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The October Meeting

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The Matter of Minimum-Fee Schedules is Discussed

A packed house at a dollar a plate, on October fifth, proved beyond the peradventure of a doubt that the proposed schedule of Advisory Minimum Fees was a subject of vital interest to the profession, and, likewise, the irresistible appeal of Messrs. Hickman Walker and Luke Kavanaugh as headliners on the program.

An imposing array of newly-admitted members of the Colorado Bar, honor guests of the Association and each one decorated with a pink carnation in his buttonhole, lent color to the occasion and a certain amount of refreshing naivete to the atmosphere.

President James A. Marsh, who presided at the meeting, first read a letter of inquiry concerning the whereabouts of a former member of the Denver Bar, Mr. G. Harry Smith, who it seems is being sought by relatives. He then introduced Judge Van Fossan, of the Federal Court of Tax Appeals, which court was sitting in Denver at the time of the meeting.

Steele Offers Resolution on Judicial Salaries

Mr. George Steele was recognized by the president and then offered a resolution approving and recommending the proposed amendment to the constitution of Colorado restoring to the legislature the power and duty to fix the compensation of Supreme Court and District Court judges. The resolution set forth that, as a result of the present constitutional provision establishing judicial salaries at a fixed sum, judges in this state were the only ones whose compensation was the same now as it had been in 1883; that there had been an horizontal increase in the cost of living since 1915 and that the purchasing power of the dollar was now less than 65% of that of 1883; that economic changes have caused a reduction in the compensation of judges; and that no increase in taxation would be necessary in order to provide for adequate salaries under the proposed plan. The resolution also authorized the president to appoint twenty-five additional members of the Association to make known to the people the nature of the proposed constitutional amendment and the necessity for it. Mr. Steele's resolution, seconded by Mr. Morris, was then unanimously adopted by vote of the meeting.

President Marsh Speaks to the Young Lawyers

The meeting, President Marsh declared, was a tribute to the newly-admitted members of the Colorado Bar, and he welcomed them heartily in the name of the Association. The officers of the Association, he said, had met with the Supreme Court judges to arrange for the occasion and they had asked Chief Justice Allen if he thought the recruits would be interested in the matter of minimum fees. Judge Allen had replied that they would be interested in most any kind of fees. Money, Mr. Marsh said was a very interesting subject to everyone; it gave different results on different occasions; and to illustrate the point he told a story of a witness who testified in a bribery case to the effect that he had received $25.00 for voting from the Republicans and at the same time $25.00 from the Democrats. On cross-examination, he was asked how he did vote, to which he haughtily

replied that he had voted according to the dictates of his own conscience. Mr. Marsh then referred to the able and exhaustive remarks of the Chief Justice at the ceremonies attending the admission of the candidates and said that in his opinion it was the ablest opinion the Chief Justice had ever delivered. He had wondered, he said, how Judge Allen had acquired such a vast fund of information, and the explanation given by the Judge was, that he got it all from the young lawyers. The president of Harvard University had, he said, in a similar manner explained the wonderful reservoir of information and fund of knowledge in that institution, by saying that all the Freshmen brought a little knowledge with them and the graduates when they graduated carried none away, therefore, it gradually accumulated.

Money Indispensable

Money, Mr. Marsh declared, was an indispensable requisite to existence, but the practice of law had a higher purpose than this, and the most unfortunate person in the world was he whose only job was to stand guard over a money chest. He urged the newly admitted lawyers to do something for others, which, he said, paid generously in dividends; and quoted at some length from an eminent author, who said: 'the lawyer supports and defends the accused and oppressed; he maintains the cause of the poor and friendless; he succours those that are ready to perish; he counsels the ignorant, he guides and saves those who are wandering and out of the way, and when "he has run his course and sleeps in blessings," his bones "have a tomb of orphans' tears wept on them." How much untold good is done by an honest, wise and generous man, in the full practice of this profession, which even those to whom he has consecrated his time and thoughts without the hope of adequate compensation never appreciate!' The American Republic gave equal opportunity to all, but no government could give all equal ability; and nothing could give peace to a man but the triumph of the principles of right and justice. He hoped, Mr. Marsh said in conclusion, that the newly-admitted members of the Bar would benefit as much by contact with the older members as the older members would benefit by contact with them.

