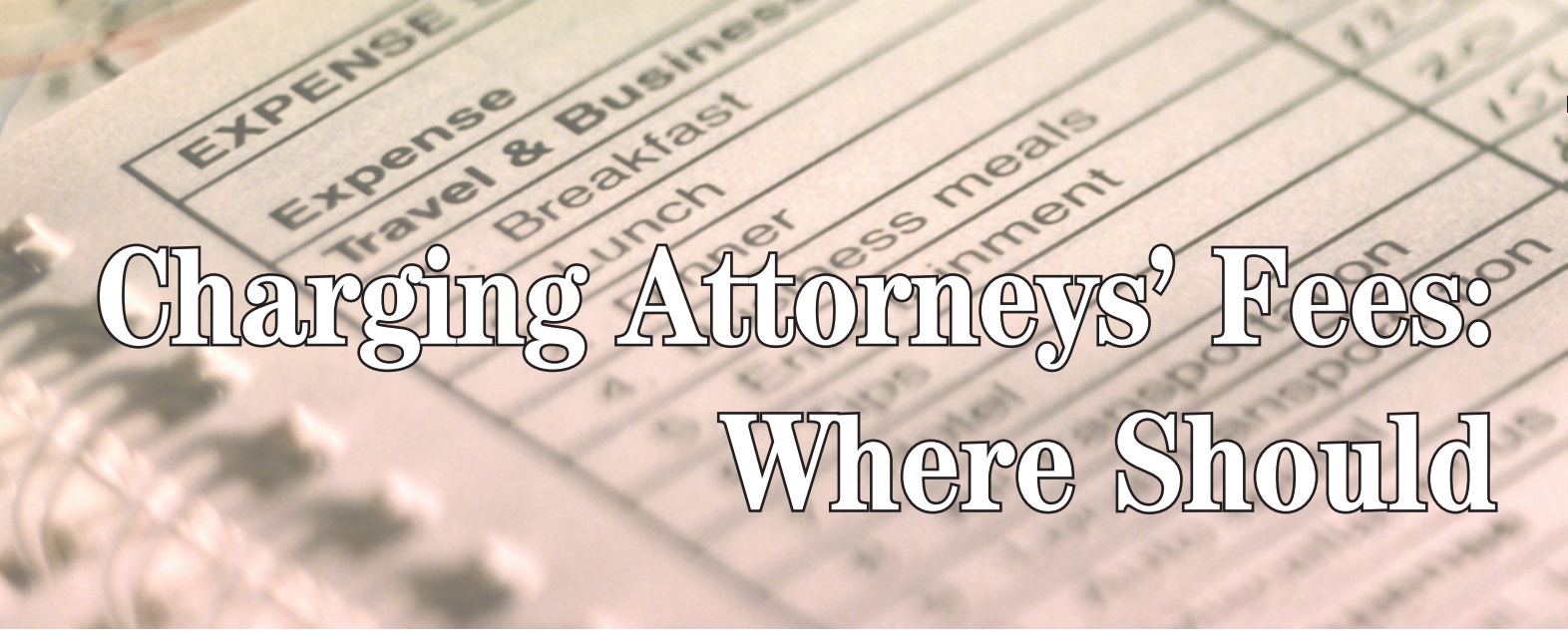

Charging Attorneys' Fees: Where Should

A Plaintiff Lawyer's Perspective

BY SUBODH CHANDRA

You are the managing partner of a boutique civil-rights law firm. A prospective client calls you. She was a local-government employee who believes that her newly elected boss fired her in retaliation for her supporting his electoral opponent in his campaign. She was not a policymaker but a civil-service-protected, rank-and-file employee. She had earned about $30,000 annually. Being fired caused her household's near financial collapse. The local jobless rate had soared to more than 20 percent and finding a comparable job was impossible. All of this was emotionally devastating.

Your firm is selective. It declines to represent 95 percent of those seeking the firm's civil-rights representation. But the evidence initially presented about the political motive behind the firing makes this an intriguing First and Fourteenth Amendment retaliation case. And the client herself is compelling—you like her, she doesn't seem too greedy, and you think a jury will like her too. You believe in the Constitution and want to help her.

