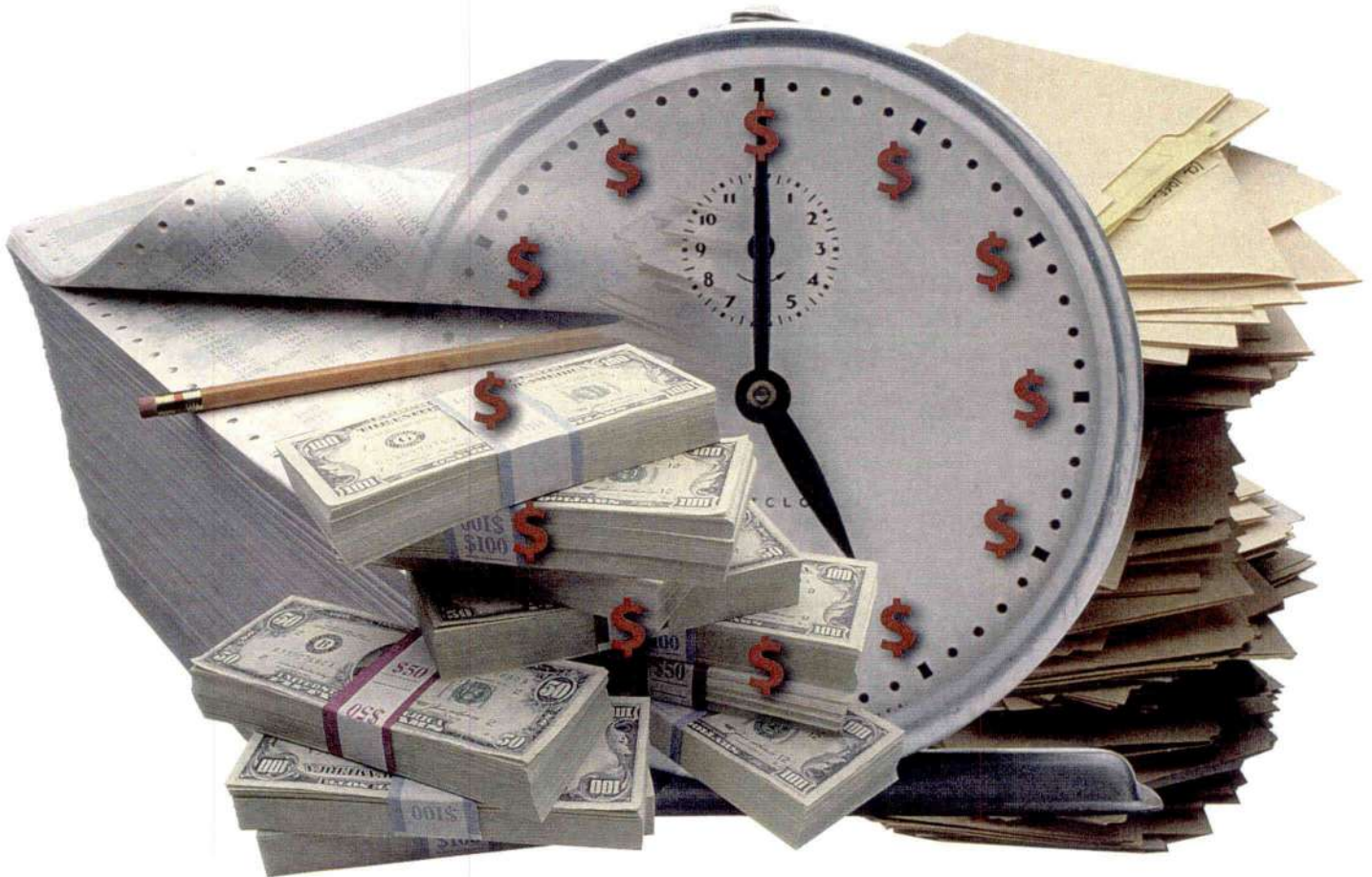


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A Task Based Billing *Update*

BY STEVEN A. LAUER



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Screen shots on pages 46 and 48 © The Prudential Insurance Company of America.

ILLUSTRATION: RIVER BEND DESIGN

A DEVELOPMENT IN ALTERNATIVE BILLING ARRANGEMENTS unveiled to a great deal of attention several years ago was the concept of task based billing and the creation of codes based on that concept. Since then, many have experimented with task based billing and, for some, it has gone the way of Total Quality Management and other sweeping reforms. Detractors have noted that task based billing is not a substitute for active monitoring of invoices. This observation is accurate; the codes will not do your work for you. They can be, however, a powerful tool in cost management.

