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The preferred source for strategic litigation management information

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About John Kelly

John G. Kelly is a Toronto law professor and professional services strategist to consultants and vendors in the corporate legal department and law firm communities on the development of value-added client-centered legal services in the new professional services paradigm. He has developed billings management models that utilize the Uniform Task Based Management System (UTBMS) as a platform for project management applications, metrics measurement and performance management through Balanced Scorecarding. John is the author of the The Legal E-Business Guide, published by The Association of Legal Administrators (ALA).

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Executive Editor's Report

By John G. Kelly, B.Com., DPIR, F.CIS, L.L.B, M.S.Sc., M.A. (Jud. Admin)

Happy New Year! I say that advisedly given the contents of this issue of the **Litigation Management Report**. This has been a most productive year for me in conjunction with facilitation of development of the **UTBMS – Workers' Compensation Code Set. (UTBMS – WC Code Set).** The **Big Ideas** article provides you with an update on the incredible progress the team has made in the past 12 months since I announced its launch last January. I'm also happy to be able to provide you with a first-hand account of the progress being made in another area very much in need of a UTBMS Code Set. The article by Jane Bennitt and Cathrine Collins on the pending rollout of a set of **UTBMS eDiscovery Codes** demonstrates the relevance and, indeed, importance of litigation managers to embrace the **UTBMS Litigation Code Set (2007)** and the **UTBMS – WC** Code Sets as drivers for their budgeting and e-billings programs. Don't just read the article by Suzanne Ganier on evaluating outside counsel – act on it. Suzanne brings a wealth of experience from both the inside (in working as a litigation manager for an insurer) as well as consulting for a variety of insurers. She knows of what she speaks. The law firm profile on **Mills Gallivan** provides readers with an interesting look at the other side of what Suzanne Ganier does. Being a managing partner is a juggling act. A good managing partner can and should be brought into any dialogue on law firm evaluation. As Mills Gallivan points out, managing partners want their firms to be part of the solutions, not the problems. A good managing partner will get the requisite attorneys and practice groups working with you if you bring them into the loop. The **Must Reads** contain a happy title. The **Happy Lawyer**, like virtually every practice management book on professional services, documents how unhappy the billable hour is making lawyers, as well as their clients. This book becomes one more reason for litigation managers to take the lead and shift to UTBMS. A bunch of unhappy lawyers are waiting for you to come to the rescue. **Higher Education?** will make you pause and think, if even for just a moment, about the direction college education has gone and whether and to what extent we're getting our money's worth. I purposely inserted the section on football into the read to give you something to talk about as the college bowls close down and Super Bowl is upon us.

Enjoy the read.

John

Big Ideas

By John G. Kelly

How do you transform a *"Big Idea"* into a tangible product? How do you make certain that the product performs according to plan? You do what a dedicated team in the insurance defense community (who I had the privilege to facilitate in the **UTBMS – WC Code Set** Project) did over the past year. You roll your sleeves up, have frank discussions among stakeholders with different interests in a common goal, and get down to work. The picture accompanying this article that some of you may recall from last year's special edition will reacquaint you with the team. Two team members absent from the picture who I need to make certain you're aware of and congratulate when you see at the upcoming Council of Litigation Management (CLM) annual conference in New Orleans are attorney George Woolverton and Marijoy Arguelles, Litigation Management Director, Everest National Insurance Company.

Left to Right First Row
Mark Hamberger, James Anderson, John G. Kelly, Bill Pipkin, Dan Simpson

Left to Right Second Row
Louis Vaccarella , Joyce Higgins, Malcolm Maremont , Michele Punturi, Elizabeth Kenny, Irena Djukic

That's the short answer to what has been a long but extremely enriching and productive process. The picture was taken at the kickoff to what evolved into multitasks. I initiated a series of teleconferences. They were instrumental in accomplishing to important objectives. We went through every task in the **UTBMS Litigation Code Set 2007**, which was in its own right a modification of the original code set to respond to insurance defense budgeting and billing requirements, and determined where and to what extent additional modifications were needed. To provide clarity, and firmly link the WC code set to workers' compensation insurance defense we attached a WC moniker to each task that the modified code set. For example, L110 was assigned a moniker of WC110 with an explanation and commentary and practice tips specific to WC insurance defense. *"Appendix A"* to this article illustrates how a task common to all insurance defense cases can be modified to provide both litigation managers and insurance defense attorneys with better guidance to reflect the specifics of workers' compensation.