But by any measure, obtaining individual justice for a client like this will be costly. In a matter of a few months, fees and expenses will likely outstrip the case's economic damages value and is already well beyond the client's means. A quick settlement is unlikely; governmental actors don't change their minds easily, especially in politically sensitive cases where it is easier to push the pain of judgment day out a few years.

Fortunately, however, statutory fee shifting under 42 U.S.C. § 1988 exists. Because fees and costs will not be recovered for years, and because your firm will be personally bearing the case's financial risks, you have to spend a great deal of time initially screening and investigating this matter. (You also have to advise the client about the risk she faces of paying costs at the case's end should she lose.[1]) Indeed, you have generally spent significant time and incurred significant fees long before defense counsel even become aware that a case exists. This vigorous screening and pre-suit investigation prevents the filing of frivolous claims, and you hope and expect that courts would want to encourage and reward it.

Finally, after two months of your firm's intensive and fruitful legal research and fact investigation, you confirm your instincts and conclude, "We will fight for her. We will either obtain a decent settlement, or prevail at trial and on appeal. And the defendants will eventually pay for our work and reimburse our costs." A formal engagement agreement is signed accordingly.

Implicit in your decision to proceed is that by definition you will forego some other work, including from fee-paying clients,

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the Line Be Drawn?

A Defense Lawyer's Perspective

BY LIZA FRANKLIN

In response to the fact that some public officials were dishonoring their oaths and abusing citizens under the color of law, Congress enacted 42 U.S.C. § 1983, also known as the Ku Klux Klan Act. The act was as honorable as it was necessary. Under § 1983, a citizen could sue public officials civilly for violating his or her civil rights. The damage award in an average case, however, did not make this area of law particularly attractive to private attorneys. Litigation is expensive—the cases are extremely labor-intensive, and a 40 percent contingency on a $10,000 damages award would not cover the incurred costs or keep the lights on in an attorney's office.

Enter 42 U.S.C. § 1988, under which attorneys' fees are paid by the loser. In *Riverside v. Rivera*,[10] the Supreme Court collected quotes from Congress on the purpose of § 1988. The Court cited a lower court with approval for the idea that "[t]he function of an award of attorney's fees is to encourage the bringing of meritorious civil rights claims which might otherwise be abandoned because of the financial imperatives surrounding the hiring of competent counsel."[11]

The intent was not to create a new way to charge ridiculous amounts with no oversight. Rather, the Supreme Court noted:

> When a plaintiff succeeds in remedying a civil rights violation, the United States Supreme Court considers that plaintiff to have served as a "private attorney general," vindicating a policy that Congress considered of the highest priority. He therefore should ordinarily recover an attorney's fee from the defendant—the party whose misconduct created the need for legal action. Fee shifting in such a case at once reimburses a plaintiff for what it cost him to vindicate civil rights, and holds to account a violator of federal law.[12]

"[W]hat it cost him to vindicate that right" by "the bringing of meritorious civil rights claims," however, is not the only thing that has been encouraged. Rather, the pursuit of § 1988 awards has created some of the most blatant billing abuses ever filed in a court of law.

$863 to rent a van so that plaintiff's counsel could have exhibits driven to and from court every day (plus, of course, an

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that you would otherwise be doing. You do not know when—or even with certainty whether—your firm will be compensated. This sort of work is, at bottom, a form of gambling, even though you have some experience in "knowing when to hold 'em and when to fold 'em" and have "beat the house" a number of times.

Your firm—a collection of large-firm refugees—believes that every individual client deserves the same dedicated and rigorous representation that you all used to provide the Fortune 100. While others might cut corners, you understand the importance of investing expenses in your cases, just as a corporate fee-paying client would. The best experts cost money. Electronic research costs money. Court reporters cost money—a lot of money. You resist compromising your best professional judgment about how to advocate for your clients, even though some federal courts often seem to disagree that plaintiffs in fee-shifting cases deserve that same level of excellent representation.[2] But you must then recover fees toward the top of the market to be in a financial position to continue fee-shifting work at a top quality level. Otherwise, you would do your clients, the courts, and the public a considerable disservice, and the quality of your work, as well as your reputation, would be compromised.

