

True or False: You Are What You Bill

Lawyers are an unhappy bunch. Their dissatisfaction with law practice is well documented. ¹ A recent poll in Britain, where law firm profits are soaring, ² found that one-fourth of 2500 lawyers surveyed, including one-third of non-partners and 20% of law firm managing partners, wanted to leave the legal profession. ³ One undeniable reason for this unhappiness is the ever-increasing numbers of hours lawyers must devote to client work. But the amount of time lawyers must spend at work is only part of the problem.

Lawyers' distress also derives from the single-minded focus on hours billed as a measure of lawyers' worth. This mindset has a corrosive effect on the way lawyers view themselves, their profession, and their lives. Measuring their contribution, value and compensation on the basis of hours produced is de-motivating and demoralizing for lawyers. For law firms, the result is an erosion of commitment, learning, and trust.

Growing condemnation by lawyers and clients of the reliance on billable hours is leading some firms to re-examine the way lawyers work and to search for alternative ways to measure lawyers' performance and productivity. Four firms that are making this effort are featured below.

Billable Hour: Background

There is nothing inherently wrong with billing by the hour for legal services. Hourly billing originated in the 1950's and 60's when keeping track of hours spent on legal matters was seen as a way to determine which of a lawyer's cases were more profitable than others. Timekeeping gradually became fairly common, but the practice picked up in earnest after 1975, when the fee schedules routinely used by lawyers were adjudged to be antitrust violations. ⁴ The growing use of computers also made it easier for firms to prepare and send out bills (and for clients to evaluate bills) based on the simple formula that multiplied the number of hours recorded by the lawyer's hourly billing rate.

Soon, however, firms realized that the formula allowed them to maximize income by increasing hours and/or rates. Rates were somewhat limited by clients, but firms could exert control over lawyers' time by increasing the hours they were expected to work. Firm expectations for lawyers climbed from 1500 to 1700 billable hours a year in the 1970s to 1900 in the 1990s, to 2000 hours and more today. This rise in hours and income has been accompanied by a rise in dissatisfaction, especially among associates. ⁵ What had begun as a simple accounting technique designed to increase income by recording time has turned into a monster that is driving lawyers out of the profession and threatening to undermine the sustainability of modern law firms.

I Bill, Therefore I Am

The fixation on billable hours has damaged the way lawyers view their work and themselves. As *professionals*, lawyers are highly skilled, with specialized expertise and obligations to both clients and society. In law firms, what they produce and sell are *services* intended to solve complex problems, advocate for and protect clients' rights, and seek justice. They do this in a high-pressure environment that is marked by hard work and intellectual challenge.

Most lawyers who enter private practice are highly motivated to succeed and feel proud of what they do. Their legal work is intertwined with their social and personal identities. They are driven by a desire to achieve and by a belief that the work they are doing is intrinsically worthwhile. Even those who enter law practice primarily for financial rewards expect that their legal work will contribute in some significant way to their personal fulfillment.

That motivation is destroyed when lawyers' performance and to a large part, their careers, are determined by the number of hours they bill. Evaluating lawyers on the quantity of time billed instead of the quality of their performance, work product, and client relationships, undermines their identity as professionals. Instead of highly skilled experts with unique talents, lawyers feel like fungible "billing machines" that are producing and selling hours – not services. Associates come to consider law practice a *job*, a simple trade of time for money, rather than a *profession* or *career*, which invokes far broader commitments and responsibilities to clients, firm and community.

The Psychological Effects of Believing that Time Really Is Money

When Benjamin Franklin commented that "time is money," he could not possibly have foreseen that this equation would be taken so literally or that the effect would be so harmful. But the dominance of billable hours has had precisely this result. Because each hour has an assigned monetary value (the lawyer's billing rate), time and money are literally the same in lawyers' minds. With this mentality, since all time is potentially billable, and maximizing income requires working as much time as possible, time spent on non-compensable work is disfavored, and any time spent *not* working is deemed trivial and a sign of laziness or lack of commitment.