CAPTURING MEANINGFUL DATA

Before the dawn of the Uniform Task Based Management System (or, UTBMS, see sidebar next page), most attorneys prepared invoices for their clients using what can be referred to as "block billing." Time entries included descriptions of multiple tasks, all pertaining to a single matter. For example, if an attorney devoted three and a half hours to a client's matter over the course of a morning, he might record that time as:

3.5 hrs Research *re* cost recovery; draft motion and brief; call client; conf. w/ senior atty.

A number of breakouts might accurately describe that morning's activity, including the following:

2.0 hrs Research *re* cost recovery
 1.1 hrs Draft motion and brief
 0.2 hrs Conf. w/ senior attorney
 0.2 hrs Call client

0.5 hrs Research *re* cost recovery
 0.6 hrs Draft motion and brief
 2.1 hrs Conf. w/ senior attorney
 0.5 hrs Call client

Either set of the above entries might accurately describe what had been done in the course of that morning and either might be perfectly defensible. The two sets of entries might suggest entirely different questions to the reviewer, however.

And that is the primary point of task based billing. By providing greater detail about how a legal service was provided (in terms of how much time was devoted to each function), the billing attorney enables the reviewing attorney to better understand what the service entailed. Moreover, that additional detail can provide the basis for important dialogue between the in-house attorney and the outside attorney: what the appropriate staffing level is, whether a particular exercise is worthwhile in the context of the project, and whether the client is receiving sufficient value for the cost of that service.

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BEYOND THE BREAKOUTS: USING TECHNOLOGY TO ANALYZE BILLING DATA

That brings us to a critical step in implementing task based billing: using technology to help analyze the data produced. As can be deduced by the example above, task based billing generally results in a greater volume of discrete billing data than does block billing, easily twice as much or more. How does one wade through all the paper to analyze the data and generate useful budget information?

For several years, I received monthly hard copy bills prepared in task based format for a single case involving dozens of professionals at the law firm representing my client. The invoices filled page after page with computer generated entries in small print. More recently, that firm began transmitting its invoices for electronic review. Since implementing electronic delivery and review, invoice review has been greatly streamlined and the quality of review improved. Invoices can now be reviewed using software that permits sorting of information to see relationships among various entries that would not be possible reviewing hard copy.

Time entries can be sorted in any of the following ways: by phase of the matter, task, activity, billing pro-

fessional, position of each professional (partner, associate, and legal assistant), and by cross-tabulating the billing professional and task. By thus manipulating the data, one can identify whether, for example, a partner is performing tasks more properly performed by a lower-level professional or if the amount of partner time in the bill is consistent with expectations for the matter as a whole as well as with particular project phases. For example, during certain phases of litigation, one might expect legal assistant time to predominate in the bill, because most of the expected activity consists of producing thousands of pages of documents already identified by the opponent upon visiting a document repository. If the invoice, on the other hand, shows that a partner's time accounted for the bulk of the fees, a conversation with the firm about how the case is being handled and whether tasks are being properly assigned might be in order.

A few screen shots from the system will help illustrate the capabilities of electronic review. Refer to the screen shot depicting fee summary by task. A glance at this chart allows one to conclude quickly whether the general amount of time devoted to review and analysis that month was consistent with expectation. (NOTE: The percentage is calculated on the basis of

THE UNIFORM TASK BASED MANAGEMENT SYSTEM (UTBMS)

When the availability of standard task based billing codes (the Uniform Task based Management System, or UTBMS) was developed by a consortium of legal departments and law firms and endorsed by two leading legal associations — the American Corporate Counsel Association and the American Bar Association — several years ago, it eliminated a hurdle that had prevented greater application of task based billing. Various corporate clients had independently created sets of codes, each demanding application by the law firms representing them. Naturally, law firms resisted adopting a number of different code sets.

The UTBMS includes four distinct sets of task codes, a set of

activity codes, and a set of expense codes. The four sets of task codes are litigation, bankruptcy, project, and counseling.