They recognized the increase in requests for alternative fee arrangements. An "80" numeric was created and attached to each phase in the code set to provide WC outside attorneys to comply with insurer guidelines when alternative fee arrangements replaced conventional hourly bill report details. *"Appendix B"* is the template for alternative bill arrangements.

There are also WC-specific tasks that are outside the scope of conventional litigation. WC insurance defense attorneys all too often have bills rejected when they attempt to submit invoices that appear out of the norm to first instance bill reviewers. For example, many WC cases require on-site inspections/ investigations. This can often seem like overbilling when entered as routine travel to and from assignment that isn't related to a formal hearing or court appearance. The team has inserted a WC 360 task code in the **Phase 300 Discovery/Document Phase** to capture that task and enable them to comply with billing guidelines that are WC-focused. It's attached as *"Appendix C."*

The team recognized that one of the difficulties in having a code set adopted as an Industry standard is that users don't know how to use it. They need guidance on its application. The team has developed a comprehensive **UTBMS –WC Code Set Users' Manual**. Who is it for and how do you use it? I'm going to let the manual explain all of that to you by referring you to *"Appendix D."*

How do we know that these code sets will actually add value to WC insurance defense budgeting and billing? The team conducted a beta test. The insurer team members submitted a representative sample of files representing work done through conventional billings to attorney team members. They then did a comparative analysis of how work on the file would have been budgeted and billed using the code set. Billings were much better articulated and work flow was improved. In short, the code set is a cost-effective budgeting and billing tool.

There are a series of next steps being taken over the next 13 months that will result in the UTBMS –WC Code Set 2010 being adopted as the industry standard by 2012. Work is in progress to have the code set posted on the American Bar Association (ABA) web site. A number of insurance litigation conferences and symposia are scheduling panel demonstrations on how the code set works. I will be facilitating a UTBMS-WC Code Set case study that will demonstrate how an insurer, e-billings vendor, a WC insurance defense firm and law firm billings vendor can develop an integrated budgeting and billings system that will add value to the overall process. The case study will be encompassed in a "white paper" that will be rolled out at an invitation event. I encourage you to contact me to attend this event. I will have details shortly. I encourage you to contact me for complete copies of the code set and users' manual as well as get on the white paper distribution list. This is a train that's pulling out of the station and now's the time to get on board. Contact me at johngkelly@rogers.com. ■

"Appendix A"

UTBMS Litigation Code Set 207

L110 Fact Investigation/Development – All actions to investigate, understand the facts of matter

Interview of client personnel/potential witnesses

Review of documents

Work with an investigator

Legal research for initial case assessment purposes

Communication for Fact Investigation

UTMBS Workers Compensation Code Set 2010

WC110 – Fact Investigation/ Development - All actions to investigate, understand the facts of matter

- Interview of client personnel/potential witnesses/Conference with employer/ adjuster
- Review of file documents, investigation/surveillance/background search and security and claims materials
- Review of employer/personnel/wage records
- Legal research for initial case assessment purposes
- Development of factual and legal issues
- Identify potential experts
- Review of medical records regarding work status, treatment plan and maximum medical improvement
- Obtain and Review medical/legal claims records for prior injuries/ diseases/disability/W.C. Claims.

WC110 – Commentary & Practice Tips

- The only legal research that should be included in this code is that which is directly related to an initial evaluation of the case. All subsequent legal research should be itemized under the primary task for which the research is conducted, or issue within a case.
- Many of the tasks within the WC110 phase will apply during the entire life of the case, particularly in jurisdictions such as New York where issues arrive months and years following the initial determination of compensability.
- Keeping track of time spent performing this function will enable both the firms and insurers an opportunity to learn whether they are strategizing together. Insurers will learn whether they are included in the process of putting together a "game plan."
- The medical records obtained and reviewed in this section are from the employer, adjuster/carrier.