This mindset creates the illusion that time is a commodity that can be bought or sold almost like cash. This "commodified" view of time extends into lawyers' personal lives. If all hours have the same monetary value, there should be no difference in the value of time spent at work and time spent on other pursuits, such as going to a picnic, a birthday party or a concert with family and friends. But since only work time is compensated, time spent on other things may appear frivolous or wasted. Even when they are away from work, lawyers feel the stress of lost time and therefore lost income. A parent attending a child's piano recital for two hours may worry about the "lost opportunity cost" of that time and feel that such lost time has to be justified. Lawyers have even reported thinking about what billable rate would be appropriate for coaching their children's soccer games.⁶

When faced with a choice about how to spend their time, many lawyers become conditioned to choosing work. They do not invest time in building and maintaining relationships with friends and

colleagues. They take little time for reflection or relaxation. They develop a sense of detachment that can result in a profound sense of isolation, alienation, and loneliness.

The psychological effects of the obsession with billable hours undermine lawyers' commitment and motivation, inhibit associates' learning and development, and create friction between partners and associates.

- *Associates define their commitment by hourly requirements.* When associates see themselves as employees who trade time for money, they define – and limit - their commitment in terms of the hours they owe the firm. Instead of feeling engaged in the intellectual challenge of solving the client's problem, they calculate how many hours an assignment will "give" them. It is not unusual for an associate to decline an assignment because "I have already met my hours requirement for the period," or to refuse to participate in important firm events because "I need to bill 10 more hours this week."
- *Hiking compensation often de-motivates associates.* Associates enjoy the financial benefits of high compensation, but resent the firm for using money to manipulate them. For example, by tying bonuses to incremental increases in hours above the minimum "target," firms reinforce the feeling that associates are instruments the firm employs to increase its profits. At some point, the feeling that they are merely "billing machines" leads to cynicism and loss of self-respect, and decreases engagement in their work.
- *Associate learning and development suffers.* Lawyers come to a firm expecting personal attention, interesting work, and on-the-job training. But when the only things that get rewarded are those that can be billed, partners and associates resist non-compensable activities, including informal day-to-day mentoring and training. Instead, firms offer associates formal mentoring programs and CLE classes, which are insufficient substitutes for one-on-one, real-time learning opportunities.
- *Associates are set up to fail.* Because associates are highly paid, partners expect a great deal from them. To partners, few demands are unreasonable when they are paying associates so much. But since partners do not take the time to teach associates the skills, characteristics, behaviors, and practices of excellent lawyers, associates feel professionally stymied and consider partners' expectations unfair. When associates cannot perform to expectations, the outcome is friction between partners and associates.
- *Partners withhold good work.* The challenging "stretch assignments" that associates need in order to develop their skills are frequently withheld from them. Sometimes it is because clients instruct firms not to give work to high-priced but inexperienced associates. More often, however, it is because partners hoard the work to meet their own billable hour requirements.
- *Mixed messages about time expectations lead to distrust.* Many firms profess that they want associates to spend time in activities that promote professional development, provide pro bono services, build client relationships, and help support the firm (e.g., committee work). But when it comes to their evaluations and bonuses, promotion and compensation

decisions frequently contradict these assertions. Instead, firms focus on hours billed and hold up as role models the partners who bill the highest number of hours each year.

The Result: Lawyers Want Out

Long term law firm success depends on lawyers who are prepared to link their future to the firm. But few lawyers today are willing to sacrifice their lives to a firm, one billable hour at a time. What lawyers are rejecting is not the hard work or long hours per se, but the dehumanization that results from what they perceive as selling hours for money. Lawyers seek a sense of wholeness; they want to lead lives of meaning, connection, and moral purpose. Law firms can – and should – provide work environments where lawyers can find that kind of life. But this is possible only if they stop thinking about billable hours as the primary measure of success.

Bold new ideas are desperately needed to find ways for law firms to look at professional success more broadly and to restore the intrinsic value of legal work as a source of intellectual and professional satisfaction. The firms highlighted below are taking steps in that direction.

¹ See, e.g., Carl Horn III, *LawyerLife* (Chicago, American Bar Association) 2003

² Alex Novarese, "Profits at U.K.'s Top 50 Law Firms Hit Record Levels," *Legal Week*, July 20, 2007, <http://www.law.com/jsp/LawArticlePC.jsp?id=1184869657030>

³ Frances Gibb, "One in four lawyers wants to change jobs," www.TheTimes.com, July 2, 2007

⁴ Huseyin Leblebici, "Determining the Value of Legal Knowledge: Billing and Compensation Practices in Law Firms," in Laura Empson, ed., *Managing the Modern Law Firm* (Oxford, Oxford University Press) 2007.

⁵ *Ibid.*

⁶ Jeffrey Pfeffer, "Why Free Agents Don't Feel Free," www.CNNMoney.com, March 15, 2007