The litigation set was the first to be developed and is fairly self-explanatory in purpose, since litigation has long been viewed as an area of poorly understood and little-controlled costs. For several years prior to the formation of the consortium that developed the UTBMS, bankruptcy courts had required that fee applications use task based billing codes, and the set used by those courts was adopted by the consortium without change. The project set is for discrete legal assignments, including transactions, that move through various distinct phases, which are fairly similar despite the variety of potential projects. Those three sets of task codes are intended to allow clients to manage the legal

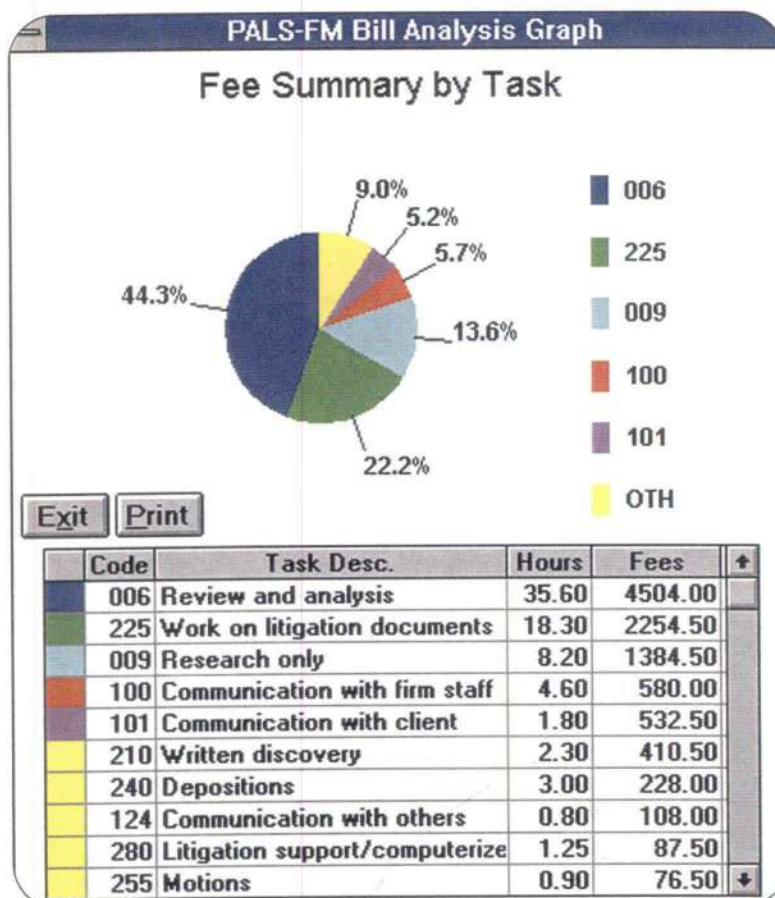
work of outside counsel more effectively by enabling them to better understand those costs.

The purpose of the counseling set is somewhat different from that of the others. Legal departments are often faced with the question of whether to buy legal services from law firms or develop an in-house expertise. The counseling code set permits clients to monitor how much is being spent for legal services within distinct substantive areas of law and simplify that make-or-buy decision.



An InfoPAKSM on task based billing — including the code sets and a list of software providers — is

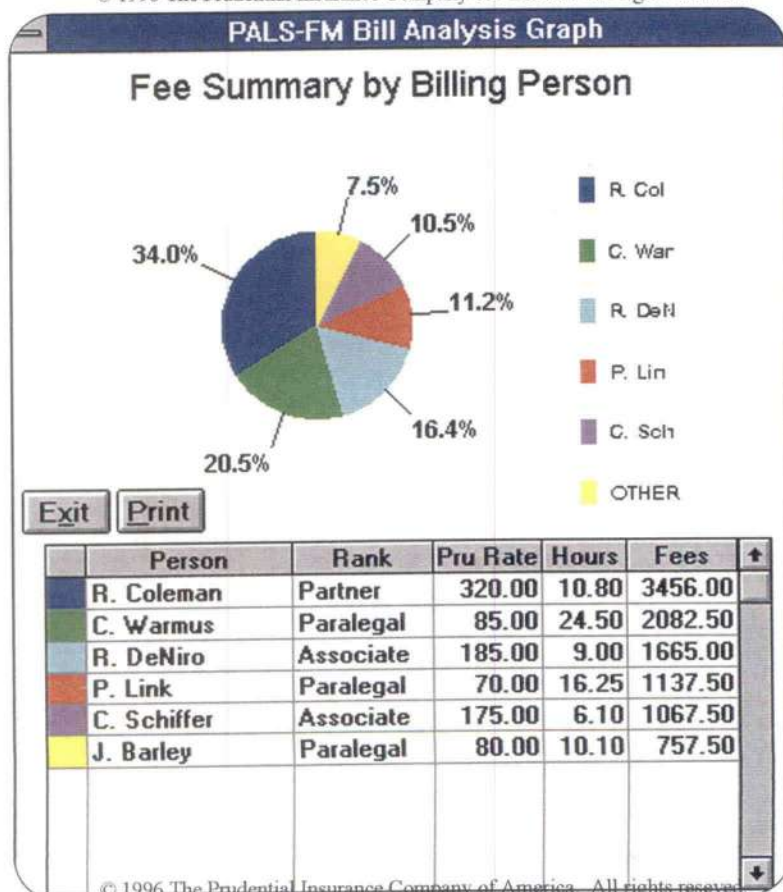
available from information resources: 202/296-4522, ext. 314 or 326 and ACCA OnlineSM (www.acca.com/i-paks.htm).



