

[It's About]

TIME

Break the Hourly Billing Habit. Let Automated Practice Systems Power Pricing Innovations.

BY MARC LAURITSEN

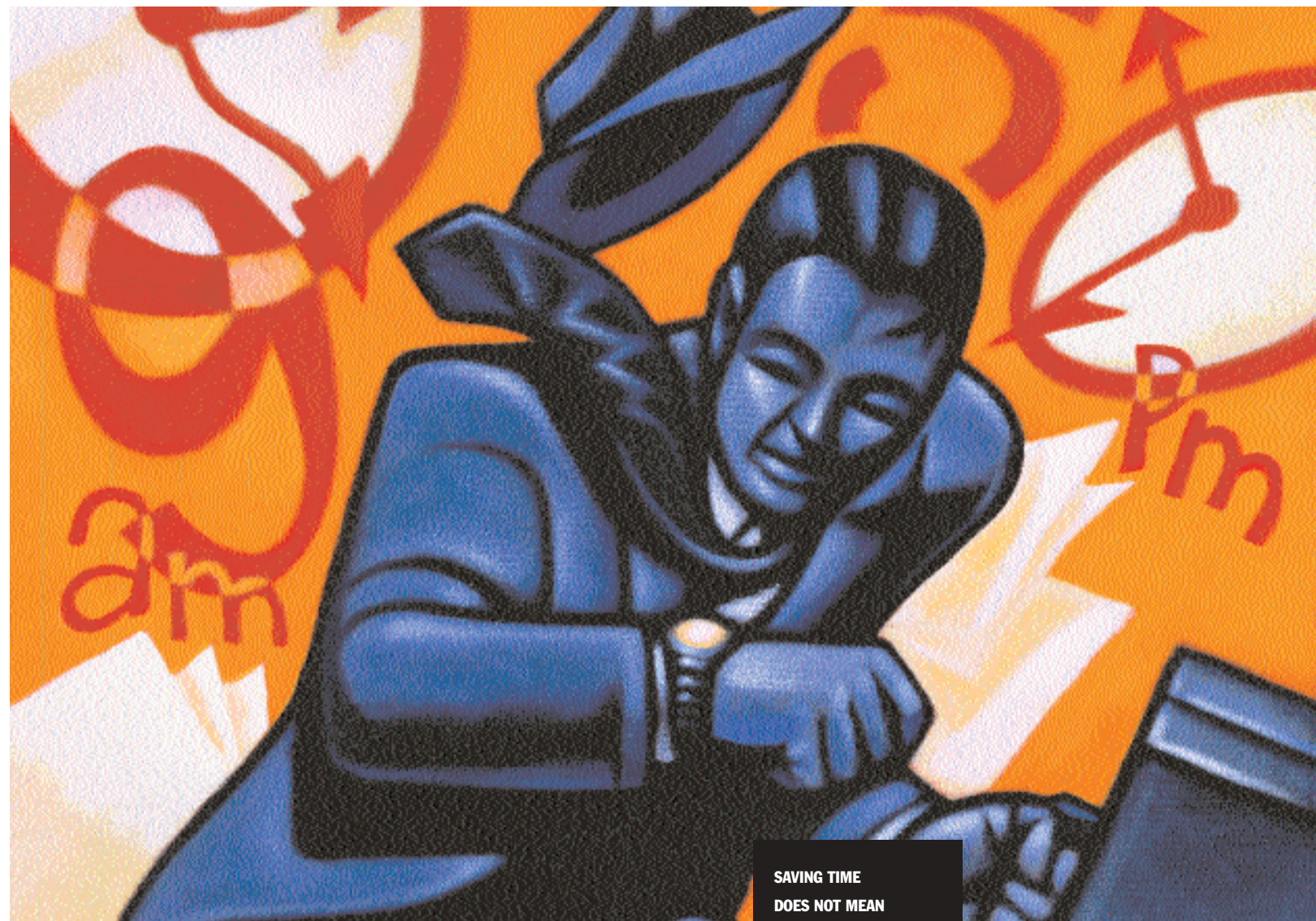
A RECIPE FOR PROSPERITY. In an hourly billing world, does greater efficiency mean lower billables? That's the specter timesaving technologies raise for many lawyers. It seems hard to justify the expense, let alone recover the cost, of such tools within existing billing practices.

