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TWELVE STEPS TO PROSPERITY

An address delivered at the 1959 Annual Convention of the Colorado Bar Association by Philip S. Habermann, Executive Director, State Bar of Wisconsin

The moral for today's message is, "The gods help them who help themselves." The source of that quotation is Aesop's Fables, 550 B.C., and that is about as far back as you can go for authority. This proverb is as timely today as then, and the point of all this is that if we lawyers want to improve our economic situation, we have to stop sitting on our hands and get busy helping ourselves.

The first thing to do is to stop feeling sorry for ourselves and envying the doctors. Any troubles we have are due largely to our own neglect. I haven't seen any starving lawyers, but as a profession we have fallen far behind economically. For the training you have and for the time expended, lawyers are reasonably entitled to a substantially improved economic picture, and without having to work a 60-hour week to get it. It is incongruous that the bar, educated and trained better than ever before, is suffering from inflation in the midst of the greatest prosperity for others that this country has ever known.

Secondly, you must establish a definite goal or objective. It is my opinion that with reasonable but concerted effort, individually and as an organized bar, you can achieve a 10% a year increase in lawyers' incomes for the next ten years. That is a fair goal, and one that would regain the ground lost since 1929.

How do you go about it? What can you do? For that, I suggest a 12 point program. Some of it is up to you individually. Some of it must be done by your organized bar. But if you all set your sights on this goal, and all work at it year in and year out, you can't fail. And it takes work, not money, to reach this goal.

These 12 steps are nothing new. Some of them you may now be doing. Collectively, the results achievable are distinctly worthwhile. But remember, you have to set your sights on a goal of some sort.

1. *Fee Schedule*

First, you have to have a realistic schedule of charges, preferably in the form of a minimum fee schedule. More than that, you have to live up to it, and see that the chiselers don't under-cut you.

Now I am not going to recite all the platitudes about law being a profession and not a trade, that it is a way of life and not to riches, et cetera. Furthermore, I assume that you all know the provisions of Canon 12 setting forth the elements on which legal fees are to be based.

I am assuming that you all are familiar with all of that, and that what you really seek is a workable, realistic basis on which you can render your services for an adequate fee that will afford you the living your training and profession merits. This fee must recognize that the legal profession has no call upon the general public for its support and sustenance unless it performs a satisfactory and useful service.

You all know that your law income comes from four types of work:

- 1) The contingent fee cases
- 2) The retainer contracts
- 3) The standard-price jobs, such as probate, and
- 4) The vast variety of work where you are entitled to a professional fee based on time and the other elements involved.

Now no minimum fee schedule will solve all your problems, but it will greatly standarize and up-grade your charges for all of these classes of work and particularly for the set-fee jobs. If properly drafted, it will give the attorney the basis on which to charge and justify the charge if need be.

Let me emphasize that to be really effective your fee schedule must go into considerable detail on individual items, and must cover most items. Moreover, you probably need to abandon an ill-conceived concept of fee development. Most fee schedules need a new look. All too often we have been guided by

- 1) An ignorance of our income requirements
- 2) A guess as to the client's ability to pay, and
- 3) A fear of what the competition is likely to charge.

No wonder lawyers are hesitant when asked what their fees are and defensive when they state them!

I know that we could debate fees and charges and fee schedules for at least a week. The point is that *every* lawyer has to be made to realize that the day of the \$5.00 will is long-gone. A lawyer is entitled to a professional fee, not just an hourly charge, and he is entitled to have his brother lawyer's support in charging it. A fee schedule that properly reflects today's high office overhead and will produce an adequate fee to yield a professional man's income will go a long way towards offsetting the effect of inflation on the practice of law.

Lawyers stood still while the others moved on ahead. Do you realize that the day of the \$10,000 a year craftsman is nearly here, if not here now? I'll venture that in Denver there are tradesmen—plumbers, bricklayers or electricians—that draw \$4.50 an hour in pay and fringe benefits. Without overtime, that is \$9,000 a year! And believe me, those boys aren't around apologizing for what they charge. They are proud of it.

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I am personally convinced that the promulgation and enforcement of an advisory schedule of minimum fees *will do more than any other single thing to improve your income.*

Enforcement is a problem, of course. It takes some "selling", both inside and outside of the profession. For the consistent under-cutter, you should apply ethical sanctions.