Minimum-Fees Discussion Opened

In opening the discussion of the question of the proposed schedule of advisory minimum fees, Mr. Marsh explained that in July, 1925, the Denver Bar Record had contained a statement calling attention to the matter; that, subsequently, Judge Butler, then president of the Association, had appointed a special committee to consider the advisability of such a schedule and report back to the Association; that this special committee had reported at the May, 1926, Annual Meeting of the Association, at which time there was some discussion and action on the matter postponed until the September meeting, when definite action was again postponed until this October meeting. He then introduced Mr. Luke J. Kavanaugh, who, he said, would speak in favor of such a schedule.

The Gospel of Minimum Fees According to St. Luke

Mr. Kavanaugh said that he appreciated the compliment of being invited to speak on the question. It was only in modern times, he declared, that lawyers had been at all interested in fees. In the old days they had received "honorariums"; they had been retainers of some great lord and took whatever was

presented to them for their services. In other professions the same rule had prevailed and he cited Pere, the surgeon, and Benvenuto Cellini by way of illustration.

Barristers Paid by Solicitors

In England today, Mr. Kavanaugh said, the solicitor got the money and paid the barrister, who had no contact with the client concerning the matter of fees. He then told the Ben Franklin story about the lame and blind beggars who were walking along together when they found an oyster. Not being able to agree upon the question of who should have the oyster, they submitted the matter to a lawyer who decided it as follows: "One shell for thee and one for thee; the meat between is lawyer's fee." That represented one extreme, Mr. Kavanaugh said, and the other was represented by the old Delaware lawyer who, explaining the difference between his profession and the calling of a grocer, said that when the grocer sold something and was not paid for it the goods were gone but when the lawyer sold his services and was not paid for them he still had just as much as he had before.

What Other States Have Done

The right attitude toward the subject of fees, Mr. Kavanaugh thought, lay between these two extreme positions. We were making a mountain out of a molehill by taking the matter so seriously, he thought, for after all the proposed schedule was only of an advisory character and many other states had definitely adopted such schedules with marked success. In 1915, Illinois had adopted a schedule of fees which had been revised in 1921 and increased thirty-three and a third per cent to take care of the increased cost of living.

Merely a Guide

The schedule, he declared, was merely a guide to suggest to the newer members of the Bar reasonable minimum charges in certain kinds of cases and was not in any sense an attempt to deprive anyone of any rights whatever. If one were to ask a half-dozen different lawyers as to what would be a reasonable fee in a given matter, he said, he would get a half dozen different opinions and be as much at sea as ever.

Factors to be Considered

There were five factors, Mr. Kavanaugh declared, involved in arriving at an estimate of a proper fee in any given case: first, the intricacy of the problem; second, the time required; third, the amount involved; fourth, the experience and skill of the lawyer; and, fifth, the customary charges of other lawyers for similar services. And, said Mr. Kavanaugh, when the fifth factor is considered, since there is no possibility of agreement among lawyers as to customary charges except by reference to the other four factors involved, you proceed in a circle and arrive nowhere. Nobody knows, he declared, what the customary charges are in matters pertaining to estates, for example, and so in twenty-two states the statutes provided specifically that the court should prescribe reasonable fees in estate matters and the county judge in Denver followed the California rule with great success.