"Appendix B"

WC180 – Alternative Fee Arrangements

This code includes all non-hourly or other alternative fee arrangements for tasks and activities in this phase

Commentary & Practice Tips

Workers' Compensation practice is frequently encountering alternative billing arrangements such as flat fees. The intent of this task code is to permit the recording of time included within the initial assessment phase for which there is no an hourly rate entry. For example, if a matter such as settlement processing involves a single fee, regardless of the time spent, instead of entering a variety of time charges under WC160 broken down by various activity codes, the cumulative time can be recorded under WC180 insomuch as the separate activities do not impact the total amount of the bill.

"Appendix C"

WC360 – Discovery On-Site Inspections/Visits

- Travel to and from site Inspection/ visits
- Attend Site Inspection/visits
- Prepare summary of results from onsite inspection/visits

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Process Improvement

By Jane A. Bennitt, Consultant, Hildebrandt Baker Robbins and Cathrine J. Collins, VP of Bridgeway Research.

Jane A. Bennitt

Catherine J. Collins

Coming Soon (and it's about time!): UTBMS eDiscovery Codes

Jane A. Bennitt is a consultant with Hildebrandt Baker Robbins. Jane brings more than sixteen years of hands-on experience in implementing collaborative client/outside counsel solutions. She is a subject matter expert in the creation and deployment of collaborative case management and e-billing solutions, specializing in global e-billing, and contract management solutions. Jane works with law departments, insurance claims organizations, law firms and vendors needing assistance with requirements gathering around workflow and business processes, compliance concerns, designing and implementing automated solutions, data availability and quality, and creating metrics to support business process improvement for a variety of legal applications. Currently serving her fourth term as President of the LEDES Oversight Committee, Jane is the principal author of the LEDES XML E-Billing Version 2.0 (2006) and 2.1 formats (2008) intended to support global e-billing. Jane is a graduate of University of Connecticut.

Cathrine J. (Cathi) Collins

is Vice President of Bridgeway Research. Ms. Collins has been a legal industry consultant for more than 20 years, and has a strong financial and legal background. She has helped hundreds of legal departments improve productivity by leveraging their technology investments, enabling high performance in the areas of cost analysis, matter management, resource alignment, risk management/mitigation, compliance, e-Discovery and communication. Cathi is well known in the legal community and has been a featured speaker for many industry forums and is a fellow of the Council on Litigation Management, co-chairs the College for Litigation Management committee and serves on the Board as Secretary of the LEDES Oversight Committee. Cathi is a graduate of Millersville University and sits on the Board of Directors of Metalloid Corporation.

In response to numerous inquiries over the past two years, the LEDES Oversight Committee (LOC) formed a working group this year to create UTBMS codes for eDiscovery work.

Creating the Working Group

Once the Subcommittee was authorized, the LOC, understanding that the domain expertise necessary for such an effort to be successful may not be within the current LEDES membership, reached out to key thought leaders and organizations connected with the eDiscovery industry to determine their interest in participating in the effort. Adam Potter, from The Council on Litigation Management, and George Socha from Socha Consulting and EDRM.net, also helped to recruit interested parties.

The effort began by issuing a survey asking for each individual's level of interest in participating in the activities of the working group. From the responses, the core member team was established, as well as a mailing list for meetings involving the larger group, and another for people who were more generally interested in the final work product.

In total, approximately 200 participants are involved at one of these three levels.

<u>The Working Group Process:</u> The group reviewed the EDRM metrics cube, http://edrm.net/2008_2009/metrics_006.php, assessing how this multi-dimensional format aligned with the traditional structure associated with e-billing. Understanding that timekeepers, positions and activities are recorded as separate data elements in e-billing, it then became easier to identify the key tasks that needed to be represented in a UTBMS task code series.

In addition to the EDRM metrics cube, the working group collected and reviewed a number of other submitted custom codes sets currently used by various entities for eDiscovery billing, looking for commonality and differences.

The working group met several more times and, after multiple revision cycles, has finalized their recommendations.

Ideally we wanted to create a numbering series that could be incorporated into any of the existing UTBMS code sets without issue. Unfortunately the Revised Project Code set enacted by the LOC in 2007 to support global e-billing includes 900 series codes, so this was not possible. Recognizing that the majority of the time these codes will be used in conjunction with the UTBMS Litigation (L) code set, it is therefore expected that the codes will fall between L600 and L699. In total, there should be approximately 30 codes added for categorizing eDiscovery services.