2. Cost Accounting

The second step is to apply the basic elements of cost accounting to the law office. This is directly related to the setting of realistic charges and the keeping of adequate time records, about which you have all heard recently.

To date, lawyers have ignored the obvious fact that no business can operate effectively unless it knows its cost of doing business. The gasoline station and the grocery store on the corner know exactly what their products cost, what their overhead is, and what mark-up they must add to make a living. But do you know what it costs you to draw a will or probate an estate? Do you make or lose money on your contingent fee cases? Do you even know what it costs per hour or day to keep your office open? What is your annual operating cost before there is one cent for your pocket? It is easy to find out.

This is directly related to fee charges. You simply have to recover your costs plus whatever amount you are to have for yourself, on the average, for all the work you do. If you don't, you'll go broke.

If you want to take home \$14,000 a year, and your overhead is \$6,000, then you have to average \$16.67 an hour for the 1200 hours a year that you can charge up to a client. That 1200 hour figure is about all the charge hours the average lawyer can produce in a year.

Now I want to emphasize and re-emphasize two things:

- 1) Probably 50% of all Colorado lawyers are *not now* keeping time records. Don't be frightened about them. It is not complicated.
- 2) I am *not* advocating time records so that you can charge for all your work on the basis of the time spent. I am emphasizing the absolute necessity, however, of knowing how much time you put in on every matter and on every part of your practice. Until you know this, you are simply flying blind. And time is certainly an essential factor in setting a fee in a non-standard job.
- 3) If you don't recover your costs, you are:
 - a) Running a discount house, or
 - b) Taking too many uneconomic cases, or
 - c) Just plain inefficient; or all three!

What I am trying to say is that you have to *know your cost of doing business*, and you *have to keep time records* to know what your various types of work are producing. And the *time and costs must* be reflected in your fee charges.

3. Specialization

I believe that specialization of lawyers is going to come soon, and we should begin now to get ready for it. The medical world is

split into dozens of specialties and anything serious requires the attention of at least two, and often more, of the doctors. It isn't only that this results in more income, but it results in more efficiency, and our public will pay for what they get.

If we have to have a cerebral operation on a loved one, we are not going to encourage the diagnostician to do it himself. And we are willing to pay for skills. The skilled trial lawyer in tackling an anti-trust case, or an SEC registration or a complex tax case is getting into a job like the cerebral operation, and so is the tax practitioner who would attempt to try a negligence case. Yet such is done every day all over Colorado.

The statistics show that among the lawyers the greater rewards go to the individual in proportion to the size of his firm. The people in the larger firms are not necessarily smarter, but everyone knows they do specialize informally. Within a large office several men do little else in their whole lives but taxes. One man lives happily among his bond indentures. Other men do real estate, while another team handles bank work, and so on. Could that not be the reason in large part for the universally better financial yields of firm members, compared to individual practitioners?

The American Bar Association now frowns on specialization, I know. That means we cannot put a specialty on our cards or doors or stationery without violating the solicitation or advertising canon. There is some current agitation to change that. The firms and attorneys I have described don't violate these rules. They just assign work that way, and get the results.

No breaking down of the rule is here advocated, as long as the admission to the specialty is self-judged. The abuses and the varieties of specialization would run away at a gallop.

But every medical specialty has to be recognized by the American Medical Association first, and then has its own academy for making examinations and admissions.

When the individual and small firm lawyers want to measure up in income to the doctors or even to their brethren in the large firms, let them move on the American Bar Association with a program, not just to permit specialties on the letterheads or calling cards, but to establish standards of admission to the specialties. Then the specialization will mean something worthwhile for the

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public and the lawyer will be worthy to demand the corresponding rewards; and quite likely will receive them.

4. *Modernization of Law Offices*

Lawyers must give more attention to their law offices. Not only is a comfortable, attractive and efficient office an aid to doing better work, but more important, it impresses the client.

You can't work at top efficiency in physical surroundings which are inconvenient or distracting. Inadequate lighting, inadequate ventilation, noise, the "few extra steps" per day that an improper layout entails, all take their toll in time and money. A properly designed office means greater economy of operation, increased productivity for lawyer and staff, and creates for the client a welcome impression of stability, prosperity and know-how.