But many forms of information technology are no longer optional. Word processing, e-mail, voice mail and file backup systems are all recognized as obvious, unavoidable costs of doing business. We don't, for instance, use ballpoint pens and armies of paralegals instead of word processors or litigation support systems just because the former would lead to more billable hours. The same should hold true for more specialized knowledge technologies, like expert systems, portals and document assembly, which, properly implemented, can enable dramatic productivity gains. But their economics are less obvious. Many offices fail to reap, or even consider, the benefits because of an hourly billing model that tends to penalize efficiency.

Some law offices, however, have moved forward without fear and found ways to unleash the profit-enhancing power of specialized practice technologies. Read on to learn what innovations are taking place at the front.

The Productivity Paradox in Law Offices

Over the past decade, academic circles have debated the so-called "productivity paradox." Why, despite the dramatic investments that companies had made in laborsaving information technology, were no corresponding gains in employee productivity being



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measured? While computing power in the U.S. economy had increased by two-plus orders of magnitude since 1970, why did productivity, especially in the service sector, seem to stagnate? Hypotheses advanced to explain this phenomenon included measurement error, time lags in payoffs, mismanagement and redistributional as opposed to net gains.

Many lawyers face a less-subtle productivity paradox: The faster they work, the less money they make for a given assignment. The built-in tension between some forms of efficiency-improving technology and strict hourly billing has not escaped attention.

While these issues play out with almost any laborsaving technology, they seem especially acute in the case of document assembly. Legions of would-

be users have walked away from this powerful software, saying (in effect), "That's great, but I bill by the hour, and doing my work faster will just reduce my billings." My old friend Wynn Smith used to tell the story of his attempt to sell document automation to an incredulous law firm partner. The partner concluded the conversation with something like, "You mean to say that with this system I could accomplish in a few hours work for which I now bill clients one day of my time, plus a few days each of a couple of associates and paralegals?" Then, after a long pause, "What are you, a *communist*?"

John Patafio, an attorney in Amityville, New York, recently described the situation as follows in

an online discussion of HotDocs: "Lawyers have no problem shelling out for things they think will increase their profits.

Who had cell phones when it cost \$1,500 for the phone and the calls were \$1.50 to \$5 per minute with no calling plans? Who buys copy machines by the container-load with more features than the space shuttle and a monthly lease fee that looks more like a car payment? We understand these technologies and how they will help us. Trust me, lawyers are not shy about spending. Show us in a meaningful, demonstrative way how we can personally benefit from the technology in our practical day-to-day, and I have no doubt my brother and sister lawyers will line up!"

Show Me the Money

Here are some of the ways—under capitalism—that lawyers are profiting from advanced practice technologies.

1. Use new technologies in areas where billing practices already reward greater productivity. There are many sectors of the legal profession where hourly billing is not dominant, such as corporate law departments, nonprofit legal services providers, government offices and pre-paid and union-sponsored legal services plans. Even in private firms, practice areas like consumer bankruptcy, immigration, no-fault divorces, estate planning and municipal finance have a tradition of fixed or not-to-exceed fees. In most of these contexts, the economic analysis is fairly simple: Given the volume of work you do (or could do) and the time-cost savings you could realize by deploying productivity-enhancing tools, is there an adequate return on investment for the costs of those tools?

A rigorous financial justification for the investment needs to factor in such things as discounts for the time-value of money and the probability of net success. But many offices recognize quick payoffs from practice systemization. Carolyn Manteuffel, of Paige J. Donnelly, Ltd. (www.paigedonnelly.com), a St. Paul, Minnesota-based personal injury firm that makes extensive use of document assembly, puts it bluntly: “Because we operate on a contingency fee basis, efficiency is the name of the game. The more the staff can crank out, the more files we are able to handle at one time, the more money we make.”

The fact that advanced technology has not been more enthusiastically adopted even in hourly billing-free sanctuaries, however, reminds us that pure economics are only part of the picture. There are lots of other reasons

that people don't adopt new technologies. Some of the reasons are compelling; some are dubious. For instance, some lawyers appropriately recognize that aspects of their work are so highly nuanced that automation with current technologies would not be cost-justified. Other lawyers reject automating even obvious aspects of their practices from fear of seeming to have “too much time on their hands.” And some people just place high value on comfort, continuity and the absence of change.