The amount of work that this particular case actually winds up requiring at the district court alone, however, shocks your firm. Over two and a half years, most of your firm's lawyers have to work hard to overcome obstacles never anticipated. Among other things out of your control, the case winds up being transferred among multiple judicial officers.

Non-parties allied with the main defendant erect barricades to third-party e-discovery. But after months of litigation, you overcome them, exposing a broader civil-rights conspiracy than was originally known, and amend the complaint to name multiple defendants. The principal defendant's original lawyer—apparently realizing his client has lied under oath—withdraws from the case over a year into the representation. This requires "re-educating" new counsel about the case.

New defense counsel seek to jointly represent multiple defendants, who point the finger at one another. Committed to the proceedings' integrity, you first unsuccessfully try to persuade opposing counsel of the joint representation's impropriety, and then prepare and file a motion to disqualify. After extended briefing, a magistrate judge recommends disqualification; but the district court does not accept the recommendation. This fight over conflict consumes over a year. (And new counsel do not have the same ethical qualms about the main defendant's implausible explanations that the former ones did.)

Most motions in the case go through two such rounds of litigation, doubling fees, because the district court keeps delegating decision-making to the magistrate judge, and then objections are briefed to the district judge.

As plaintiff's counsel, by now you are accustomed to facing more significant discovery hurdles. Defendants are generally interested in little discovery other than boilerplate interrogatories and the plaintiff's deposition. Plaintiffs in civil rights cases, on the other hand, will often have far fewer documents than the entity being sued, with e-discovery a growing challenge and critical source of evidence. If a plaintiff's discovery production is modest, as it generally is, then defense counsel do not need to spend as much time to review it, or to prepare for depositions in light of it. Here, as in many cases, you have to first fight vigorously for, and then wade through, many thousands of pages of documents produced by defendants and third parties, thus increasing fees.

The best experts cost money. Electronic research costs money. Court reporters cost money—a lot of money. You resist compromising your best professional judgement about how to advocate for your clients, even though some federal courts often seem to disagree that plaintiffs in fee-shifting cases deserve that same level of excellent representation. But you must then recover fees toward the top of the market to continue fee-shifting work at a top quality level.

This single case unexpectedly gobbles up a plurality of your firm's time, creating a "cash crunch" in which you continue to pay out of prior, hoarded fee-shifting revenue for overhead, personnel, advanced costs of other cases, etc. While you have been accustomed to the "feast or famine" nature of your practice, for the first time, you incur debt to keep operating and fulfill your obligations to existing clients. In the process, though, your firm roots out evermore devastating evidence of the elected official's political motive and generally dubious character.

There are two failed mediations, even though liability becomes crystal clear. Both required substantial preparation time; one was with an expensive private mediator. Throughout the case, the insurers are willing to pay less than you and your client collectively expect—and that gap widens over time as attorneys' fees and costs accumulate further.

Measurable economic damages over time shrink close to zero. Your firm becomes a victim of its own success for the client—two years into the case, you succeed, through a separate administrative proceeding, in getting your client her job back, along with her back pay. (You even pull off getting her a new boss she likes by exposing in companion, uncompensated civil litigation that the prior, retaliating boss had engaged in unrelated criminal behavior, to which he pleads guilty. This is just part of comprehensively fighting for the client.)

Some courts hold that such work in companion cases is compensable in federal fee shifting.[3] They would focus on whether time

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hourly rate for the driver of said van). Cabs to and from court every day because the trial team would not catch a ride in the trial van. $3,000 in hotel rooms so that plaintiff's counsel would not have to commute to their suburban homes during trial. $500 in valet parking. One obviously can't stay in a hotel or use valet parking without tipping, so hundreds of dollars in tips to room service and valets at said hotels. $685 for § 1983 treatises to stock the firm library. More than 200 attorney hours for several attorneys from plaintiff's counsel's firm to "observe" the trial. Literally thousands of dollars in meals for the trial team and other hungry people. 50 partner-level attorney hours (say $525 per hour) spent typing trial subpoenas. Hours spent learning how to download and use Skype, Summation, and "the cloud." Nearly 100 hours spent working on an internal firm budget and deciding how to staff the case. 100 hours spent by a partner to index the documents produced by the defendants. More than a 40-hour week of billable hours spent reading a summary judgment opinion. One firm billed **both** the $30,000 they paid to a temporary agency for a paralegal **and** over $200,000 in hourly bills for that same paralegal's time. And my personal favorite, $3.85 each for a Snickers bar and a bag of M and Ms from the Hotel Sofitel minibar (according to a receipt for contact lens solution submitted for payment, plaintiff's counsel went to Walgreens earlier that same day, but did not purchase the candy there).