The working group has presented their recommendation to the committee-at-large and by an overwhelming majority vote the code set was recommended for presentation to the LEDES membership at the annual LOC members meeting held in conjunction with the Legal Tech New York conference.

<u>Next Steps:</u> The final draft presented by the Subcommittee will be posted 90 days to solicit comment. During this 90-day period a webinar will be conducted to review the proposed codes in detail. At the end of the 90-day solicitation period, the working group will reconvene to review the comments provided and determine whether additional changes are required. Upon final recommendation of the working group, the final proposed codes will be presented to the Board, the LOC Standards Coordinator will review the documentation provided to ensure the process has followed the LOC mandated steps, and upon this confirmation, the recommended codes will be presented to the full LOC board for pro-forma ratification.

<u>LEDES Oversight Committee Format Ratification Process</u>

Whether for data exchange or UTBMS standards, the LOC's format ratification process is the same.

LOC members can suggest new standards for development by documenting their proposal to the LOC Standards Coordinator.

The documentation is posted for review and comment by LOC members for 30 days.

Based on the feedback received, the Board determines whether a Subcommittee will be formed and, if so, designates a Chairperson.

LOC members are notified of the new Subcommittee and volunteers sought. The composition of the Subcommittee is determined by the Board and Subcommittee Chair.

As the Subcommittee meets and develops their proposal, updates are provided to LOC members at members meetings.

The proposed standard is posted for review on the LOC's extranet. Webinar(s) on the proposed standard are held and feedback solicited over a 90 day period. At the conclusion of the review period, the Subcommittee meets to review feedback provided.

This cycle can occur multiple times until the Subcommittee elects to submit the proposal for ratification.

The Standards Coordinator reviews the process followed by the Subcommittee to ensure that all mandated steps have been followed. If satisfied, the Standards Coordinator submits a recommendation that the standard be enacted by the LOC Board.

Finally, at their next meeting the Board votes to enact the standard. ■

Performance Management

By Suzanne Ganier, Litigation and Claim Management Executive

Suzanne Garnier

The Future of Claims Litigation Management with Predictive Modeling

Making the Subjective - Objective: *One Approach to Evaluating Panel Counsel.*

Suzanne Ganier is an innovative litigation and claim management executive. She has more than fifteen years of experience in the property & casualty industry during which she has produced significant cost savings and reduced risk in the most difficult of litigation, claim, and business environments. She has contributed to the Claims SPOT blog and has written litigation management courses for the Council on Litigation Management. She has spoken at the 2010 Council on Litigation Management Annual Conference and will be speaking at the 2011 Annual Conference on "Changing Your Litigation Culture: Lessons from the New Orleans Saints." Suzanne has her Bachelor of Arts in Psychology from the University of California, Santa Barbara and her J.D. from the Sandra Day O'Connor College of Law at Arizona State University. Currently a free agent, Suzanne is actively searching for her next professional opportunity.

If you have ever tried to review the performance of panel counsel, you know that doing so is difficult at best. How do you accurately and objectively measure a law firm's performance when so much of the practice of law and its results are subjective and dependent on outside factors? Simply because a firm achieves positive results in the courtroom doesn't necessarily mean that that firm's performance is one you want duplicated. Conversely, a firm that suffers defeat more often than victory in the courtroom doesn't necessarily mean that this firm is a poor performer. So how do you objectively evaluate panel counsel performance?

Before you can evaluate panel counsel performance, you have to first look internally and decide what is important to your department, i.e. what factors are important for your organization when working with and evaluating panel counsel. Such factors could include:

- Amount of fees charged
- The firm's ability (or failure) to stay within budget
- Results at trial, mediation, arbitration, etc.
- How long a firm takes to conclude a case from inception
- Compliance with company procedures

If your organization is like most that I have worked with, all of these factors are important. Certainly all organizations want attorneys that cost-effectively, efficiently, and consistently provide positive results. Whatever factors are important to your organization, you cannot accurately evaluate panel counsel performance until you determine which of these factors are important to your organization.