Certain features are common to all well-planned offices, such as clean aisles and corridors for easy access to every part of the office, work areas of adequate size and equipment and reference materials readily accessible to the personnel. In larger firms, some centralization of facilities in mutually convenient locations will be necessary and appropriate.

Additional features include secretarial and other work stations separated from reception areas and shielded from the main stream of office traffic. If a secretary doubles as receptionist, give her privacy so that she may carry on her duties without unnecessary interruption from waiting clients or disturbance to them. Privacy for the lawyer is an obvious necessity and his office ought to be adequately soundproofed.

With space at a premium, the large private office is a luxury few can afford. Scale your offices to accommodate only the number of people with whom you usually confer and avoid the expense of seldom utilized space.

An area may be designed as a conference room to accommodate larger groups. Since such a room often houses library facilities, folding partitions may be installed to permit library work to continue in one part while conferences are in progress in the other.

Every consideration should be given to making the lawyer's office a comfortable place for himself and his staff, since he spends approximately one-third of his time there. Air conditioning equipment will prove a worthwhile investment. Similarly, adequate heating and ventilation, and adequate lighting are absolute necessities. Posture chairs for secretarial workers and comfortable seating for the lawyer are great aids to productivity.

There is an increasing trend toward the construction of professional buildings for occupancy by one or more lawyers as well as toward modern redesign and refurnishing of existing quarters. All of the Wisconsin lawyers who have built their own offices, without exception have said: "Why did I wait so long!" The effect on their practice is far beyond their expectations. Most important, they now have ample parking for themselves and their clients. Today that is very important.

An attractive office brings business and is an asset which no

lawyer can afford to ignore. It reflects credit upon his professional position and his business abilities.

5. *Mechanization and Equipment*

We must strive to decrease overhead costs. One of the most effective means is to make ourselves and our offices and staffs more efficient through the installation of modern equipment and machinery. These include such obvious items of modern equipment as:

1. electric typewriters
2. electric dictating equipment
3. copying machines
4. electrical duplicating equipment
5. tape recorders
6. telephone or intercom systems
7. modern filing equipment

I will not dwell extensively on these pieces of equipment now, for most of you have received the detailed booklet issued by the American Bar Association Special Committee on Economics of the Bar entitled "Modern Equipment Makes the Lawyer Money." I urge you to read it carefully, for it is going to put dollars in your pockets.

Suffice it to say that I do not understand how any law office can operate in this day and age without a good copying machine both for copying and as an aid in drafting. The obvious advantages of electric typewriters and dictating equipment are many, but this is fully covered in the booklet just mentioned.

6. *Forms of Doing Business*

Over and over surveys show conclusively that the lawyers practicing in partnerships make more money than those practicing alone. Whether this is because the better lawyers tend to form partnerships, or that partnerships are more efficient, can be argued. I suspect that it is a bit of both, but there is no doubt about the efficiency angle.

The facts and figures are rather amazing. As you might suspect, more than one-half of the lawyers practice alone. Yet the earnings of lawyers increase substantially after they organize into firms. Lawyers having one partner make over one-third more than lawyers practicing solo make. Lawyers with two partners make nearly twice as much as lone practitioners. Lawyers with three partners make

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more than twice as much as the lone practitioners; and lawyers in firms with four to seven partners make nearly three times as much.

Now don't think if you run out and get yourself six partners your financial problems are solved. The point is that *the figures do conclusively show lawyers do better financially with a partner than without one.* There are a number of sound reasons for this. Moreover, partnership income is almost always more stable than that of the solo lawyer.

There are many advantages other than financial in having at least one partner. These include the ability to handle matters for clients more promptly, especially during the absence of one of the partners for vacations, illness, or work in court. Very important is the advantage of being able to discuss the problems as they arise from day to day with your partners. Two or three or four heads are definitely better than one. Teamwork is always inspiring for the best efforts.

And then, there is the matter of specialization which I mentioned before. Even in the smallest of partnerships you can have a fair and equitable division of work which is in a sense specialization. In the four and five man partnerships or larger this can be worked out to great advantage for both lawyer and client.