What is lost in all of this is a sense of civic responsibility. We are not talking about one multinational corporation suing another multinational corporation. The loser in that case can simply lower dividend payments. Municipalities do not have that luxury. They cannot simply lower dividends or raise the prices of their product. We are talking about tax dollars collected from the citizens of the municipality, money that can no longer be used to serve those constituents.

First, some of these charges would seem to run afoul of the canons of ethics. No client should be billed for your candy. Ever. I cannot imagine a general counsel would continue to employ a firm that sent four partners to a routine status, then charged for each of those partners to prepare and photocopy memos to the file about said status (I hope the status of the case was good, at least). It would not happen, or at least it would not happen more than once.

That client, however, can defend itself by refusing to pay and firing the firm. In § 1988 cases, however, the municipal defendant cannot fire the other side's attorney. The municipal defendant must spend weeks culling through hundreds of pages of records to individually object to the truly objectionable, file a drawn-out response, and rely on the court to take up the extremely labor-intensive task of ruling on those objections. This cannot be the image attorneys wish to portray, especially as court opinions about this conduct begin to roll in.

Second, what is lost in all of this is a sense of civic responsibility. We are not talking about one multinational corporation suing another multinational corporation. The loser in that case can simply lower dividend payments or dreams up ways to increase revenue to make up the cost. Municipalities do not have that luxury. They cannot simply lower dividends or raise the prices of their product. We are talking about tax dollars collected from the citizens of the municipality, money that can no longer be used to serve those constituents. Those millions of dollars cannot repair bridges, staff mental health clinics or, yes, hire police officers to fight crime. In that sense, one case is not "one case." It is a case that impacts more than that one plaintiff. I believe that attorneys, officers of the court, must take that responsibility seriously. "Private attorney general" should mean exactly that—private individuals taking the needs of more than themselves into consideration.

Rather than abusing that responsibility, prevailing attorneys should take the words of the Supreme Court seriously:

> Cases may be overstaffed, and the skill and experience of lawyers vary widely. Counsel for the prevailing party should make a good faith effort to exclude from a fee request hours that are excessive, redundant, or otherwise unnecessary, just as a lawyer in private practice ethically is obligated to exclude such hours from his fee submission.[13]

I would never say that there are no meritorious cases. I am a defender of police, not a lunatic. But if the three city lawyers and one paralegal can take a case to trial, perhaps the plaintiff can make do with fewer than 19 billing attorneys and 11 paralegals. And buy their own M and M's. ⊙

Liza Franklin is a deputy corporation counsel for the City of Chicago's Department of Law, Federal Rights Litigation Division. The division she heads is tasked with defending Chicago police officers in intentional misconduct cases brought in state and federal court. Significant cases include all of the ones you read about in the paper. Prior to joining the city in 1997, Franklin was an associate at a large firm where she never gave any thought to who defends police officers. She is a graduate of the University of Chicago Law School and the University of Illinois at Urbana-Champaign.

Response by Subodh Chandra

I too, snicker at Liza Franklin's Snickers bar story. Actually, I cringe. A lawyer who leaves something like that (or a bill for contact lens solution for that matter) on a fee motion invites criticism that tarnishes us all. One would hope that the lawyer stung by Franklin's

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for which compensation is sought on a related case was "expended in pursuit of a successful resolution of the case in which fees are being claimed"[4] and would "'have been undertaken by a reasonable and prudent lawyer to advance or protect his client's interest' in this case."[5] Other courts might interpret these successes through the lens of the Supreme Court's decision in *Buckhannon v. Board and Care Home, Inc. v. West Virginia Department of Health & Human Resources*,[6] finding that there was no federal judicial decision altering the parties' legal relationship, and that the work, however fruitful for your client, is thus not compensable.

You consider yourself reasonable, and more than prudent, and so you do the work regardless, to advance your client's interests.