Once you have decided what factors are important in your evaluation, you can begin to build your evaluation process. A warning in building that process: avoid preconceived notions or opinions of your law firms. Undoubtedly, there are law firms and attorneys that you like better than others. That is human nature. Likewise, it is human nature for one to favor those we like over those we do not like when evaluating performance. However, I strongly caution you to put all such feelings aside when you start to build your evaluation process. One of the purposes of an objective evaluation is to objectively support any management decisions that you may make in relation to the management of the organization's panel counsel. Thus, you want your final results to be unassailable by charges that one law firm received better results than another simply because of your subjective feelings. There will be a point in the evaluation process in which a subjective review of the firm will be necessary and relevant, but subjective feelings and thoughts about a particular firm cannot be the basis for your evaluation.

Your evaluation process should also go beyond your office or your staff. In order to obtain as much information as possible, you need to go to those people that have worked with your outside counsel, i.e. claim examiners, claim managers, third-party vendors, and of course, clients. Develop an objective, scale-oriented questionnaire that gives them the ability to rate panel counsel in a number of areas. In my work, I have developed questionnaires that touch on areas such as responsiveness, compliance with procedures, counsel's ability to work collaboratively, and ultimately, whether the evaluator was pleased with the ultimate result. In addition to a number scale, provide the evaluator with a chance to expound on any questions and provide a narrative of their thoughts if necessary.

I would also strongly suggest that you allow the evaluators to provide these responses anonymously and confidentially. Claim examiners and attorneys who work together daily can develop very strong ties. Again, that's human nature. And because of those ties, a claim examiner may hold back with negative information because they don't want to "get the firm" in trouble. In addition to encouraging your evaluators to be as candid as possible, make it easier for them to do so, by suggesting that they return the completed evaluations to a neutral third-party (one who will not be involved in the evaluation process) or completing them on-line without any identifying information about their source. I guarantee that when your evaluators truly believe that their evaluations are anonymous and confidential, you will get very candid responses.

The next step is obtaining all the data that you can about panel counsel, i.e. getting the numbers. Those numbers include:

- Number of cases assigned in the past year
- Number of cases currently pending
- Number of attorneys handling cases for your organization
- How much has been billed by the firm in the last year
- If you use bill review, how much has been deducted (and not paid on appeal) in the last year
- Number of cases closed in the past year
- Average number of days currently pending cases have been open
- Average number of days closed files were open
- Average cost paid per closed file

What do you do with all of this information? That depends upon whether this is your first detailed panel counsel evaluation or a subsequent evaluation.

If this is your first evaluation, you will use this information as a starting point for future evaluations. You will also use this information to compare firms against one another once the full evaluation process is completed. In completing an initial review of panel counsel, I have also used this information as a basis to set benchmarks and goals for the firm to achieve by the next evaluation.

If this is a subsequent evaluation, you can use this information to compare panel counsel's current numbers to their prior numbers. However, if has been quite a while since your last review or there have been substantial changes in procedures and billing guidelines, such a comparison may not be accurate. Make sure that you are comparing apples to apples and oranges to oranges.

Once you have the numbers, it's time to set up your criteria for your file reviews. I'm going to be brutally honest – file reviews are tedious and boring. Your fingers get chapped from paging through all of that needless paper. Many documents that you would want to see are missing. And undoubtedly, you will see things in these files that make you want to tear your hair out. But they have to be done. Without a file review, you can neither truly evaluate panel counsel performance, nor truly know how your litigation is being handled.

Before you start the reviews, you have to decide what you are going to evaluate. As the goal is an objective review, you will want to choose areas that can be objectively evaluated, such as meeting deadlines. The best place to identify such deadlines or time constraints is in your litigation procedures. Any procedure that has a deadline or time constraint should be added. For instance, if panel counsel is required to submit an initial case assessment within thirty days of suit assignment, you should include this as an evaluation area. The question would look something like this:

Initial case assessment provided within 30 days of case assignment?

Yes No

As the question calls for either a yes or no answer, it is very objective. I would suggest however that you leave some room for error. In my experience, if counsel has provided the assessment within 3 days of the thirty-day deadline, I will provide a positive answer. I will also take into account deadlines that fall around major holidays like Christmas, Thanksgiving, and New Year's Day. But other than that, if the deadline is July 13 and the

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Law Firm Profile

By Mills Gallivan, Senior Shareholder, Gallivan, White & Boyd

Mills Galivan

Gallivan, White & Boyd is one of the Southeast's leading litigation and business law firms. With 45 attorneys and 57 support staff, we have the strength to tackle complex issues and the agility to change fields quickly when necessary. Our negotiation and litigation experience is excellent. We are reliable problem-solvers who lead our clients through challenges and opportunities, great and small.