Of course, there are some disadvantages in a law partnership. Most of the reluctance comes from a spirit of independence and a fear that the other partner or partners will get a greater benefit out of the arrangement and that it will not work out evenly. But you know better than I do that a partnership is not necessarily a 50-50 proposition. There are many alternative arrangements which are eminently fair to each of the partners as to division of net income and responsibility. You can tailor up just about any sort of an agreement you want. All sorts of variations of partnerships are in use in one form or the other all over the country. The thing to emphasize is that *the advantages of law partnerships are real and the disadvantages can be greatly minimized by sensibly drafted, flexible partnership agreements, carefully thought out and agreed upon to fit the needs of the two or three or four men involved.*

Within the next few months there will be distributed by the Committee on Economics of the Bar of the American Bar Association to every member of the ABA a splendid booklet on law office partnerships. The initial draft is being prepared by Paul Carrington of Dallas, and is based upon his broad experience in this field and upon more than 100 examples of law office partnership agreements recently procured from leading law offices throughout the country. This booklet will be invaluable and I urge you to pay great attention to its recommendations.

7. Office Systems.

Days could be spent on the subject of office systems alone. That includes your staff organization, your accounting system, your filing system, your personnel plan and all of the things surrounding you which help you practice law. All I will do is try to emphasize a few points.

First, it is essential that you *have an orderly system of some sort*. Don't make it too complicated.

Second, remember that *any good system is based upon the principle of intelligent laziness*. This principle tells us to *do a thing once, to do it completely, and then not bother with it any more*.

Obviously, the basic system in your office should be built around functions and not individuals. People come and go but the system should continue on and on.

It is essential that you have an adequate accounting system. This is especially true because of the trust accounts that a lawyer handles and the necessity of keeping accurate records for both the clients records and the lawyer's own purposes. Yet you would be astounded at the inadequate and antiquated systems, which are usually homemade systems, now in use by many lawyers.

Of course, the accounting system should tie in very closely with the office record system, and should produce the figures needed to reflect the cost accounting data I mentioned before. Not only will an efficient accounting system reduce the amount of copying work and bookkeeping required, but it will pay big dividends to you in prompt collections and more adequate records for your income tax purposes. Furthermore, it will show you whether you are operating efficiently.

Time does not permit discussion of an adequate filing system, a tickler file, office memorandum and opinion file and the like. Again, there are many good, simple recommended systems, such as that set forth in the "Practical Lawyer" of November, 1956. Just be sure that you understand your system, that it is simple and workable, that it will produce what you want when you want it, and that it can grow.

Even the smallest office has need for an office manual containing some of the personnel policies, rules and regulations.

You can also save considerable time and effort from your own work and spend less hours per task if you will routinize and standardize to the maximum extent. This means that you must preserve your best efforts in the form of opinions, memorandums and drafts so that you can copy from them. You must use "boiler plate" or standard clauses in drafting wills, corporate charters and other documents. You must prepare and use adequate check lists to cut down your time and effort. You can use your copy machine as an aid in drafting. All of these things make you more efficient per-

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sonally, which means that you come up with more legal fees at the end of the week.

Remember, improved efficiency is one certain way of increasing your net income. Modernized office procedures and systems are a sure-fire way to improve your office efficiency. Organize your office so that you can delegate to your stenographer or subordinate those things that you can not afford to do yourself, like bookkeeping, filing, answering the telephone and a lot of other things. And don't forget *the principle of intelligent laziness: do it once, do it right, and then don't bother about it any more.*

8. *Post-Graduate Lawyer Training*

Both your state bar and your local bar associations have an important and expanding job in the field of post-graduate legal education. This program is directed primarily at refresher courses for the practicing lawyer and to give him the "how to do it" aspects of the law practice. This will better equip the lawyer and enable him to do the job more speedily.

In all of this your law schools will cooperate, but the post-graduate legal training is primarily a responsibility of the organized bar. I recognize that you have a problem in a state where you have vast distances and a widely scattered lawyer population. Yet it is something that is so worth doing that I am certain an expanded program, at a high level of instruction, will meet with such a response that the bar will fully support the undertaking. For example, try a series of Saturday law forums during the winter and spring, emphasizing practical law problems. The goal should be to make these post-graduate institutes so useful and so instructive that no lawyer dares to stay away.