An Ethical Question

Referring to opponents of the proposed system, Mr. Kavanaugh said that whenever they wanted to object to anything they invariably took refuge in the statement that the matter was "an ethical question." There was an ethical objection to any fee, he said, but there was none

to the mere matter of charging a fee and there could be none to a minimum fee. As to the objection that the proposed system would result in commercializing the profession, Mr. Kavanaugh declared that he didn't know anyone who practiced law merely for pleasure and that every lawyer was confronted by the necessity of making a living. As to the possibility of the minimum fee becoming in effect a maximum fee, Mr. Kavanaugh explained that if a client went to an older lawyer and referred to the 'minimum fee schedule the reply would be that these fees applied only to those practitioners who were just out of law school.

Labor Union or Trust

There was nothing to the objection that the minimum fee schedule would make a sort of labor union out of the Bar, Mr. Kavanaugh thought, but it might be a good plan at that if the lawyers followed the example of manual laborers who were thereby able to insure themselves three hundred dollars a month. The objection that the schedule had the appearance of a trust was also ridiculous, he declared, for who ever heard of eight or nine hundred lawyers agreeing on anything under the sun when not even three could agree to any proposition?

Adopted in Other Places

Mr. Kavanaugh then cited many other places where advisory minimum fee schedules had been adopted with success and pointed out that they did not, of course, apply to charity cases. He then referred to an article which had appeared recently in the Saturday Evening Post wherein it had been said that the whys and wherefores of lawyers' fees were like locating the fountain of youth or the end of the rainbow. The mere fact that lawyers who have practiced twenty years have no difficulty over the matter of fees should not prevent the adoption of the schedule and if a lawyer, after twenty years of practice, could not make a living he ought to come down to earth and drive a truck.

Report is Resume of Best Thought on Subject

The committee's report, Mr. Kavanaugh said, was a resumé of the best thought of lawyers all over the country who had considered the matter for years. He quoted from Ecclesiastes the passage referring to the three things which could not be understood; the way of an eagle in the air, the way of a serpent on a rock, and the way of a maid with a man; and declared that to that list might well have been added the way of lawyers in fixing their fees.

Asks Help for Young Lawyers

In conclusion, Mr. Kavanaugh appealed to the older members of the profession to help the young lawyers in this matter of fixing fees. A large part of the public, he said, looked upon lawyers as lazy men occupying luxurious offices and lying in wait for unsuspecting clients whose money they would ruthlessly take. This impression should be corrected and the schedule of advisory minimum fees would be a step in the right direction, Mr. Kavanaugh thought. "Let's tell people that we know what our minimum fees should be," he urged, "and that we know something about business. Let's be in the van, not in the rear of the professions, and let people know that we are awake and not dead."

Walker Replies for the Opposition

To the rapid-fire remarks of Mr. Kavanaugh, R. Hickman Walker made a leisurely oratorical reply. "Like the swan's-down feather which stands upon the swell at full of tide

and neither way inclines, so I stood upon the question of minimum fees," Mr. Walker declared. But when he was invited to speak for the opposition he immediately decided that the whole system was wrong and determined to be bitter and not merely "Luke-warm" on the subject.

Originated in Suspicion

The minimum fee matter, Mr. Walker declared, had originated in suspicion, was inimical to the best interests of the Bar, was deceitful in appearance, and was mischievous in operation. He was grieved to think that Mr. Kavanaugh had selected this occasion to present this mercenary subject. What a shame it was that the newly-admitted members of the Bar, who still have fresh on their lips the purifying vows of membership and were still under the spell of the profound speech of the Chief Justice, should be thus plunged into the icy and filthy waters of the minimum fee question.

Burden of Proof on Proponents

The burden of proof rested on the proponents of a system, Mr. Walker declared, and here they rested their case on the needs of the novitiates. Reading from the report of the committee to prove this point, he said that he suspected Ben Hilliard of having a part in it. "He will have his joke." said Mr. Walker. The young lawyers, he said, were not interested in the question of minimum fees but merely in the question of when, where, and out of whom they will get any fees.