GWB is ranked as a Best Law Firm by U.S. News and Best Lawyers in its inaugural edition. GWB is ranked in Tier 1 of the Metropolitan Rankings for Greenville, South Carolina in seven distinct practice areas: Alternative Dispute Resolution, General Commercial Litigation, Personal Injury Litigation – Defendants, Product Liability Litigation – Defendants, Railroad Law, Real Estate Law, Transportation Law and Workers' Compensation Law – Employers. For more information visit www.gwblawfirm.com.

The firm is divided into four different practice groups. Each practice group has a practice group leader. We have a Litigation Practice Group, an Insurance Practice Group, a Workplace Practices Group, and a Business and Commercial group.

Within the practice groups we have a total of 19 teams. For example, in Workplace Practices we have two teams: Workers' Compensation and Employment. In the Insurance Group we have an Insurance Coverage team and a Tort & Insurance Practices team. The Litigation Group includes a Products Liability Team, a Toxic Torts team, a Railroad & Transportation team, a Drug and Medical Device team. The Litigation Group has teams that focus on areas that are outside the domain of insurance although there is often an overlap. The Business and Commercial Group handles our commercial litigation and also includes our Professional Negligence team. Overall, we're a strong litigation firm with best practices capability in insurance law and a deep understanding of the insurance industry.

How is a practice group leader selected?

We have a Managing Shareholder and an Executive Committee. They consult and designate a shareholder attorney to be a practice group leader. It's a collegial process and shareholders are encouraged to dialogue amongst themselves and either put their name forward or coalesce around another attorney. There is no set term to an appointment. The Executive Committee meets regularly with the group leaders to monitor and support performance of the group. The EC on their own initiative or at the request of the group leader will periodically appoint a new leader that the firm believes can best respond to practice group management requirements at a particular point in time.

A practice group leader needs to devote an average of 200 billable hours per year to the position. This is a significant management contribution that eventually takes its toll on any attorney whose primary interest is practicing law. There comes a time when enough is enough in this capacity and the PGL wants to return to a full time case load.

How does the practice group leader account for the 200 billable hours devoted to internal administration?

A practice group leader bills for that time just like they would for client work. It goes into an internal firm management file and is counted as part of that lawyer's total commitment to the firm. This provides the firm management with an opportunity to review the activities taking place in administration of the group.

The firm goal for shareholders is to work towards a 2,500 reported hour year. Those hours can be attributed directly to client work; internal work that adds value to the firm or marketing activities. A practice group leader is entitled to include those 200 hours as part of their yearly reported hour target. In addition to internal firm time allotted to a practice group leader, we allot internal time to all attorneys for other activities such as business development, client relationship management and special projects.

How does the Managing Shareholder and Executive Committee structure work?

We elect our Managing Shareholder for a three-year term. The EC is composed of the Managing Shareholder and two other shareholders. The Executive Committee members are elected on a staggered term basis. Once a year during the three-year appointment term of the Managing Shareholder one of the members of the Executive Committee comes up for election. There are no term limits on re-election. If someone wants to be nominated for an Executive Committee position they need a nomination and a second by 2 other Shareholders. Once nominated the nominee is encouraged to discuss their interests with other shareholders. It's a very transparent and democratic process that is not the least bit adversarial. Collegiality among our lawyers is an integral part of practicing law at GWB.

To what extent does the Managing Shareholder focus either on firm management or firm strategy and business development?

We've been transitioning over the past several years as we've grown. When we were in the 25-attorney headcount range, the Managing Shareholder was actively involved in internal firm administration. Now that we have a headcount of 45 attorneys we've found it advantageous to hire a professional law firm administrator who acts as our Chief Operating Officer. He's taken over day-to-day operations and has been given considerable authority to administer the firm.

The Managing Shareholder and Executive Committee have now taken on a more strategic role. We're now operating at the "25,000 foot level' with an emphasis on providing guidance, oversight and support to practice group leaders in the areas of litigation management, business development and client relationships. The Executive Committee is much more focused on setting the course of direction for the firm and coordinating firm goals within and between practice groups. The EC watches our compass and keeps a steady hand on the tiller to assure we are staying on course.