As a corollary to this, I might suggest that the bar should establish liaison with your law schools, to insist that the law schools carry something on their curricula in the field of legal economics and office management. You may also desire to argue for certain practice courses, and for more selective entrance requirements to the law school. We hear repeatedly that there are too many people being admitted to the bar who aren't capable of being good lawyers and not enough people being admitted who will be good lawyers. This is a problem of the bar as well as of the law schools.

The need for better post-graduate and regular legal education is a corollary to our efforts to stamp out unauthorized practice of law and prevent encroachment. We need better post-graduate and regular legal education so that we are *in fact* better equipped to do the job than are the lay people accused of unauthorized practice. I am ashamed to say that this isn't always so.

9. *Unauthorized Practice of Law*

It is trite to say "we must be vigilant and militant to uncover and stamp out the unauthorized practice of law." It has been, is and will be a problem and I don't know of a better way of putting it.

Lawyers have slept at the switch while lay persons of every description encroached on our legal practice. We have been too tolerant, too easy going, and too busy to do anything about these poachers.

Let some fellow cut his poor neighbor's kids' hair and charge 50¢ for it, and the state barber inspector will haul him into court pronto. The court will fine him \$50.00 for barbering without a license and the public applauds. The worst that could happen would be a kid with a lousy haircut which would grow out in three weeks. Yet if some notary draws a will and charges \$5.00 for it, we are apt to shrug it off as not too important, even though he botches the job and some poor guy loses an inheritance.

We must also disabuse people of the erroneous impression that it is perfectly all right for a layman to do legal work so long as he makes no charge for it. Legal work is legal work, whether for free or for a charge. This is a strange attitude, too, for no one would ever claim it okay for a non-doctor to operate or a non-dentist to make false teeth so long as they didn't charge.

My plea is this: support your committee on unauthorized practice of law, both financially and in spirit. Hire a special investigator, if you can, to police the situation. Enlist the active assistance of your state attorney general and your county attorneys. Don't yield another inch to lay agencies. Try to regain some of the practice you have lost. And most of all, educate every member of your bar to the problem and end the complacency that is too often found. Here is one case where "what you don't know" *will* hurt you!

Your bar association must play a part here. It should encourage the reporting of instances of unauthorized practice, and work out treaties with other groups and then enforce them.

10. *Stronger Bar Associations*

I know it is not necessary for me to urge upon you the importance of stronger bar associations. Certainly if we are to have higher professional standards and a stronger profession we must have and will have stronger and more active bar associations. What lawyers pay in dues to their own professional organizations is peanuts compared to what many other groups pay. But if we *can* improve the lawyer's economic status, he can and will pay higher dues, and gladly.

Since your state association can be no stronger than the sum total of your local associations, I urge you to place special emphasis on encouraging more activity at the local bar level. That is where law is practiced, and where the problems arise. If the local bar associations are well organized and active, the state association is

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all the more effective and able to do the things that it must do to increase the professional status of the lawyer, and his economic position as well.

Your state bar should encourage the activity of your special committee on economics of law practice. It should actively search for new methods of helping the lawyer in his practice—to “look for the better mousetrap.” It should encourage and finance experiments in the preparation and development of new techniques. More important, it should disseminate and recommend to every lawyer these important findings and developments.

11. *Public Relations*

You all appreciate the importance of good, continuous public relations efforts on behalf of the organized bar as well as the individual lawyer. I am not going to dwell upon the general aspects of it at this time. Good public relations are essential to a prosperous, well-governed bar, and I know that you are and have been working in this field.

There are three specific aspects of public relations which can and should be emphasized. These will be especially important in increasing the economic well-being of the lawyers.

The first is some sort of *client security fund*. This is a “hot potato” and in fact, my own Wisconsin bar turned the matter down last summer. Nevertheless, like many new ideas of merit, this one is going to catch hold in some form or other and within the next decade most bar associations will afford to the public some sort of guarantee that any client who suffers a pecuniary loss by a dishonest lawyer will be reimbursed. Several states now have a plan. Others are actively considering some type of program now. At least, keep an open mind on the matter and see what develops, how much it costs and what the results are. It can be a wonderful public relations tool.

