

Ep #49: Lessons From Old Hollywood: Why Flat-Fee Legal Work Is Nothing New



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John E. Grant

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One of the things that is fascinating to me, is the extent to which the behaviors and practices of the legal profession have evolved over the years, and the extent to which they haven't. If you've been listening to me for any length of time, you've probably heard me mention that I'm a fourth-generation lawyer.

I actually say that with a bit of an asterisk. Neither one of my parents are lawyers, but my mom's second husband, who until recently was my stepdad, is one. His life and practice are a whole cautionary tale, in and of itself, that I won't get into today.

But it's true that two of my four great grandfathers were lawyers, starting in the early part of the 20th century. And they're kind of fancy lawyers at that. My dad's grandfather was a guy named Fred Verheyen. He was an attorney in Butte, Montana. Which might sound like he would have a small-town practice until you realize that Butte, Montana, had a population as high as 100,000 people in the early 20th century; at least three times bigger than it is today. And that's because it was a mining boomtown.

Fred Verheyen was an attorney for a man known as the “Copper King”, William Andrews Clark, who became one of the world's richest men, helping provide the raw materials for the millions and millions of miles of copper wire needed to build North America's electricity and telecommunications grids.

Now, as I understand it, Fred eventually made his way west to Los Angeles in the 1910s to look after the affairs of W. A. Clark Jr., who among other things, founded the Los Angeles Philharmonic and built the Hollywood Bowl Amphitheater. Now, I presume that Fred was involved in drafting at least some of the legal agreements for those things, but I haven't seen the actual artifacts to prove it.

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My other attorney ancestor was my mom's grandfather, Lloyd Wright Sr., and he's the one who inspired a significant percentage of his lineage to pursue legal careers. He was pretty big time. He helped pioneer the field of entertainment law during Hollywood's golden age.

He went on to be an ABA president, was the longtime president of the International Bar Association, and he even chaired what came to be known as the Wright Commission, which was one of the first U.S. government studies that went deep into its own national security practices, the needs for national security, and some of the shortcomings.

So it's safe to say that Lloyd Wright was pretty inspirational. Therefore, it should be no surprise that my grandfather, his brother, and a whole host of my aunts and uncles and cousins either became lawyers or married a lawyer or both. I sometimes joke that part of why I tend to understand lawyer culture pretty well is I grew up with it.

And again, that's not exactly true, right? I was brought up in Central California, pretty mainstream upbringing. My mom was a school teacher. My dad had a handful of careers. But it's not completely wrong either. So in today's episode, which is coming out in the middle of the holiday season, I thought I'd do something completely different and take you on a little trip down memory lane Or at least history lane, because these are not my direct memories ... and read to you from the files of Lloyd Wright Sr.

Scans of which circulated around my family on a thumb drive a bunch of years ago. Some of these documents provide a really fascinating window into what law practice was like in the middle part of the 20th century. And I think there's some lessons that we can learn from them today.

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So I'm sitting here literally with a file directory open on my computer from this thumb drive sitting in front of me. I'll start by just reading some of the names of these scanned PDFs, because my great-grandfather had one of the coolest client lists you could possibly imagine, certainly of the era.

I've got Al Jolson on here. I've got Amos and Andy, which is a little bit of a problematic one. I've got Buddy Rogers, Burl Ives ... appropriate to the holiday season ... Cecil DeMille, Charlie Chaplin. It is a pretty impressive list of folks.

But the one I'm going to focus on today is Jane Wyman. Jane Wyman was an extremely well-known actress in her time, but is probably better known to history as the first wife of actor, and eventual president, Ronald Reagan. The two of them were married in 1940 when they were both Hollywood A-listers. They had two surviving children together, Maureen and Michael. But they sadly also lost a daughter, Christine, who was born about a month premature in June 1947 and didn't survive.