So what about those who primarily earn a living by charging clients for their time?

2. Keep business you might lose, obtain business you might not get. Rather than using explicit cost reduction or revenue enhancement formulas, practice automation efforts are often justified in terms of client service, quality control, competitive advantage and marketing. A large firm partner using WorkForm, an early document assembly product, once told me, “This is the only way to stay competitive.” Sometimes you have a book of business that is not especially profitable, but that would be costly to lose. Other times you have unused capacity you'd be happy to put to use on a new client's behalf, even if the effective hourly rates are not what you ordinarily demand.

3. Reduce hours you won't bill for anyway. On occasion, firms feel compelled to write off time because some timekeepers record more hours for a task than can be justified, or because the overall bill seems too high for the client. You can use technology to help eliminate some of the time you would otherwise write off. And don't forget that efficiencies for staff whose time is never billed, such as secretaries, provide a straightforward reduction in operating costs.

4. Raise hourly rates for work that uses extensive automated expertise. If you invest serious time and money in building knowledge tools that enhance professional effectiveness, you may be able to recover that investment by charging higher hourly rates. Blair Janis, a legal technologist at the Salt Lake City office of Ballard Spahr Andrews & Ingersoll, LLP (www.ballardspahr.com), points out that:

The increased rate reflects the improved quality of the lawyer's work that occurs with document automation and the value the client places on having the work done quickly. The net result should be that individual clients pay less than they would have without the automation (fewer hours for that client), but the lawyer continues to bill the same number of hours overall at a higher rate than before (getting more work done for more clients in the same amount of time it took without the automation).

5. Add a transaction fee to cover special technology costs. Document automation pioneer Eric Little recommended that firms add a per-transaction cost that has the effect of roughly splitting the billable time savings between firm and client. Practice systems can be viewed as hypothetical banks of time that can be drawn from across many transactions.

6. Charge for the time it took before automating. Many lawyers engage in some de facto value billing: charging for the time a task ordinarily would, or should, take, even if they happened to have actually spent more time, or less time because similar work was recently done for another client. Absent clear client disclosure, any significant “hypothetical” time accounting like this raises ethical concerns. But with client knowl-

edge and consent, arrangements in which work is billed based on how much time it typically takes without special supporting technology can appropriately serve both client and lawyer interests. One firm I spoke with several years ago treated its highly sophisticated estate planning system as though it were a senior lawyer, billing accordingly for the time in which it was in use on a given matter.

New York-based consultant Seth Rowland, president of Basha Systems, LLC (www.bashasys.com), took on these issues in the same recent exchange:

What lawyers should be delivering is a professional service. A professional service is defined not by the number of hours spent, but by the quality of the deliverable. Most clients, generally businessmen and women, don't care how many hours you spend on a task. What they care about is whether you as a lawyer have delivered ... delivered a workable contract, delivered a structured settlement, delivered peace from litigation, delivered appropriate and viable trademark and patent applications.

To the extent that you put a value on the deliverable and get a client to agree to pay those terms, there should be no conflict with the bar rulings. If you define your deliverable in terms of "hour equivalents," this should not pose a problem, as long as the bills and retainers state in advance that these are not real hours spent. The key words are "advance disclosure."

7. Set fixed rates for service packages especially amenable to automation. Say that the competition keeps busy doing a certain kind of work at an average price of x without significant use of knowledge-leveraging technology. Then power-tool-equipped providers should be able to do that work at a significant discount off of

BOSTON-BAKED DOCUMENT

AUTOMATION BY MARC LAURITSEN

One innovative way to deliver legal services is to develop and maintain a document assembly system for use at a client site. That's just what the Boston office of Hinckley, Allen & Snyder, LLP is doing for one client, Fleet National Bank. Each year the franchise finance group at Fleet provides millions of dollars in small business loans to McDonald's franchisees across the country for the purpose of renovating existing restaurants and building new ones. Paula K. Andrews, partner in Hinckley Allen's corporate practice group, drafts the documentation for the loans (notes, mortgages, guaranties and related documents). But drafting and reviewing documentation for each specific loan could not be done profitably given the relatively small dollars involved and the corresponding constraints on legal fees for such transactions. So instead, Andrews has developed a series of document models, with fill-in-the-blanks for loan terms and alternative language for different states and various loan types (such as fixed vs. floating interest rates, equipment loans vs. mortgage loans). These models have been translated into a complex series of HotDocs templates that are run by Fleet's franchise finance group, headed by Ted Lynch.