Insurance-adjuster bean counters generally tend to be unable to grasp the concept of non-economic, e.g., emotional damages, much less punitive-damages exposure faced by individual defendants, for which governments and insurers are not often not contractually or legally responsible. And governments and insurers balk at paying attorneys' fees and costs, despite being exposed to them, thus belying most economists' assumptions of rationality. When they consider paying, they want pay at rates they pay their own insurance-defense counsel, which is less than you and comparably credentialed firms bill out your paralegals.

The denial is particularly acute in your case. And so the case keeps going, and the evidence keeps accumulating. And so do attorneys' fees and advanced costs in what has now become a case that resembles the plight of the unsupervised children in *Lord of the Flies*. Defendants twice breach mediation confidentiality, presumably to try to make your camp look unreasonable to a judge with a busy docket. This results in further contentiousness. The court is nonchalant about the breaches, but they make your client distrust the justice system—after all, judges promised confidentiality. This results in your needing to spend substantial time to help your client remain sane about the process.

In a long-awaited status conference, defense counsel collectively "pile on" regarding fee expectations, causing the district-court judge to make hostile comments about fees. The judge has not reviewed your contemporaneously recorded time records, but cannot comprehend that at the end of two and a half years, your firm genuinely finds itself with $1.75 million in lodestar fees (fees that you would have charged fee-paying clients at your usual hourly market rates for such litigation), and $65,000 in hard, out of pocket expenses, to overcome the very obstacles that defendants and third parties erected, and make your case. (Each deposition transcript costs $1,000 to $3,000; multiply that by the number of witnesses and defendants in this case, and then by the breadth of your portfolio of cases, and you have a lot of personal chips on a lot of tables you are playing simultaneously. The client may be technically responsible under your engagement agreement to reimburse you for out of pocket costs when the case ends, but she is uncollectable.) The judge, in the presence of defense counsel, threatens a "line by line" review of billing entries and expresses enthusiasm at the prospect of gutting time from it.

Emboldened by the judge's comments, the insurance company dangles an "offer" that provides the client with a windfall as to the case's remaining value—but borders on calamitous for the lawyers who worked to get her there. It represents pennies on the dollar of time and money invested in the case. What do you do?

Because you put your clients first, you settle the case for the client's benefit. (You also know that you and your client are facing up to two more years of interlocutory appeal time on even a meritless summary-judgment motion based on qualified-immunity before ever seeing a trial, and potentially years more litigating fees after any trial.)

But you then wonder how you are now going to compensate your people—all highly credentialed—to keep them. Because they have been living on fumes while this case has consumed the firm's time. And you wonder how and whether you are going to continue this type of practice. Because even when your cause is righteous, it is, after all, gambling. Little different from that practiced in those casinos that were just built downtown.

Congress adopted the civil rights fee-shifting statute, 42 U.S.C. § 1988, to attract competent attorneys to provide clients with civil-rights concerns with meaningful access to justice, that is, to create a system of "private attorneys general" to vindicate the constitutional rights that we hold so dear. Congress could have never anticipated, however, the degree to which the justice system makes litigating the underlying case, and recouping attorneys' fees and advanced out-of-pocket costs, such a challenge. Nor could it have appreciated that the lawyers willing to do the work required—at the level of rigor and excellence we all ought to expect—would have to have enormous, and perhaps irrational, appetites for risk.

There is, as described above, a fundamental disconnect between the actual work required to do a first-rate job for clients in civil-rights cases and the willingness of some courts to award a fully compensatory fee. Lawyers who help their clients prevail are entitled to fees, yet district courts seem more than willing to second guess their professional judgment and subject their bills to a brand of post hoc slashing in which fee-paying clients rarely have the opportunity to engage. Perhaps this is because taxpayers are usually footing the bill, although the Supreme Court has held that that is irrelevant to the fee analysis.[7] Some courts cannot help being put off by fee and cost petitions that far exceed damages, even though that is perfectly legal,[8] and indeed, to be expected if lawyers are doing their jobs in these cases. Because decisions taking hatchets to fees are subject to an "abuse of discretion" standard, reviewing courts are often reluctant to disturb even the stingiest awards.

