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## Slice of History: Reginald Heber Smith and the Birth of the Billable Hour

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The next time you're grumbling over your timesheet, you might be interested to know that the credit for its invention can be laid at the feet of one of our own. Reginald Heber Smith, managing partner of legacy Hale and Dorr from 1919 to 1956, is the man who pioneered the rationalization of the modern law firm.

Accurate accounting methods, budgets, a mathematical system of profit distribution, timesheets and—yes—the dreaded billable hour are all among Smith's many contributions to the legal profession. But recent detractors who blame Smith for where the billable hour has taken us might be surprised to know that the earnest and altruistic man himself, living in a gentler age, would have been as shocked as they at today's incarnation of a system that he fully intended to promote fairness, efficiency, client satisfaction, professional ethics, and the advancement of the public good.

Ironically, for an invention that has been criticized for the erosion of law firms' public service, the seed of the idea that was to become the billable hour grew from Smith's experiences in the world of legal aid. In 1913, straight out of Harvard Law School, Smith was invited to become counsel of the Boston Legal Aid Society, where he had volunteered during his summers as a law student. Passionate about redressing the inequities of a legal system that, in his words, effectively "close[d] the doors of the courts to the poor" (*Justice and the Poor*, 1919, 8), Smith was faced with the challenge of funding and staffing approximately 2,000 legal aid cases per year on a shoestring budget, with the help of only a few assistant counsel, a social service secretary and some clerical assistants.

Smith, drawn to the emerging discipline of scientific business management, took his own management dilemma to the halls of Harvard Business School. There, Professor William Morse Cole and a group of his students set about devising a functional system of accounting and recordkeeping—including a method for tracking statistical information on cases—for the Boston Legal Aid Society. Armed with this information, Smith was able to implement new controls, training procedures and management practices, such as weekly conferences with all attorneys, that greatly improved the functioning of the office. In 1915, the Society cleared an impressive 65% more cases than it had the prior year, and reduced the average net cost of each case from \$3.93 in 1913 to \$1.63

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Smith's tenure at the Society was to last five years, the last two of which he largely spent conducting a national study of legal aid that became the foundation for his magnum opus, *Justice and the Poor*, published in 1919. That same year, he came to Hale and Dorr—a newly formed firm of six partners—as managing partner, bringing with him the same organizational zeal that had fueled his early success.

While its details remained elusive, Smith sensed that the perfect organizational system lay just beyond his grasp, and was determined to unearth it. “After I came to Hale and Dorr, at the conclusion of World War I, my partners generously granted me permission to see if I could establish records as to time,” Smith was to write in 1966 (Memo, reprinted in John A. Dolan's *Hale and Dorr: Backgrounds and Styles*, 1993, 305), looking back over his career. “It took me quite a while so that in retrospect I am thoroughly ashamed of myself.” Indeed, Smith gradually came to realize, it was time itself that provided the ideal organizing principle for law office organization. Even from the vantage point of four decades later, Smith's musings on the timesheet have the air of revelation: “Actually nothing could be simpler than a form on which you wrote the name of the client, the name of the case (because a client may have several cases in the office at the same time), a brief description of the work you did, and the time you spent doing it.” (Memo, 305.)

To Smith, a time-based system had the inexorable logic of a law of nature. “Really my only contribution as [sic] to decide that the minimum time entry should be one-tenth of an hour,” he wrote, marveling at the ease with which the details fell into place. “I fixed that for the reason that I can more easily add, subtract, and divide on the decimal system.” (Memo, 306.) The timesheet, divided into six-minute increments, was born. Now Smith had to sell it to his partners at Hale and Dorr.