And I bring that up because I have to wonder how much of an impact a tragedy like that had on their marriage and their relationship. They were both busy working actors, but it had to have been so hard. And the timing is interesting because the point at which my great-grandfather got involved was in helping Wyman file for divorce in May of 1948.

Now, one thing, it is hardly fair to Jane Wyman to characterize her just as Ronald Reagan's first wife. So incredibly, 1948 was also the year that she won Best Actress for her role in a movie called *Johnny Belinda*. And while I haven't seen the movie, the role sounds brutal. I'm not going to go into it because this is a holiday season podcast episode, but suffice it to say that portraying this character had to have been incredibly emotional.

And in fact, there's actually a quote from Ronald Reagan, who at one point during the divorce said, "I think I should name *Johnny Belinda* as a

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co-respondent in this divorce.” Back in the day, a “co-respondent” was often someone that a spouse had committed adultery with. So Reagan kind of blames this film, in a way, for breaking up the marriage. But I think there was probably a lot of stuff going on.

So the first thing I'm going to read you out of my great-grandfather's files is a newspaper clipping. It's a cutout from the front page of the *Los Angeles Times*. It was written by the *Times*' gossip columnist, a woman named Luella Parsons, whose work was nationally syndicated. And if you know the Harry Potter stories, Luella Parsons was the Rita Skeeter of her day.

Here's as much as I can read from the article. The bottom corner is missing and I wasn't able to find the original online, so I'll get as far as I can. Also, I don't have a date on this article, but the headline is, “Jane Wyman to Sue Reagan for Divorce”; it's running beneath a photo.

The headline on the caption on the photo says, “Family Breakup”.

And the picture is a very candid, sort of happy shot of Ronald Reagan holding his daughter Maureen, Jane Wyman smiling next to him. It's all very Hollywood. She's wearing a fur coat and gloves and she's got sunglasses clipped on it. He's very debonair, with a pocket square and sort of a tweed jacket. So here's the text of the article itself.

“The trial separation of Jane Wyman and Ronald Reagan has failed. In this coming week, Jane will sue her husband of eight years for a divorce. They were married January 26, 1940 at the end of a personal appearance tour they took with me. The marriage reception was at my home and I, with all their other friends, am genuinely shocked because they were unable to work out their problems.

Jane's attorney, Lloyd Wright, said that a property settlement has already been made. Also, arrangements for the care and custody of their two children; Maureen, age seven and Michael, age three. The children will live

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with their mother and their father will be permitted to see them anytime he wishes.

Although attorney Wright was vague about when and where the divorce will be filed, Jane has confided to friends that she will establish residence in Las Vegas and get her legal freedom immediately.

When I talked to Ronnie last, he was hopeful that Jane would give up this divorce idea. He said he believed they would be together for the next 15 years, but Mrs. Reagan apparently had other ideas. The trouble started when Ronnie accepted the presidency of the Screen Actors Guild and devoted much of his time to the issues that are now troubling Hollywood and the world.”

And then there are some other paragraphs that I can't make out all of, because this is where the tear starts. But I think that gives you a pretty good snapshot. It's crazy to me that this is a personal account, right? This is very gossip columnny. This isn't something that I think we see so much these days.

Some interesting historical notes in here, that bit about moving to Las Vegas. So this was an era, where if you wanted to divorce your spouse, you had to sue for it and establish legal cause. And you couldn't really settle your divorce, because under the laws at the time, the state maintained an interest in upholding the marriage.

So you had to prove to a judge and sometimes a jury that you had actual grounds for divorce and the evidence to prove that those grounds were valid. And that means that divorces at the time could get really ugly and a lot of dirty laundry could get dragged out into the public.

As you can imagine, this was especially true for celebrity couples like Reagan and Wyman. And I know a lot of listeners do family law, and I know that you see some ugly things, but I think this era took it to a whole different

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level. And probably the closest thing we've had recently is the whole Johnny Depp and Amber Heard drama. Which, I have to admit, I mostly steered away from.