All this flies in the face of the principle that lawyers' own professional judgment should be trusted.[9] Given the challenges described above, plaintiffs' counsel in fee-shifting cases, who can only earn a living by spreading their risk, have a built-in incentive to minimize costs and the efficiency of time expended generally. In my experience, all will try to do so, but only the *good* ones will nevertheless embrace the greater risk of doing the good, long, and hard work necessary to win, and win big.

Statutory fee-shifting exists to encourage practitioners to do the same quality of work for those who cannot afford fees as they would for fee-paying clients—and to safeguard the protection of precious constitutional rights in the process. Those who undertake federal fee-shifting work must be permitted to earn fees comparable to those highly skilled practitioners could earn in other similarly complex fields such as anti-trust, complex business litigation, ERISA, etc.—or top-quality lawyers will not have the appropriate incentives to roll the dice at the constitutional table. ⊙

Subodh Chandra is managing partner of The Chandra Law Firm LLC, a civil rights litigation boutique in Cleveland, Ohio. Significant cases include successful voting rights litigation on behalf of a homeless coalition against Ohio's Secretary of State, and a multi-million-dollar jury verdict in a First Amendment employment retaliation case. Chandra is a former director of law and prosecuting attorney of the City of Cleveland, a former assistant U.S. attorney, and a refugee of large firms in Los Angeles and Cleveland. Chandra is a graduate of the Yale Law School and Stanford University.

Response by Liza Franklin

We are not actually arguing about different things. You wax poetic about the difficulties of litigation. I agree. You talk about how hard prosecuting a case is. I agree. You do not, however, talk about the responsibilities you have to anyone other than the client and your partners. I suggest there are more responsibilities at work here than simply those to this particular client. Lawyers who sue municipalities should recognize that the money does not come from the tree growing on the roof of City Hall. It is not an amorphous, mysterious, magically renewing bag of money. These are tax dollars from real people, used to do real things in society. Lawyers who sue municipalities should take those responsibilities as seriously as do the attorneys who take the pay cuts to work for those municipalities.

I am suggesting that the proper approach for a "private attorney general" is to act as though you have a paying client. Take a look at the cases from the perspective of a lawyer representing a paying client. A paying client would not pay for the overbilling of a case. My division sometimes hires outside counsel to represent Chicago police officers in civil rights cases. In my capacity as deputy corporation counsel, I am the general counsel who reviews those bills. I reject charges when a partner bills 6 hours to redact documents or make photocopies. The taxpayers do not pay for food for in-house attorneys, and they do not pay for food for outside counsel who work past 7:00 p.m. Our outside counsel know that the bills are reviewed, and they take their billing responsibilities to the taxpayers seriously. Those that have failed to do so no longer work for the taxpayers. As the loser in a case, we cannot force you to be reasonable. But we hope you will. And buy your own M and Ms. ⊙

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brief in response to the fee petition (or by the court's decision) in that case has learned a lesson and will scrutinize the billing invoice more closely before submitting it for payment.

But as to many of the other litigation expenses that she lists, I do not find them unreasonable or worthy of mockery on their face without further inquiry. Transporting the trial exhibits in a van? Perhaps they were large exhibits and it was necessary and reasonable. Cab rides? Perhaps they were reasonable—it's either that or pay huge parking fees and/or rental-car expenses in a big city. A hotel room in downtown Chicago to avoid commuting to the suburbs in the midst of trial (and presumably to use as joint work space for continued trial preparation)? Potentially reasonable if you have ever contended with Chicago commuter traffic, need to be certain that you arrive in court on time, and need to maximize your trial-preparation time. And keep in mind, these were all presumably documented expenses that plaintiffs' counsel advanced and bore, not knowing whether they would win. They might very well have had to eat them—personally. They should not if their clients prevail.

As much as defense counsel (and sometimes courts) often sneer in their fee briefs at the time and expenses the plaintiffs' lawyers invest in their cases, the truth is that all lawyers have to exercise professional judgment about what it takes to work efficiently and win. Having been on both the defense and plaintiff's end of the bar (and as someone who now does both, although mostly the latter), I can state unequivocally that it is generally easier to be a defense lawyer than to be a plaintiff's lawyer. The plaintiff's lawyer bears the burden, often weighty in civil rights cases, of proving the case. The plaintiff's lawyer generally does not get paid at all, or reimbursed for out of pocket costs, unless the client prevails. The defense lawyer merely needs to find chinks in the armor of the case—some that are technical, procedural, or simply contrived, and that have little to do with rendering justice. Obviously, I am oversimplifying, but the underlying point is that it easier to be an armchair critic and complain that someone else didn't *really* have to invest time or money in a case to win than to actually do it.