“This simple plan had but one weakness which is that lawyers are individualists,” Smith wrote. “[T]hey hate any system; and to keep a detailed record of time seemed to them about as bad as a slave system.” (Memo, 306.) Note that Smith's time-based system was not being criticized—as it was by the close of the 20th century—as a “slave system” for driving up work hours at the expense of lawyers' personal lives, public service, health and sanity. What bothered the Hale and Dorr partners—who were generally expected to work a genteel 5.5 hours on weekdays and 2.5 hours on Saturday mornings—was the indignity of being asked to provide *any* kind of accounting for the way in which they saw fit to use their time within those hours. To them, any system of time measurement smacked of the Taylorist industrial assembly line, its workers performing their tasks like automatons as an officious manager stood by with a stopwatch. Through perseverance, transparency, and his sincere commitment to the health and future of the firm, however, Smith prevailed upon his partners to accept the timesheet, and it eventually became, to them, “as much a matter of habit as getting dressed in the morning.” (Memo, 306.)

Initially, the timesheet remained a purely internal metric, used for organizational planning and budgeting. But at some point between the timesheet's inception around 1920 and his completion, in 1940, of a book detailing his fully realized vision, Smith discovered the utility of translating the timesheet into the billable hour. Until that time, according to legal historians, lawyers had relied largely on flat-fee arrangements, or looked to the state bar associations' minimum fee schedules,

which set different prices for different services. The beauty of the billable hour, in Smith's mind, was that it provided a fair, logical, transparent and indisputable method for valuing legal services—one that clients could understand and embrace as readily as the lawyers themselves. "This method is especially pleasing to businessmen, all of whom have cost systems of their own," reflected Smith. "You can show him your cost and you can give him your supporting evidence. This at once dispels the notion that you are charging 'all the traffic will bear.'" (Memo, 306.)

In 1940, the American Bar Association published Smith's *Law Office Organization*, which originally appeared as four separate articles but was reprinted, by popular demand, in the form of a pamphlet that, by the early '90s, had gone through 11 editions. Hale and Dorr, in 1940 a firm of 17 partners and eight associates, had become the proving ground for a system that was to dominate the legal industry, both in the United States and beyond, into the next century. Extrapolated from one firm to an entire industry, however, and fueled by forces that he could never have foreseen, Smith's formula for fairness and efficiency was to become something else altogether.

By the late 1950s, the national bar—lamenting the "economic plight" of lawyers, whose earnings had failed to keep pace with those of other professionals, such as doctors and dentists—had mounted a campaign to promote the billable hour as a business strategy, says law professor Niki Kuckes. By the late 1970s, a decade after Smith's death, pure hourly billing had taken over. "To improve productivity, law firms began adopting policies requiring attorneys to bill a certain number of minimum hours each year," Kuckes writes. "It seemed like a harmless enough step—until the number of those hours began to rise steadily beginning in the '80s." ("The Hours," *Legal Affairs*, Sept./Oct. 2002.) Driven by the Supreme Court's invalidation of the bar on lawyer advertising, and by *The American Lawyer's* ushering in of the "big-firm star system," adds Scott Turow ("The Billable Hour Must Die," *ABA Journal*, Aug. 2007), the legal profession's "competitive war" had begun.

In Smith's careful hands, the billable hour was never the double-edged sword that now stands accused of cutting out the soul of the legal profession, misaligning the interests of law firm and client, and forcing the industry's breakneck rush to ever greater growth, leverage and profits. Smith, contrary to the arguments of today's critics, never saw profit as the primary motive. "Normally you hope for profit over cost," he wrote in 1966, shortly before his death. But, he continued, "[o]ften, and for good reason because law is a profession, you must fix a bill below cost." (Memo, 306.)

Smith's real goal, ever since his days in legal aid, was "100% efficiency" in the delivery of the best that the legal profession had to offer, whether to pro bono clients, fee-paying clients of the firm, or to society at large. "The goal is to render to clients who need legal advice and assistance a definitely better help than any other firm has ever given at any time anywhere else," Smith wrote in 1941, in his 23rd annual report to the partners of Hale and Dorr. "Our perpetual ambition must be to build up the finest service that it is humanly possible to give." (Dolan, 246.) For all of Smith's pleasure in the neatness and logic of the billable hour, and his satisfaction at the administrative certainties it could bestow, it seems likely that—were he with us today—he might be in favor of jettisoning it in favor of the deeper values that he never lost sight of throughout the whole of his lengthy career.