Cites Grand Junction

When Mr. Kavanaugh had referred to schedules prevailing in Chicago, Los Angeles, Minneapolis and other large cities of the country, he should not forget Grand Junction, Mr. Walker cautioned. He had started practice in Grand Junction, he said, and had hung the bar association's schedule of minimum fees in his office. It had afforded him much inspiration in the early days of his professional career, he declared. At first he had entertained himself by calculating from it the huge possible profits from his practice but later it had come to have an application of irony for the profits did not materialize. He wanted to spare the young men here that pain, he said.

A Community Holdup

Mr. Walker then referred to the portion of the committee's report concerning satisfying clients as to the reasonableness of fees by means of the proposed schedule. Thus, he declared, it was proposed to make the minimum fee schedule a club to bring the recalcitrant client to his knees—a sort of community holdup. The minimum fee for advice was three dollars, he pointed out, and he protested against having his name used in support of the proposition that he could give any advice worth the sum of three dollars.

How it Would Operate

Illustrating how the schedule would operate, Mr. Walker said that a lawyer in the presence of an enraged client would explain the intricacies of the question and the fact that he was a specialist; finally, he would go to the schedule on the wall and, by way of clinching his point, say, "Thus saith Jake Schaetzel." If the schedule fee were greater than that charged, he said, the controversy would for the moment subside, but if the fee charged happened to be larger than the schedule fee, there would then be encountered the psychological principle that the mention of a maximum in the absence of an express contract makes the maximum a minimum in the view of the vendor and makes the minimum a

maximum in the view of the vendee. The schedule merely places in the client's hands, he declared, material for a quarrel with the Bar Association. He was opposed, he said, to any attempt to capture that intangible and elusive factor of personal skill by means of such a schedule. He then referred to specific items in the committee's report which he considered objectionable.

Must Accept or Reject Report in Entirety

Under the terms of the proposal, Mr. Walker explained, the report of the committee must be either accepted or rejected in its entirety or else we must continue to discuss the question for the remaining life of the association. He then referred to the item providing for a per diem charge of fifty dollars for the "average, competent, busy, practicing attorney," exclaiming, "and this is a schedule for the use of the young lawyer!" Again referring to the items in the report, he pointed out that for trials in the District Court the schedule provided for a per diem of $35.00 and propounded the question, "Why should a man who is entitled to $50.00 per diem only get $35.00 when appearing in the District Court?" The answer might be perhaps, he suggested, that it was upon the theory that he would have the rest of the day to himself.

Schedule Already Functions

Mr. Walker pointed out that the schedule had already been printed and pasted up in many large real estate offices and that it was, therefore, already in a situation to perform its advisory function without the approval of the Bar Association.

The Nub of the Matter

In conclusion, Mr. Walker said that he objected to this attempt to encroach by concerted action upon the matter of conscience between a lawyer and his clients and insisted that every lawyer should be free to establish his charges as he saw fit. Nothing short of absolute freedom would do.

The Association Acts

Following Mr. Walker's address, Mr. Jacob V. Schaetzel moved that the president of the association appoint a standing committee to adopt a schedule of advisory minimum fees with power to revise said schedule from time to time as occasion required.

Judge Strong offered an amendment to refer the whole matter to a committee to be appointed by the president. This amendment was voted down.

Bentley McMullin reported to the meeting the result of his own investigation of the matter in other cities where minimum-fee schedules had been adopted and thought the proposed schedule highly desirable.

Ernest Morris then offered another amendment to Mr. Schaetzel's motion by which the matter would be referred to a new committee but this amendment, not having a second, was not voted upon.

Robert Bosworth then referred to the experience of the Colorado Bar Association's grievance committee with controversies over fees and ventured that the proposed schedule would complicate rather than simplify the situation.

The question being called for, Mr. Schaetzel's motion was finally put by the president and lost.

Thus ended, for the time being at least, the protracted and much-discussed question of the proposed minimum-fee advisory schedule.

—J. C. S.