And of course, that is exactly what happens. From the moment a fee motion is filed, plaintiffs' lawyers find themselves subject to virtually proctological post-hoc second-guessing (often through discovery that intrudes into work product and even other, unrelated client matters).

Courts sometimes forget that in fee-shifting cases, the awarding of fees is not meant to be an act of grace. It is a legal entitlement for the clients based upon the considered policy judgment of Congress that our Constitution is worth fighting for, and that we need lawyers willing to take up the cause. I would urge courts to avoid being drawn in to the game of second-guessing the professional judgment and integrity of those who appear before them. If an attorney is foolish enough to attempt to bill for a $3 Snickers bar, then, by all means, strike it. And administer a verbal spanking. But ask also why defense lawyers are nickel and diming the bill, and running the bill up further by doing so, when it is their client who violated the Constitution. ⊙

Endnotes to Both Perspectives listed on page 57

Endnotes to Both Perspectives

[1]Fed. R. Civ. P. 54(d)(1).

[2]*Cf. Yahoo!, Inc. v. Net Games, Inc.*, 329 F. Supp. 2d 1179, 1183 (N.D. Cal. 2004) (stating that fee-shifting is intended to allow plaintiffs to obtain only "reasonably competent counsel," not "counsel of unusual skill and experience" and limiting local hourly rate).

[3]*Nat'l Ass'n of Concerned Veterans v. Sec'y of Defense*, 675 F.2d 1319, 1335 (D.C. Cir. 1982) (considering work "expended outside the four corners of the litigation"); *see also Chrapliwy v. Uniroyal, Inc.*, 670 F.2d 760, 767 (7th Cir. 1982) (in Title VII action, permitting fees for collateral federal-contract debarment action, where efforts "were designed to [and did] move the Title VII case toward ultimate disposition", and so "in that sense [were] within the Title VII action").

[4]*Concerned Veterans*, 675 F.2d at 1335.

[5]*Arizona v. Maricopa County Medical Soc'y et al.*, 578 F. Supp. 1262, 1268 (D. Ariz. 1984) (quoting *Twin City Sportservice, Inc. v. Charles O. Finley & Co.*, 676 F.2d 1291, 1313 (9th Cir.), *cert. denied*, 459 U.S. 1009 (1982). *See also Boehner v. McDermott*, 541 F. Supp. 2d 310, 319 (D.D.C. 2008).

[6]532 U.S. 598 (2001).

[7]*See, e.g., Johnson v. Mississippi*, 606 F.2d 635, 637 (5th Cir. 1979) (holding that it is not a "special circumstance" justifying a lack of a fee award that taxpayers will be footing the bill).

[8]*See generally City of Riverside v. Rivera*, 477 U.S. 561 (1986).

[9]*See, e.g., Nadarajah v. Holder*, 569 F.3d 906, 922 (9th Cir. 2009) ("[b]y and large, the court should defer to the winning lawyer's professional judgment as to how much time he was required to spend on the case; after all, he won, and might not have, had he been more of a slacker") (quoting *Moreno v. City of Sacramento*, 534 F.3d 1106, 1112 (9th Cir. 2008)); *see also Grant v. Martinez*, 973 F.2d 96, 99 (2d Cir. 1992) (deeming inappropriate an "ex post facto determination of whether attorney hours were necessary to the relief obtained").

[10]106 S. Ct. 2686, 2696 (1986).

[11]*Id.*

[12]*Fox v. Vice*, 131 S. Ct. 2205, 2213 (2011) (*citing Newman v. Piggie Park Enterprises, Inc.*, 390 U.S. 400, 402, 88 S. Ct. 964, 19 L.Ed.2d 1263 (1968) *(per curiam)*).

[13]*Hensley v. Eckerhart*, 461 U.S. 424, 434 103 S. Ct. 1933, 1939-1940 (1983).