But back in the 1940s, Nevada had laws that made it relatively easier to get a divorce than in most states. Now the state still had an interest in the relationship, so the person suing for divorce still had to prove in court that their reasons were valid. But Nevada's evidentiary standard was much, much lighter.

You didn't have to bring forward the litany of sordid details that you needed in other states to meet your burden of proof and have your divorce be granted by the courts. The catch was that you had to be a Nevada resident in order for the Nevada courts to have jurisdiction over your marriage.

Establishing residency wasn't too onerous, but it did require that you actually reside in Nevada for a full six weeks before gaining legal residency. There was a whole cottage industry in Nevada, especially outside of Reno, where these little transitory communities popped up known as “divorce ranches”. And people from all over the country would travel to these places to wait out their six-week requirement.

Now Wyman presumably had enough money that she could rent a house or a condo or maybe even a hotel room in Las Vegas instead. But that's why the gossip column makes this passing mention of Las Vegas, right? Readers at the time would have been very familiar with the legal tactic, and it actually seems to be something my great-grandfather facilitated on a semi-regular basis.

To take this four-cause divorce thing a little further, another thing that's interesting is that as governor of California in 1969, Ronald Reagan signed the nation's first ever no-fault divorce law, allowing people to dissolve a

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marriage without assigning blame. And you have to think that his own divorce experience had something to do with that.

Specifically, the gossip column intrigue that accompanied the breakup of his marriage, when there was also this backdrop of this sort of tragic losing a child at birth. So it makes sense that Reagan was the guy to sign it. And maybe the most important thing about no-fault divorce, and you family lawyers know this, is that they let parties reach a settlement agreement to end their marriages without having to prove anything to the state and drag a whole bunch of cringy evidence into the public eye.

Today, every state in the U.S. has no-fault divorce laws, although they're pretty recent. New York implemented theirs only in 2010. And not to be a news cycle downer, but no-fault divorce is becoming a timely topic again, because some pretty prominent conservative politicians, including the Speaker of the House, are openly advocating to roll them back and go back to having an era of for-cause divorce.

Okay, so the other thing I want to read you from the file is a cover letter from my great grandfather, Lloyd Wright, to Jane Wyman. And this was the cover letter for a bill, it's pretty fascinating how it's worded. So this is dated July 8, 1948, addressed to Ms. Jane Wyman, c/o Business Administration Company, 360 North Camden Drive, Beverly Hills, California. There were no zip codes at the time.

And here it says, "Dear Jane, In all unhappy situations where one is forced to engage professional services, the time comes when the bill must be paid. I've gone over our records and the responsibility assumed, and I'm enclosing a statement for services rendered which I feel is more than fair.

There are a lot of involvements in a situation of this kind, the details of which I will not bother you with, but I'm sure you will understand makes my responsibility in the matter all the greater. Because I am more interested in

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you and in your friendship than I am in the money, if you do not feel that the enclosed statement is absolutely more than fair, I would want you to be perfectly frank with me.

For I mean just what I say, I do not want any pecuniary advantage or gain, but only what I consider a modest compensation. In addition to this, I want you to feel free to make payment in such amounts and at such times as suit your financial pleasure, with the proviso that I would like it, if it is convenient, to have it paid during the year 1948.

I hope that you are happy and satisfied, and that occasionally I will have the pleasure of seeing you. Sincerely yours, Lloyd Wright." Now that is a fascinating letter to me on a number of levels. The actual bill isn't in the files, but there is a Wikipedia article I found that suggests that the billed amount was \$7,500, and that Wyman actually negotiated it down to \$5,000, which as the letter clearly states, she was invited to do.

Adjusting for inflation, that original bill would have been close to \$100,000 today. There's also a cover letter in these files regarding Wyman's updated will, and it seems to me that the invoice probably covered both the divorce work and some estate planning.

