

The Billable Hour and Lawyer Wellness

By Tim Batdorf

If you have been regularly reading the Practicing Wellness column, you should be somewhat familiar with this month's author, Tim Batdorf. Tim is a Royal Oak attorney very interested in attorney wellness with whom I have partnered on numerous projects.

Tim and I will co-present at this year's Evening of Enlightenment, a joint venture between the Lawyers and Judges Assistance Committee (LJAC) and Brighton Hospital to raise funds for the Richard Steinberg Memorial Treatment Fund. The fund is named for Michigan attorney Richard Steinberg, a former LJAC member who, in the midst of his own silent turmoil, took his own life. Richard's passion was raising funds to assist lawyers without adequate resources who needed treatment for substance use and mental health disorders. Proceeds from the Evening of Enlightenment go directly to the Richard Steinberg Memorial Treatment Fund. Please look for our save-the-date ad in this issue of the Bar Journal for details about registering for this event or to make a donation to this worthwhile fund.

Batdorf, author of The Lawyer's Guide to Being Human, is currently writing another book. The following article is a peek at some of the subject matter Tim will cover in his new book and discuss at the Evening of Enlightenment.

—Martha D. Burkett,
Program Administrator, LJAP

though his society did not charge any fees for its services.² In that era—with the invention of the assembly line and mass production—efficiency was all the rage. Efficiency experts thought that unproductive and inefficient business models would be completely eradicated by systematization and rationalization.³ They even went so far as to tell people how many times to chew their food! (Apparently, 20–50 chews per mouthful lead to digestive efficiency, for those who want to know.)

Although lawyers first began recording time in 1914, the billable hour was not a common billing method until years later. For most of the twentieth century, lawyers “eyeballed” their bills, essentially determining fees based on the assigned value of services and not on the amount of time it took to produce the service. Lawyers must not have been particularly proficient with that type of billing because their salaries declined to the point that the American Bar Association felt the need to intervene. In 1958, the ABA published a pamphlet called “The 1958 Lawyer and His 1938 Dollar,” lamenting the economic plight of lawyers whose salaries had fallen below those of physicians and dentists.⁴ The ABA urged lawyers to become more businesslike and keep accurate time records, which the pamphlet called the lawyer’s “sole expendable asset.”⁵ At that time, the ABA recommended that lawyers bill 1,300 hours yearly or 5–6 hours daily over a 48-week span.⁶ For the

next 10 years, the ABA mounted a nationwide campaign to promote the idea that timekeeping was the best way to generate revenue.⁷

Still, for much of the 1960s and 1970s, lawyers continued to eyeball their bills. Clients were not particularly fond of that way of invoicing and began demanding pure hourly billing.⁸ In an ironic twist of fate, the billable hour, which clients now seem to hate, was originally demanded by clients. By the late 1970s, hourly billing became the norm.⁹ At about that same time, the practice of law began to evolve. For most of the twentieth century, lawyers practiced alone or in small groups. In the 1970s, however, lawyers began to consolidate into larger firms, to the point where we now have multinational firms with thousands of lawyers scattered around the globe. Given that development, the fungible nature of the billable hour became even more important because it provided law firms with a standard way of assessing lawyer performance and establishing cultural norms and expectations within the firm.¹⁰

Despite the many advantages of the billable hour, we now see several of its disadvantages: ever-increasing hourly demands, the absurdity of rewarding inefficiency, an overreliance on billable hours to assess lawyer performance, allegations of lawyers and law firms padding time, the destruction of collegiality within firms, and lack of time for pro bono work, just to name a few.¹¹ One common misconception is that the billable

It may surprise you, but the billable hour is a fairly recent phenomenon. The idea of a lawyer recording time was first conceived by attorney Reginald Heber Smith in 1914.¹ Smith ran a legal aid society and wanted to track hours to ensure legal services were being provided efficiently, even

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hour system is to blame. It is not. At its root, the problem is one of wellness. Unhealthy lawyers create and perpetuate unhealthy systems. Put simply, the way a healthy lawyer relates to billable hours is much different from the way an unhealthy lawyer does.

Focusing on wellness and being a healthy lawyer is fundamentally important for creating a healthy system, whether that system is within a law firm setting or the larger legal community. It is easy to think of wellness as a “special issue” reserved for “other people” who are somehow defective or deficient. But in truth, we all fall short of the ideal. It is only by being truly honest with ourselves that we can hope to have any real impact on the health and wellness of the larger whole. ■



Tim Batdorf is a lawyer, career coach, and the founder of Lawyer & Self,[™] which produces The Lawyer's Career Kit[™]—a self-coaching program for lawyers. For more information, visit www.lawyerandself.com.

FOOTNOTES

1. Derrick, *Boo to Billable Hours: A Lawyer's Guide to Better Billing* (Santa Barbara, CA: Podia Press 2007) ch 2.
2. *Id.*
3. See Woodward, *Efficiency expert: Science historian Jennifer Alexander examines the social and cultural dimensions of efficiency from medieval times to the present*, *Inventing Tomorrow* (Spring 2000), available at <http://www.it.umn.edu/news/inventing/2000_Spring/efficiency.html>. All websites cited in this article were accessed January 21, 2011.
4. Kuckes, *The Hours—The short, unhappy history of how lawyers bill their clients*, *Legal Affairs* (September/October 2002), available at <http://www.legalaffairs.org/issues/September-October-2002/review_kuckes_sepoct2002.msp>.
5. *Id.*; see also Posting of Ronda Muir to LAWPEOPLEblog, <<http://www.lawpeopleblog.com/2007/06/articles/profitability/a-short-history-of-the-billable-hour-and-the-consequences-of-its-tyranny/>> (June 18, 2007).
6. Kuckes, n 4 *supra*.
7. *Id.*
8. Derrick, n 1 *supra* at ch 2.
9. Brown & Mendoza, *Ending the tyranny of the billable hour: A mandate for change for the 21st century law firm*, *NH B J* 67 (Summer 2010), available at <<http://www.nhbar.org/uploads/pdf/BJ-Summer2010-Vol51-No1-Pg66.pdf>>.
10. Kuckes, n 4 *supra*.
11. *Id.*