the amount of fees generated, rather than the amount of time devoted to account for the different billing rates among professional levels within the firm). In other words, if the bill is for time at the start of a difficult case, 44.3 percent for review and analysis might be appropriate; the same percentage late in the course of a simple case, however, could suggest problems with the firm's strategy.

An important point to make here is that invoices should be reviewed by individuals who understand the legal matter well enough to make informed judgments. It is easy for someone who is not familiar with the case's needs to draw erroneous conclusions from the billing data. In fact, task based data can increase that possibility because, by definition, entries are segregated by task, not matter.

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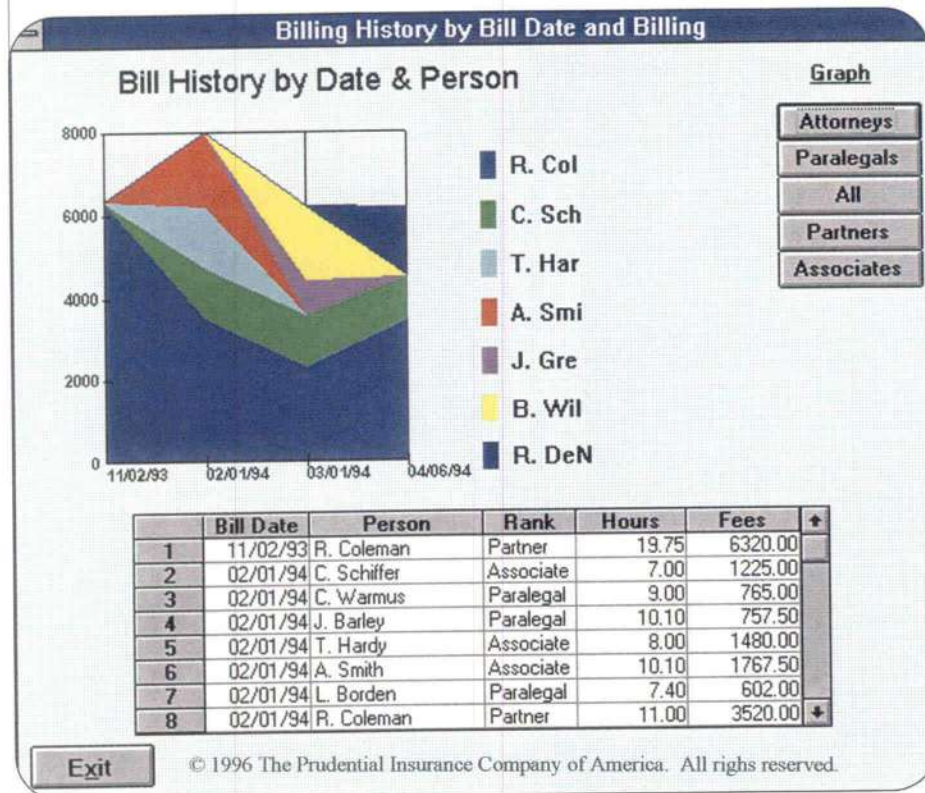


The software can also help determine if a case is appropriately staffed. Refer to the screen shot depicting fee summary by billing person for an example. The fees for the time of R. Coleman, a partner in the firm, consumed the largest single block of the bill (34 percent). A legal assistant (C. Warmus) billed 24.5 hours to the case (representing 20.5 percent of the total bill). Depending on the matter, and its stage of completion, one can decide if the levels of activity by various individuals at the firm were consistent with expectation.

