more interesting is another New York case of 135 years ago, involving approximately the same sum, in which Alexander Hamilton and Aaron Burr appeared together for the plaintiff. They won, and Hamilton's fee was $1500 and Burr's $2900. Hamilton was then head of the Manhattan bar, yet that fee of $1500 was the highest he ever received.

Fourteen years after Hamilton's death, the exactions of lawyers in New York State had become so onerous, in the opinion of citizens of Ontario County, that the latter petitioned the Legislature. The Senate appointed a committee to consider the grievance, and that committee reported as follows:

> They are constrained to say that they have a strong conviction that the fees of attornies, under the present law, are unreasonable and extravagant; that the labor of attornies bears no relation to the amount; that strong reasons urge upon your committee the necessity of reducing their fees when they are compared with the same amount of labor of other professional gentlemen; that when comparison be made with the mechanic or the farmer, the contrast would go to prove that such disparity could not long be tolerated; that its continuance must depend on the secrecy of the fact or the ignorance or slumbers of the people; that unless those costs are reduced there is reason to apprehend that a great portion of the wealth and its concomitant blessings will be engrossed by the gentlemen of that profession.

It is somewhat difficult at this distant day to see how the existing circumstances justified such strictures, for the law at that time fixed a fee for every legal act, beginning with the modest sum of $3.62½ for a retainer and ending with $3.75 for arguing a case. But there is this to be said in the committee's favor — they had definite ideas regarding standards. What was fair pay for the blacksmith or the farmer should be fair pay for the man of law.

But this is not the standard adopted by lawyers and judges today. As to what that standard is supposed to be, the editors of *Corpus Juris*, the most stupendous legal commentary ever printed, could not formulate the rule more specifically than in these words:

> The amount of an attorney's compensation, when not fixed by the terms of his contract with his client, is measured by the reasonable value of the services rendered, not by what the attorney thinks is reasonable, but by the price usually paid to the profession for such services. No regular measure of value can be fixed.

But that leaves the matter as much of a riddle as ever. If reasonableness is to be determined "by the price usually paid to the profession for such services", then it becomes necessary to find out what is "the price usually paid"; and the difficulty here is that there are no prevailing scales. In fact it is extremely difficult to ascertain what lawyers are in the habit of charging, and it is only when they testify in behalf of some brother suing for a fee, or argue for an allowance in their own behalf, that they reveal the rules by which they profess to be governed.

It may be noted that little light comes from criminal cases, first, because the information about the fees is hard to obtain, and, second, because there are virtually no instances in which the courts have been called upon to fix fees, the Hauptmann case, in which Edward J. Reilly is seeking to recover $25,000, being an exception.

Although John B. Stanchfield is said to

have received $800,000 some twenty years ago to defend August Heinze, the Montana copper king, against a charge of misappropriation of funds of the Mercantile National Bank, and Max Steuer is reputed to receive a minimum trial fee of $1000 a day, Delphin M. Delmas traveled from San Francisco to New York to defend Harry K. Thaw for the sum of $25,000. Clarence Darrow received $100,000 in the Loeb-Leopold case, yet there were many years when his total income was not more than a tenth of that. Earl Rogers, the Los Angeles criminal lawyer of a decade or two ago, averaged only $100,000 a year. The writer himself once defended and cleared a prisoner charged with attempted murder, and received for his services $50 and a shoulder of venison.

Seeking an instance in which the reasonableness of a fee was judicially determined, it would be difficult to find one more perplexing than that of the late Charles L. Craig against the City of New York for services rendered in litigation with the Interborough Rapid Transit Company over the five-cent fare. As comptroller, Craig had been happy to serve the city for a number of years at an annual salary of $25,000; but for his services as the city's special counsel he demanded $350,000 for eighteen months' work. The city rejected his claim and he brought suit. Among the witnesses for Craig was the eminent New York lawyer, Martin Saxe, who testified that the former's services were worth, for elements other than "time and labor", $100,000, to which he added $1000 a day for the 200 days when Craig said he had worked as much as fourteen hours a day, $500 each for 218 days when he worked merely a normal number of hours, and $250 each for 137 days while just "standing by", making a total of $443,250. Edmund L. Mooney, also testifying for Craig, said the latter was entitled to $1500 a day for 171 days — the "long" days — and $750 a day for 125 normal days, or a total of $350,250. For the city, former Justice Jeremiah T. Mahoney testified that Craig's services were worth not more than $75-000. Justice Edward J. Glennon, who had the task of reconciling this conflicting testimony, gave Craig judgment for $125,000. Craig appealed, but the Appellate Division of the Supreme Court decided that Justice Glennon had allowed him all that he was entitled to; and that sum is what he received, plus interest and costs.

Another fee to puzzle the layman is the one allowed Martin Conboy for advising Franklin D. Roosevelt when, as Governor of New York, the latter had before him the removal proceedings against James J. Walker as Mayor of New York City. Conboy was retained by Roosevelt as special counsel and was brought into the case on June 13, 1932. Walker resigned on September 1. All told, therefore, the number of days devoted to the case by Conboy was only eighty. During this time he studied the record, attended twelve hearings, and gave the Governor the benefit of his advice. And for this he received $25,000 from New York City. Roosevelt received that amount annually for serving the state as its Chief Executive, and Conboy soon afterwards accepted the position of United States District Attorney in New York City at a salary of a mere $10,000 a year.