When a McDonald's franchisee requests a loan, Lynch's staff fire up the HotDocs system and answer questions in a series of on-screen dialogs regarding such issues as the type of borrower, type and terms of the loan, location of the restaurant and guarantors' names. The system then generates a set of loan documents in Microsoft Word, along with a datasheet summarizing the key terms. Because the loan programs are standardized, there is no negotiation of the standard loan provisions and no need for Fleet to run the documents by Andrews at Hinckley Allen, since they are based on models she has already approved.

The benefits of this approach are manyfold for Fleet National Bank. With the document assembly system on its premises, Fleet can much more quickly respond to a particular franchisee's request for a set of loan documents. And if the franchisee has previously secured a loan from Fleet, many of the borrower details can be called up from a saved answer file, rather than reentered. Most importantly, because the HotDocs system uses preapproved clauses and programmatic logic, Fleet does not incur the time and expense of legal review for each loan.

For McDonald's owner-operators, the system means they get loan documents faster. With Lynch's policy of "zero tolerance" for post-assembly edits by his staff, McDonald's too has come to rely on the Fleet system to produce consistent and accurate forms for every instance in which McDonald's or one of its joint partner franchisees is a borrower.

For Hinckley Allen, it means continuing contact with the client and ongoing work to revise the model documentation when new loan programs arise and when new state-specific modifications are needed. Changes to the templates at Fleet are only made when they are drafted and approved by Andrews.

Another benefit that Andrews sees is the ease with which advice can be rendered to the client when questions do arise. Since all the forms are standardized, Andrews and her team at Hinckley Allen can simply reference the firm's own set of loan documents for a particular program and provide advice about their use without having to obtain client copies of the documents and review them. All of this means a solidified relationship among Hinckley Allen, Fleet and McDonald's—with each party efficiently adding value but with a document assembly system to store the legal and drafting knowledge and do the routine work.

TURNING UP THE VOLUME

IN CANADA BY MARC LAURITSEN

With more than 700 lawyers, Gowling Lafleur Henderson is one of Canada's largest law firms. One of the practice groups based in the Hamilton office serves several large financial institutions in the area of mortgage recovery and debt collection.

In the late 1980s, a senior partner of the firm, Bill Walker, foresaw an impending economic recession. He felt that developing an automated mortgage and debt recovery system would permit the firm to better serve its key financial institution clients, who would have larger volumes of debt recovery matters. Under Walker's guidance, Mark Tamminga, who had just started with the firm and is now a partner, developed a case management and document assembly system that efficiently managed the debt recovery process and generated all the necessary documentation to complete a mortgage enforcement matter.

The software became a key factor in attracting significantly higher volumes of work from both existing and new clients. The practice grew substantially. The firm estimates that by 2000 it was generating approximately 100,000 documents per year using the software. For 2001, the estimated volume of documents would be closer to 150,000. There are six lawyers and

approximately 35 staff who participate in the practice and operate the software in Hamilton, with a few additional users in other cities. For their mortgage enforcement practice, they maintain approximately 400 templates, with thousands of permutations, many of which contain very complex document logic and numerous references to database fields.

THE SYSTEM AND THE PRACTICE GROW

After several software upgrades, Gowlings now uses Microsoft's SQL Server 2000, an Access 2000 front end and the GhostFill assembly engine to handle document production needs.

The investment in technology, while considerable, has been essential to the continued success of the practice. By convention, fees on mortgage matters in Ontario are generally fixed; none of the Gowlings mortgage enforcement lawyers docket time. Gross revenues are simply a multiplication of the number of files by the fixed fees allowed. There is, therefore, enormous internal pressure to reduce cost. Without the systems in place at Gowlings, it is unlikely that the practice would be economically viable.

With the systems in place, Gowlings does very well indeed.

x and still make a profit. A straightforward way is to specify fixed prices for well-defined service components or packages.

