Shedding New Light on Legal Billing

The drunk looks for his keys under the streetlight because that is where the light is. It would be easy to laugh at his myopia but for our own susceptibility to observational bias. The better exercise is to think about where we should be putting our streetlights. Specifically, technology is enabling us to shine new light on the dark corners of legal billing.

Clients have demanded, and firms have supplied, all varieties of bills — from “for services rendered” to the ABA’s Uniform Task-Based Management System to voluminous, client-specific billing guidelines. High levels of generality invite obfuscation and fabrication. A density of detail distracts from the big picture. Further, there are limits to how much of a lawyer’s time putting in work for his clients can be diverted to reporting on that work. Though the popularity of formats has shifted over time and still varies by client, the constant is that we are limited to a single view of our legal bills.

Due to righteous pushback against block billing, today’s legal bills are often examined through a pinhole. Most in-house counsel pore over endless inventories of discrete tasks performed by individual lawyers on a particular day. These fragments of billable activity are confined to an invoice that covers a single month of a single matter. How long one lawyer performed one task on one day is a familiar frame of reference. Though the granularity can obscure more than it illuminates, I’ll concede that the tradeoff for digestibility is sensible. Nor can I make an argument that, on net, a finer or coarser view would serve as a better standard. Rather, I submit that the tradeoff is no longer necessary.

Legal bills are just data. This has always been true and, until recently, would constitute a rather banal observation. Similarly, in music, it long made no practical difference to most people that a song recording is also just data. The technology of storing, copying and transmitting data were so cumbersome and varied that comparing a record to a stack of paper was not a helpful analogy. The digital revolution changed that. The similarities between a Word file and an mp3 took on momentous importance. The flexibility of digital data — the ease of creation, reproduction, dissemination, compilation and mixing — transformed our relationship with music. Yet, even when they assume digital form, legal bills have changed very little.

Legal bills need not change for us to take advantage of the elasticity of digital data. There is all manner of available technologies that enable us to look at our current bills through an assortment of lenses. We can continue to zoom in on the micro information of timekeeper, task, day and matter. But the software can also compile that data into an assortment of macro views that reveal patterns that would otherwise remain invisible.

I’ve used some of this software and was, for example, shocked by the aggregate billings of some individual timekeepers. Having never had the view before, it did not occur to me — the drunk looking for his keys under the streetlight — to wonder at how much time an individual lawyer billed in total on a given day. I had relied on my own experience to intuitively determine whether the 3.4 hours billed by Timekeeper’s A on Day B to Matter C was reasonable. But I was blind to the fact that my judgment lacked the crucial context that Timekeeper A had on Day B also billed 5.7 hours to my Matters D, E and F. My sense of scrutiny was further enhanced by the fact that Timekeeper A had recorded all these entries weeks after the fact, as month end approached. Timekeeper data across matters was just one of several lenses that I found revealing (e.g., aggregate matter data, matter-type data, aggregate firm data, annual data, data across multiple years).

Advances in analytics and data visualization make it possible for clients to use their current and historical legal bills to diminish some of the properties that make legal services a credence good. When given the opportunity to observe patterns that you previously had no way of seeing, you have the occasion to raise questions that you never thought to ask. The questions and their answers will likely surprise you.

Finally, this prattling on about new ways to dissect the billable hour may make some AFA proponents worry that I am merely putting a band aid on a festering wound. Importantly, mining and visualizing billing data arms inside counsel with vital information on medians, means, variance, volatility and volume. The lack of command of such information has long fueled apprehension about taking the plunge into AFAs. But such command is now within our grasp. We can now know what we didn’t know. As a real American hero taught me as a child, knowing is half the battle. ACC