The second is to place greater emphasis on *preventive law*. Largely this is a matter of educating the public to the matter of legal service. The medical and dental professions have done it with scare techniques and “see your dentist once a year” programs. We lawyers must give extra emphasis to bar association efforts in conducting newspaper columns, public forums, law-in-the-high-school courses, and the like which educate the people to be aware of their legal problems and the fact that a solution is readily available. This preventive law program is a “natural” for any bar public relations program, and it will pay big dividends. Particularly I urge you to concentrate your efforts on the high school courses, the farm groups and the women. They are the most receptive to this sort of public relations.

Third, and this is somewhat tied in with preventive law, the idea of the “*annual legal check-up*,” pioneered by the Michigan Bar, should be considered. With some modifications and adaptations to your local bar needs, this idea can do a great deal to make clients and friends for the legal profession, as well as to materially assist the public.

Enough for public relations. But remember, you must all work on it, all the time!

12. *Selling the Client*

The good client is a happy client. Yet far too many lawyers are complete washouts in their relations with clients. Probably more otherwise intelligent lawyers are economic failures because of a lack of understanding of psychology than for any other single reason. This is no place for a lecture on client psychology, motivation, and manners, but I recommend that on some bar program you have somebody really lay it on the line for you on this subject.

For now, I will point out several things that you should keep in mind. Try to apply them every day with every client.

1. *Talk English.* Let the client know what is going on and what is going to happen. Answer his questions and spend enough time at the first conference to be sure that the client understands what the case is about, what the probabilities are, and perhaps something about what it will cost him.

2. *Practice law in your office.* Make your office your workshop, and not your home, the court house, or the country club. It gives you professional dignity, and that is where your working tools and facilities are.

3. *Let the client know that you are working.* The biggest single complaint about lawyers is that they "are so darned slow." One of the reasons for this is that, while many legal matters necessarily take a long time, lawyers do not keep their clients advised as to what work they are doing, how it is progressing, and what is going on. This can easily be done by an occasional letter, or copies of appropriate pleadings, correspondence, and the like.

4. *Mention expense.* If not done at the initial conference, be sure that at some point your client understands his responsibility for costs and disbursements, as well as for legal fees. That softens the impact and makes the final bill more understandable.

5. *Make court appearances easier.* Remember, most clients are scared to death of going to court. They are paralyzed on the witness stand, and fearful of being torn apart by the opposing counsel.

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Spend a little time telling them what will happen, how to act, and give them some reassurance.

6. *Develop a genuine interest.* To the client, his lawsuit is of No. 1 importance. He likes to think that it is equally important to you.

7. *Prompt billing.* Again, this is the subject for an entire talk, which I recommend highly. The hardest working lawyer in Colorado will go broke if he doesn't bill and collect his fees. *Prompt billing and proper billing* are essential ingredients in keeping clients happy. In some cases, partial billings during the course of the matter are advisable. In any case, use common sense and some detail and psychology in writing your bill, or otherwise you may win the lawsuit and collect your fee but lose a client forever.

Conclusion

Let me conclude by repeating what Aesop said in 550 B.C.—“The gods help them who help themselves.”

Twelve ways that you can help yourselves are:

1. Minimum fee schedules, adopted and lived up to.
2. Application of cost accounting principles to the law office.
3. Specialization of lawyers.
4. Modernization of law offices.
5. Mechanization and better equipment.
6. Organization of law partnerships.
7. Improved office systems.
8. Increased post-graduate legal training.
9. Reducing the unauthorized practice of law.
10. Stronger local and state bar associations.
11. New fields of public relations.
12. Sell the clients and keep them happy.

You can't do all of these things all at once. But you need a program and a goal and if you set the goal and all work on it, I predict that in ten years (if not before) your net income can be doubled. And if you must pick *one* point to start on, and if I can do no more than convince you to begin to keep time and cost records now, you are off to a good start.

I am only sorry that I can't leave with you some single, tangible solution that will put you on easy street overnight. Instead, I'll have to console you by quoting that famous saying, “half the fun is in the chase.”