Technology Efficiencies Require Billing Alternatives

By Edward Poll

IN A PREVIOUS COLUMN, IT WAS DISCUSSED HOW leveraging the efficiencies of technology can be a vital survival strategy for small firm practitioners in the "new normal" turmoil that law firms must deal with—but only if technology leverage is combined with innovative approaches to billing. This point is crucial, because technology efficiencies without billing innovation will keep the firm from realizing technology's financial benefit. In fact it could be the road to financial ruin if combined with a rigid billable hour approach.

Automation Principles

The Industrial Revolution demonstrated that that the more equipment used to make a product, less labor was required, and the lower the price. With a lower price, volume increased, and profits likewise could rise. Automation produced the same result but with a different name. The more product or service a machine could produce, the less expensive the product. The result would be a lower price with higher volume, with efficiency producing higher profits.

These principles are the same for law firms. More machine power, whether through eDiscovery software, knowledge management systems or other innovations, reduces labor, which tends to reduce cost, which tends to reduce price, which increases volume and profits.

Fee Transformation

The key to higher volume is partnering with clients, understanding what they need, listening to what they want and bridging the gap between the two by providing value. Value is defined as listening to the client to understand what they want and showing them how lawyers can provide value by delivering what clients need to address their challenges. This requires a transformation on both sides of the fee equation.

Clients must accept the kind of billing arrangements that would allow the lawyer to make more money while being more efficient. This does not mean regarding legal services as a commodity. It means rewarding lawyers with more work for eliminating inefficiencies, duplications and unnecessary services.

By the same token, on the law firm side, maintaining profits while becoming more efficient requires changing the billing system to embrace alternative fee arrangements. Using contingent, fixed, capped, value fee approaches where time does not determine the fee is essential to make the most of the leverage from technology.

Increased profit by increased efficiency through the use of technology under a fixed fee or alternative fee engagement agreement is a definite contrast to the traditional American law firm model, where profit is increased by raising the hourly billing rate. But change is inevitable.

The Great Recession caused corporate and small clients alike to revolt against that model with its opaque standards and seemingly arbitrary price increases. The premise of any alternative billing system is that time is not the relevant issue to determine the fee. Value to the client sets the fee. However, in case the firm and the client do not agree on the value provided, the rules of professional conduct must be altered to permit billings without reference to time, particularly in determining appropriateness of fees where there is a dispute.

Client Acceptance

The question becomes, then, will clients accept billing arrangements that allow the lawyer to make more money while being more efficient? The Association of Corporate Counsel's ACC Value Challenge, which aims to integrate law firm billings with corporate clients' perceptions of value, suggests that they are. Some corporate clients view certain legal services as a commodity, and want to apply standardized rates or flat fees where appropriate. However, most clients are willing to pay a fair fee for value. What they do not want is to pay too much—to pay for inefficiencies, duplications, or unnecessary services. And this is where the leverage from technology is the lawyer's advantage.

When hand-built horseless carriages gave way to the Model T, millions bought cars, and lots of skilled carriage builders went out of business. Some analysts, like British technology consultant Richard Susskind, contend that the legal profession is headed down the same path. In his book titled "The End of Lawyers?," Susskind claimed that the legal profession would be driven by a market pull towards the commoditization of legal services, and the development of new legal technologies to handle those services.

Lawyers will find their roles eroded or even displaced, he said, in a future where "conventional legal advisers will be much less prominent in society than today and, in some walks of life, will have no visibility at all."

This goes too far. The time savings, efficiency and commoditization of routine tasks and services afforded by computers and other electronic technology will, as we have seen, free the legal practitioner to better meet the demands of a challenging new era—provided that that lawyers alter their fee and cost structures in the new world created by changes in technology.

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