Another aggregation of the billing data takes that analysis one step further and cross-tabulates the analyses by task and billing professional. Using this data screen allows the reviewer to see, for example, how much time a partner devoted to counseling the client and how much to reviewing documents. Time spent by a legal assistant managing the files related to discovery will be separated from that individual's time devoted to managing files related to trial preparation.

Task based billing software can also demonstrate how various individuals' involvement with the case have varied over time. (Refer to the screen shot depicting bill history by date and person.) This screen highlights staff rotation in a matter: periodic, short-lived involvement of several different individuals may be less productive than continuous involvement by one.

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The display of the data in the pie charts is a particularly helpful feature of the software, because that graphic enables the user to see the general breakdown of entries for the entire invoice at a glance. The software is unable to otherwise link the various entries, and sometimes relationships among the entries are not indicated by the codes. (A quick review of the block billing entry at the beginning of this article illustrates this.) By grouping the time devoted to research, drafting, a conference, and a phone call, the bill suggests that all that time is related to the same task, a motion to dismiss a case, for example. In task based billing, the entries will appear as time periods that are not necessarily related to each other. This is but a slight weakness of the task based billing, if that. To the extent that the task codes do not supply context, the text accompanying the codes can provide additional information.

BUDGETING TOOLS

Useful as the above analyses are, there are even greater advantages to be gained from task based billing. As with other functional areas, legal departments must prepare and adhere to budgets. Since budgeting is a relatively new skill in the legal department's toolbox,

most of us are still learning to do it well. Task based billing can help.

Task based billing software aggregates and tracks invoices against a matter's budget as fees are generated and submitted for payment. This allows users to monitor adherence to budget for a case and, more importantly, identify where in the process the fees are greater than expected. This can permit remedial action, if appropriate and desired, and provide information for future budgets.

The database also aggregates information from multiple matters. Over time, billings in those matters can be compared. Invoices from different firms for similar work can also be compared. As more information is received and analyzed, budgeting for a variety of matters becomes more predictable and accurate.

LAW FIRM PARTNERING

For task based billing to work, of course, outside counsel must have already adopted it or be willing to adjust how they bill. In the latter instance, timekeeping may be somewhat more complicated until attorneys get used to the codes. Technology may offer some assistance here as well, however, since it is possible to create a PC-based timekeeping system that provides the codes in an easy-to-use, click-and-apply format. Moreover, the biller likely will use certain codes repeatedly, so the task would be less daunting than might first appear.

The codes offer another advantage, allowing greater standardization even in the textual description of time entries, since some codes themselves provide description. For example, the codes L240 and A105, when associated with one time entry, indicate that the billing person communicated with another person in the firm about a dispositive motion. The text accompanying those two codes need only identify the person and the subject. If an attorney spent time preparing for two different depositions during a morning, the two time entries would carry the same pair of codes (L330, which identifies the task as depositions, and A101, which means that he or she planned and prepared for the deposition). The accompanying text need only iden-

tify the appropriate witness so that the reviewer could differentiate among depositions.

The UTBMS does have some limitations, primarily because the codes cannot always distinguish between similar tasks (at least not without a greater number of codes). These can be overcome, however, by intelligent invoice preparation. Several years ago, in testing the use of an outside auditing firm, for example, I realized the auditing firm was assuming that two staff members of a law firm were doing identical work even though one of them billed somewhat higher than the other. In that instance, the time entries of both persons were accompanied by a code that meant trial exhibit preparation. After discussion with a partner at the firm, I realized that the higher billing person was in fact applying more reasoning to the task accomplished than the other. While the lower-priced staff person was photocopying material and creating the trial exhibit binders, the higher priced individual was reviewing and helping select documents to include

as trial exhibits. As this example illustrates, time entries must include enough detail to allow the reviewer to understand the differences among various tasks and to recognize the relationships among entries.

CONCLUSION

Overall, task based billing holds great promise for the legal profession. But the full realization of those benefits will depend upon the use of technology to avoid being inundated with massive amounts of data that, due to that volume, makes invoice review a mind-numbing task. Properly implemented, however, it will enable us all to better understand how and at what cost legal services are provided, what the various elements of those services are, and how they relate to each other. □

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