Nancy Grekin, of Gerson, Grekin & Hieneman in Honolulu, writes:

Pigs get fed and hogs get slaughtered. If a lawyer charges too much, the client will complain—and it doesn't take bar association ethical standards for the lawyer to figure that out. I see the billing for automated documentation

as the amortization of the lawyer's time and expertise in creating that document and turning out something that is correct and is what the client wants and needs. It can produce huge premium billing. Most of what I do with my automated documents (I use WP templates and HotDocs) involves matters for which I charge a flat fee, so the hourly rate is not important. The charge ends up being something far larger than my usual hourly rate, how-

ever, because of the efficiency of producing the document; but it doesn't result in a charge that the client thinks is unfair or too high. And when I do use automated documents in connection with a larger matter, I may end up charging more for the transaction than the hourly amount results in if I think the result was worth it.

In its Alternate Billing Forms, the North Carolina Bar Association provides a "Special Provision for Computer Generated Documents":

Some of the law firm's tasks are performed with the use of computer generated documentation. In some cases where that documentation is employed, you will note on your bill a flat fee, rather than the attorney's hourly rate for preparation of your documents. This fee represents a calculation by the law firm that takes into account the expenditures necessary to create this documentation, but does not impose a fee equivalent to that which would be necessary if we performed the work without planning and preparation.

Seth Rowland observes:

The real problem is that lawyers generally don't know their true costs for the "delivery of a defined professional service." Part of the automation process should be a detailed assessment of the pre- and post-automation cost of delivery.... If you know your average costs pre-automation, you can come up with a "price" for the service. Then, you can take that price and take a discount off of it (the automation discount), which incentivizes the client to use your services, but still charge a fee for that service that represents a premium over your hourly billing rate, which incentivizes automation.

But what if everyone did this? Wouldn't it eventually force prices down? Yes. Welcome to the free market economy. Given the glacial pace of billing innovation in the legal profession, though, you needn't worry too much. In the meantime, there are some great opportunities for early adopters.

However, don't get too complacent. Some of the online legal services dot-coms survived last year's crash and are making aggressive moves in the direction of fixed-priced offerings. There are also novel interactive Web sites at firms like Linklaters and Clifford Chance in London, and Weil Gotshal and Davis Polk in New York. Those sites herald a new generation of online expert systems providing commoditized services even for highly sophisticated fields.

8. Involve clients in underwriting some of your technology costs. Think of billing as the process through which clients are asked to contribute appropriately to the cost of services they receive. Long-term clients may well be prepared to help underwrite technologies that allow you to more cost-effectively deliver services they need.

One top firm, for example, arranged for a client to pay for the development of the knowledge base underlying a system, which was independently valuable to the client. The firm recovered other costs by selling finished systems to other firms, law departments and a publisher. Receipts from billed time are not your only source of funds. (See the sidebars accompanying this article for other examples.)

9. Consider hybrid scenarios. None of the preceding approaches need be pursued in isolation. Some go together naturally. For instance, Lee Knight, an independent document assembly application developer, reports:

One of my clients (a group of estate planning attorneys and paralegals) realized that to take advantage of document assembly efficiencies, they had to change their billing practice from an hourly rate system to a combination of (1) fixed per-document charges (varying according to the type of document) and (2) per-hour counseling charges for any work exceeding the baseline for preparation of those documents. It took some time to figure out the charges, but the new system is working well. The client's clients seem to like the new system because it gives them a more definitive idea of what their costs will be.

According to Diane M. Smith, of California-based Gaw, VanMale, Smith, Myers & Miroglio (www.gawvanmale.com):

Our law firm gets through the "penalty" for faster completion of documents by charging a flat rate for a particular service, and quotes an hourly rate for any additional work or conferences and the like. For instance, in estate planning, the flat rate for a "trust package" can be from \$900 to \$5,000, depending on the complexity of the documents and funding of trusts. Our fee letters list, for the quoted flat rate, most of the general documents associated with a trust plan. We also quote an hourly fee (the rate depending on which lawyer is handling the matter) for any additional services, such as assistance in funding the trust, including preparation of beneficiary designation forms for the client's retirement or insurance plans, or recording real property. While these "additional services" all have forms generated from HotDocs, it still requires a lot of footwork to gather the information needed. In short, I don't believe we have seen a drop in profit to equal the added

Pattie Christensen, a Utah practitioner, combines document assembly technology and fixed-fee billing for an effective hourly rate substantially in excess of her less-automated fellow lawyers. Her Web site (www.utahestateplanners.com) mentions some of the services she provides.

