Finding Success in the Space: Why Lower Utilization Could Be a Turning Point for Law Firms

By LawVision on August 27, 2015

For decades, law firms have relied on a combination of financial and operational metrics as proxies for profitability. Realization rates, utilization and leverage were the control mechanisms to boost profits per equity partner and, alongside well-maintained overhead expenses, buoy the financial health of the firm.

Yet a few years ago something shifted. Even as law firm revenues rally and demand, particularly for transactional work, jumps back, utilization rates remain low. Average equity partner utilization has cratered from an average of 1,738 across 2002 to 2007 to 1,598 in 2014 (9 months annualized), according to the *Citi 2015 Client Advisory*. This decline has law firms up in arms. Rallying cries of "work harder," "focus on top line growth," and "get out of the office" resound through the well-appointed halls of many institutions. Behind closed doors, those same firms are confidentially reviewing underperformers, grappling with how best to transition older partners and lamenting the perceived lack of drive in younger generations.

While all of these efforts are real and each may have its place in devising a solution for your firm, what if, instead of lambasting lower utilization, we were to embrace it? What if, instead of demanding more billable hours, we shifted our focus instead to how to generate more profits with potentially fewer hours? What if we learned to embrace the idea of *less but better****[1]***?

First, let's clarify that there are two types of "un-worked hours" in this scenario: 1) those that not worked and help to provide space for thinking, filtering and creativity; and 2) those that are worked but not billed and help to advance the objectives of the partner or the firm. Both are critical to what I'm about to discuss.

Time to Create a Vision

Vast stockpiles of research from across the world have demonstrated that long work hours diminish productivity and quality. One of the primary reasons, according to researchers, is not in the diminishing value of the hours worked (though there is some evidence of this) but in the intrinsic value of those not worked. More specifically, the hours spent not working provide the space to explore, restore and create. Some of the most visionary and innovative leaders, including Bill Gates, intentionally carve out time in their busy lives to devote to pursuits unrelated to their day-to-day work. It is the hours that they are not working that enable them to bring more creativity, productivity and focus to their jobs.

Consider the following excerpt from *Essentialism: The Disciplined Pursuit of Less* by Greg McKeown:

> *"If you believe being overly busy and overextended is evidence of productivity, then you probably believe that creating space to explore, think, and reflect should be kept to a minimum. Yet these very activities are the antidote to the non-essential busyness that infects so many of us. Rather than trivial diversions, they are critical to distinguishing what is actually a trivial diversion from what is truly essential."*

In this context, the legal industry's emphasis on the billable hour may actually be one of the contributing factors preventing law firms from achieving greater progress. When attention is decidedly focused on maximizing time – not the *value* of time – we lose the ability, paraphrasing McKeown's words, to distinguish what is truly essential. For many law firms, this translates into opportunistic, rather than directive, strategy and allows individual partner pursuits to become an ad hoc smorgasbord of investment in growth. The good news is, most law firms now have the time – or space – required to make better decisions. The question remains: will we?

A Word About AFAs

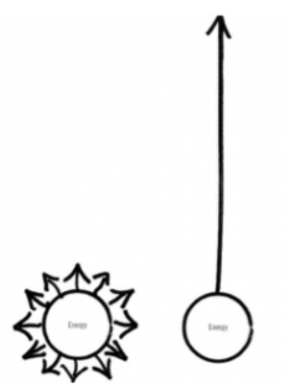
The best proxy for understanding how law firms can translate lower utilization into greater profits is to consider, explicitly, how to translate "non-billable" time into dollars. First and foremost, this approach demands that law firms diverge from the billable hour model. As long as we are paid for a unit of time, it is that unit of time that will dictate the amount of money we make. Few law firms are at this point in their evolution. Many, though, are actively making considerable strides in reducing their reliance on traditional hourly billing. According to a recent ALM survey, more than half of top firms now have a dedicated pricing specialist – and almost all of these are the direct result of the rise in AFAs. As AFAs continue to gain prominence, law firms will, effectively, be forced to find ways to deliver legal services on the *faster, better, cheaper* premise. This evolution, though, is only a small piece of the vast possibilities if we expand our thinking.

Time to Advance a Vision

Coming back to the concept of downtime as a requisite element for being able to discern what is additive from what is distracting, it would appear that lower utilization in the legal industry is currently an enormous, largely untapped, resource. If we were to accept lower utilization as the new norm, how would we approach non-billable hours differently? Conceptually, the time created could make lawyers better at what they do and potentially more valuable to clients.

Excerpted from McKeown's *Essentialism*, the below illustration demonstrates a critical difference between an Essentialist – one who does less, but better to make the highest possible contribution – and a Nonessentialist. McKeown writes, "In both images the same amount of effort is exerted. In the image on the left, the energy is divided into many different activities…In the image on the right, the energy is given to fewer activities. The result is that by investing in fewer things we have the satisfying experience of making significant progress in the things that matter most."

The common nomenclature for non-billable hours at law firms is "investment time." All too often, a firm's investment time looks very much like the image on the left. Each partner determines independently how to spend their investment time and each moves in his or her own direction hoping to advance. Yet this depiction, like most law firms, lacks a common direction – and the end result is little or no movement.



The core missing element is purpose: a succinct, clearly articulated vision for what law firms – and the individual partners – aim to accomplish. With lower utilization, law firms gain both investment time and the "space" afforded by not logging over 2,000 hours each year. It is in this space that law firms now have the time to evaluate, assess and define a sense of purpose. Those that do have the power to make great strides, redefine the way legal services are delivered (ideally with fewer billable hours). Those that don't, well, looks like the above graphic equates them to sitting ducks.

Now is the time for law firms to embrace the space and time afforded by market dynamics. Use this coming year's strategic planning process to clarify your vision and set specific, joint objectives for investment time. Explore the benefits of understanding profitability. And consider making your mantra for 2016 "less but better."

[1] English translation of Braun engineer Dieter Rams' design criteria Weniger aber besser as referenced in Essentialism: The Disciplined Pursuit of Less by Greg McKeown.