So I want to dive into a couple of things about this letter and this legal bill. First, since I've been doing a whole lot of podcast episodes lately around flat fees and value pricing, I need to point out that this was a flat fee engagement, and it seemed to cover both the divorce and the estate plan.

Now, it isn't exactly how I'd recommend going about doing flat fee work today. In fact, it seems a little crazy to me that Wyman didn't know what the bill amount would be until things were already well underway. But keep in mind, too, that hourly billing didn't really exist at the time. The common practice, as I understand it, was for state or county bars to publish a rate

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card that outlined fees for various types of legal services; so flat fee was more or less the norm.

Lawyers were allowed to charge more than the published rate, if circumstances allowed. And I'm pretty sure \$7,500 was quite a bit more than the published rate, although I tried to find a copy of an actual rate card from 1948 and I came up empty. But here's the thing about the rate cards that's fascinating. It was actually considered an ethical breach under the legal regulations at the time for lawyers to charge less than the published rate.

A lawyer could get disciplined for undercutting their fellow bar members on price. Which, if you're a legal ops nerd like I am, or you might have learned this in law school, or if you do antitrust law, this is the reason that the U.S. Supreme Court held in 1975 that rate cards were illegal under the Sherman Antitrust Act. That was the *Goldfarb v. State Bar of Virginia* case. Until then, price collusion wasn't just tolerated, it was mandatory.

The other thing that stands out to me is that my great-grandfather took an approach to his bill amounts that is nearly identical to one that I use today in my practice, but I came to it before I'd ever seen these files. So I, too, let my clients write down their bills based on their perceived value of my work. I've been working that way for the entirety of my consulting practice, and I did it in my law practice before that.

Only once has someone taken me up on it, and that was a client that wasn't really a great fit for me to begin with. Now, I learned my approach through the writings and teachings of Patrick Lamb at Valorum Law, who uses what he calls "a value adjustment line" on all of his firm's bills.

This is, again, essentially inviting his clients to do the same thing my great-grandfather invited Jane Wyman to do. If you don't think the amount of this bill is fair, let me know and tell me what amount feels right to you. I've got

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that value adjustment principle embedded in my consulting services contract, so if any of you were thinking about hiring me to help with your law practice but are worried about whether it's going to be worth it financially, I'm upholding a family tradition.

Like my great-grandfather said, the relationships I build with my clients are more valuable to me than the money we exchange. Okay, I was originally going to read from some other letters, but I went deeper on this one topic than I expected. But if you like this brief conversion from a legal operations podcast to a history podcast, let me know and maybe I'll do another one in a few months.

I've actually got a pretty good chunk of source material for it, and some of the names I didn't get to reading off were people like Howard Hughes, Walt Disney, Gary Cooper, Marilyn Monroe. So I'm not going to tell stories unless I can tie it in some way to some practical advice that I think that lawyers can use today. But from flipping through the files, there are at least a handful where I think there are some lessons we can learn.

To put a fine point on today's lesson, one of the tenets of Agile is to value people and interactions over valuing processes and tools. And it's clear to me from the Jane Wyman correspondence, and a bunch of others that I didn't get to, that Lloyd Wright Sr. truly valued people and relationships. And I know that he had a pretty unique practice and that the kind of social interaction he had with his clients isn't something that's going to happen in most law practices today.

But I think we can all try to be conscious of the humanity and the situations our clients face, and really strive to make sure that the amounts we ask our clients to pay us are genuinely worth it from their perspective, not just from ours.

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That's it for today's episode. If you enjoyed it, please forward it to a friend or a colleague who you think might benefit from a more Agile approach to legal practice. I also always appreciate if you rate or review me on Apple Podcasts or Spotify. If you have any questions, feedback or maybe a topic you'd like to hear me cover, you can reach out through my website or shoot me an email at John.Grant@agileattorney.com.

This podcast gets production support from the fantastic team at Digital Freedom Productions. And our theme song is the instrumental version of "Hello" by Lunareh.

Thanks for listening, and I'll catch you again next week.