Here's how Christensen describes her experiences with practice systems: "I started creating automated practice systems while still in law school. However, the law firm for which I worked after law school billed on an hourly basis and, as such, did not encourage the use of automated practice systems. Now that I am a solo practitioner, I am able to use automated systems to increase my productivity, to increase the total amount of service that I can provide, to reduce the amount of time spent on ministerial duties, and to reduce the occurrence of typographical errors that are so common with the 'cut-and-paste' method of document creation.

"I find that if there is a set of documents or forms that I will be creating for multiple clients, it is more time- and cost-effective for me to create an automated system to prepare the materials for the clients."

In addition, Christensen has found that automating practice systems can enhance revenues in yet another way. She says, "I have the ability to create residual income by leasing or selling to other lawyers the systems that I have created. One such project is in the works at www.gotdocs.com."

PRINTING MONEY

IN THE HEARTLAND BY MARC LAURITSEN

A lawyer somewhere between the Coasts gave me the following report:

"I recently started doing loan documentation for a national construction lender. The borrower pays the fees, but the lender doesn't want the borrower to get angry about the fees. Part of the overall marketing of the bank is that our lawyers are smart and reasonable. While there probably hovers about these deals the sense that the work is hourly, in fact every deal charges out about the same. I call in my fees to the closing secretary, and they are paid out of closing, and I have never had a borrower ask to see documentation of any kind. I send bills to nobody. Clearly the bank and the borrower have a sense that value is being delivered on a per-transaction basis and, therefore, do not think to inquire into the details. The details do not matter. This is no doubt because the prior law firm used was charging about \$18,000 per deal, and I, thanks in part to the efficiencies of HotDocs, charge more in the \$8,500 to \$9,500 range. If I could generate 500 loans per year, I could service them all and make the clients very happy and, frankly, print money.

"We manage these loans this way: I generate the documents and convert them to PDF and send to all interested parties via e-mail. Comments come back via e-mail. Once final documents are agreed to (with the quality control of HotDocs, comments and revisions decline through time), original signature pages are signed in various cities and sent overnight to the closing secretary, who then prints out my PDF documents and assembles the final documents. Rarely do the parties need to talk by phone, and I have never met many of the lawyers with whom I do business routinely. This sounds simple, but it was a revelation to the bank and to the borrowers. It is just so much easier than the old way. It was, in part, because we brought this to the bank and because of our comfort with all of it that the bank and borrowers saw us as the go-to guys.

"The only challenge at this point is matching the business of the type well adapted to document assembly and the firms with the real ability to deliver it. But that is a big problem. I could serve any lender in the United States with similar business and never miss a beat, no matter where they were located. It is hard in this business to find and reach out to the likely candidates. Somebody should invent a law firm with a national practice that limits itself to business that can be automated in this way, and that aggressively markets to clients that need it. Wow. That's a pretty good idea!"



efficiency of our automated document program. We have some departments that charge strictly on an hourly basis, but the rates have been adjusted to compensate for the automation.

Doing Good and Doing Well

Fixed prices and other alternative billing practices do more than promote better client relationships. They also richly reward creative firms that figure out how to leverage their lawyers' expertise through advanced technologies. Too often, an hourly billing mindset gets in the way of increasing both profitability and client satisfaction.

Lawyers are not very good at displacing costs and benefits across time or social space. They tend to underinvest in technology that can radically enhance their own effectiveness, and to hoard knowledge and tools from colleagues to the detriment of the collective interest.

Until more lawyers learn how to profit from practice technology, our profession will fail to live up to an important aspect of its potential. Making money from working smart as well as working hard is a recipe not only for lawyer prosperity, but also for the effectiveness of the legal system.

Clients crave quality, attentive service, predictability and good value. In the long run, lawyers who use the latest tools and techniques responsibly will get the work—and the results—they deserve. Let's see Drive down costs, bring up revenues. Sounds like a formula for profit. It's about time. ■

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