What the United States Supreme Court considers a reasonable fee may be gathered from a decision rendered in a case growing out of the misadventures of the Oklahoma Indian, Jackson Barnett, who by the grace of God and a liberal flow of oil on his allotted lands became a millionaire. Barnett had been adjudged incompetent and a guardian appointed by an Okla-

homa court. But, having been inveigled into matrimony and out of the jurisdiction of the Oklahoma courts by a clever white woman, he was induced to part with securities worth over $1,000,000. His guardian thereupon brought suit in the Federal Court of the Southern District of New York for a return of the securities. The guardian won, and then arose the question of the amount to be allowed his attorneys. The district court judge set it at $184,881.08. But the federal government was dissatisfied, and appealed to the Circuit Court of Appeals, where the amount was reduced to $100,000. Still not satisfied, the government carried the case to the Supreme Court, and that august body held that $50,000 was sufficient. In the face of these facts, where can a bewildered layman, or a groping lawyer, look for guidance?

Nowhere, however, is the lack of a dependable measure for determining fees more apparent than in receivership and bankruptcy cases. In a recent proceeding before Judge John P. Nields of the United States District Court at Wilmington, Delaware, His Honor shaved nearly seventy-five per cent off the sums asked by the trustees for the National Department Stores and their attorneys, and he reduced the claim of Jacob S. Demov of New York City, associate counsel for the trustees, from $295,000 to $35,000, pointing out that he had already been paid $25,000, and that on a basis of $30,000 a year, which should be ample, the sum mentioned would compensate him for his work, covering two years.

More lucrative than receiverships and bankruptcies are will contests and litigation over estates. Many a barrister has become financially independent by some lucky turn that brought him a client with a claim to the estate of a wealthy decedent. In the Jay Gould estate, for instance, the total amount allowed the lawyers was $2,703,635. Of this sum, Leonard and Walker, attorneys for Frank Jay Gould, received $580,315, while Judge Samuel Seabury, as counsel for the same gentleman, received $529,999. William Nelson Cromwell and associates were tendered $569,-864, and the Coudert brothers, $151,909. In the Henry B. Plant will case, William D. Guthrie was allowed $800,000; and in the Commodore Vanderbilt will case, Henry L. Clinton received $400,000.

One of the most searching inquiries into the subject of fees was conducted by Judge Otis of the United States District Court at Kansas City in the Loose will case. The question at issue was the validity of a provision in the will of Harry Wilson Loose establishing a charitable trust, valued at $4,000,000. Nine relatives attacked this provision, but the court sustained it. Following this litigation, Judge Otis was called upon to determine what compensation should be allowed the numerous attorneys. The judge appointed a committee of three prominent lawyers. The total asked was $150,000. The total recommended by the committee was $40,000.

But Judge Otis still had different views. He decided that four firms were entitled to be paid out of the funds of the estate, and to them he awarded $34,000, $20,000, $2000, and $1000, respectively. In support of his conclusions he wrote an elaborate opinion. Referring to the contention that the time devoted to a case by an attorney must be considered, Judge Otis said: "In that connection, one must consider also what time was reasonably necessary for the services rendered." In other words, the question is not how much time the particular lawyer spent on the case, but how much it would have been necessary for a competent lawyer to devote to it.

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## *Report on Rugged Proletarianism*

By Ernest Boyd

THE GREAT TRADITION, by Granville Hicks. $2. 6 x 9; 340 pp. New York: *Macmillan.*

PROLETARIAN LITERATURE IN THE UNITED STATES: AN ANTHOLOGY. Edited by Granville Hicks and others. $2.50. 5¾ x 8½; 384 pp. New York: *International Publishers.*

FROM THE KINGDOM OF NECESSITY, by Isidor Schneider. $2.50. 5¾ x 8½; 450 pp. New York: *Putnam's.*

A SIGN FOR CAIN, by Grace Lumpkin. $2.50. 5⅛ x 7¾; 276 pp. New York: *Lee Furman.*

MARCHING! MARCHING! by Clara Weatherwax. $1.90. 5¾ x 8½; 256 pp. New York: *John Day Company.*

When Mr. Granville Hicks first issued *The Great Tradition*, of which this is a revised edition, Mr. John Strachey declared that "the American revolutionary movement has just had the signal good fortune to have been endowed with a large-scale work of literary criticism from a fully Marxist writer", from which we may safely conclude that Comrade Hicks is obediently toeing the party line in his "interpretation of American literature since the Civil War", to quote his subtitle. So that one reads the book to discover precisely what bright light a "fully Marxist" critic can throw upon the subject. It turns out to be the light of a strange confusion, for the implication is that the great tradition of American literature is a revolutionary one. "Ours has been a critical literature, critical of greed, cowardice, and meanness. It has been a hopeful literature, touched again and again with a passion for brotherhood, justice, and intellectual honesty," Mr. Hicks explains — though it is difficult to conceive of a literature in Christendom of which this could not be said. Such characteristics are neither peculiar to American nor any other literature, and cannot, therefore, be said to constitute its specific tradition. Nor is that tradition in any of the world's literatures the inevitable precursor of what the author and his fellow-Marxists mean by proletarian. Some inkling of this obvious thought apparently occurred to Mr. Hicks, for he added: "That the writers of the past could not have conceived of the revolutionary literature of today and would, perhaps, repudiate it if they were alive, makes no difference." By starting out with this false premise of a tradition of protest as being an essential and indispensable part of American literature, the author, of course, finds himself at every turn criticizing or dismissing writers who failed to be what they were, not because they neglected to live up to his arbitrary test of excellence or merit.

Furthermore, while great literature has frequently criticized greed and has often been touched with a passion for justice, there has been great literature wholly unconcerned with these subjects. Still this book insists, in every chapter but the last, that American writers have fallen short of such a proletarian ideal. But if one compares even the contemporary figures whom