How does the Chief Operating Officer mesh with the Executive Committee?

The Chief Operating Officer sits in on all Executive Committee meetings that deal with administrative issues. We then delegate to him the responsibility for putting the mechanics in place. For example, if the Executive Committee decides to bring on five new attorneys it's his job to make sure that all of the facilities and support systems are in place to accommodate them. Our COO is charged with constantly trimming our sails for maximum speed and efficiency.

To what extent is the Managing Shareholder involved in client relationship management?

We have a relationship partner for every client, large or small. The Managing Shareholder makes sure that the relationship partner is constantly building that relationship. The firm invests its time and talent to understand the business goals of our clients. It's not unusual for both the practice group leader and relationship management partner to be in contact with a major client at any given point in time, particularly if a major issue arises.

The executive committee also conducts a client survey every couple of years to get feedback from clients on both firm performance and emerging trends of importance to our clients. The client relationship partners are heavily involved in the participation and follow up from the survey. However, it ultimately falls on the relationship partner to maintain an enduring and mutually beneficial relationship with the client.

How does the Managing Shareholder maintain contact with their main clients while they take on the management role?

During my terms as Managing Shareholder I informed clients with whom I had a relationship that I was taking on this role within the firm and my availability would be limited. I also made sure that an additional relationship partner was maintaining regular contact with the client. The clients understood that most routine matters would be referred to other attorneys in the firm. However, I stressed that I would always be available to clients any time they felt they needed to consult with me. Every one of my clients supported my decision and cooperated with the firm. The result was continued service at expected levels and a stronger client relationship.

How do you as a Managing Shareholder, on the one hand, leave the management of a practice area and clients to the respective partners with direct responsibility but, on the other hand, become involved to the extent its necessary to ensure the firm's best interest are being served?

This is a balancing act and more art than science; I've had lawyers within the firm come to me with a client issue. Most of the time we can discuss the pros and cons to resolve the issue. Sometimes they have requested that I participate

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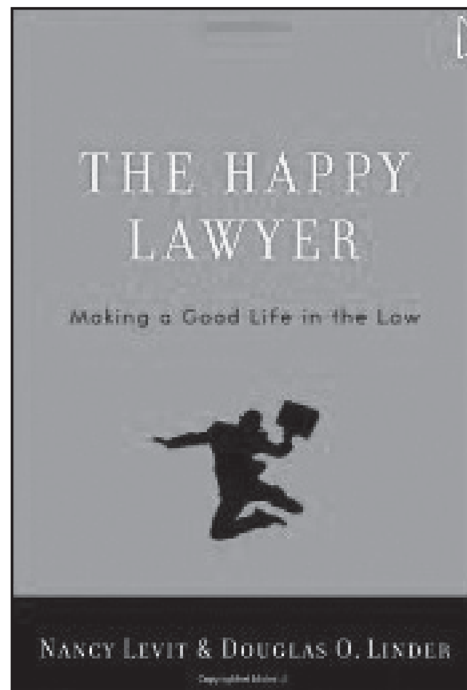
Must Reads



The Happy Lawyer

Nancy Levitt & Douglas O. Linder

Oxford University Press (2010)

The brings to mind one of two images for litigation managers; an oxymoron since lawyers seem to be continually complaining about their billing rates or a saga about high six-figure income earning partners. Although not quite an oxymoron, this book does provide the latest litany on the update of lawyers, who aren't a happy lot. Moreover, many of those lawyers who are able to achieve or even surpass yearly billable hour targets are among the unhappiest of an unhappy bunch.

Authors Nancy Levitt and Edward D. Ellison, both law professors, provide us with a profile of who the happy lawyers tend to be and, by inference, why so many lawyers aren't.

On the whole, careers in elder law, social security law, personal injury law, and immigration law – where you can make a direct contribution to other peoples' lives – produce more job satisfaction than careers spent defending companies whose sole goal is to maximize profits. Somebody has to defend pyramid schemers and monopolists, but it doesn't have to be you.

To be fair to what is essentially big business, at least part of the reason that lawyers are less than happy in working in commercial/corporate may have as much to do with why aspiring professionals choose to go to law school as the type of work they do. The authors point out that law school is a default option for many liberal studies graduates. They're smart, have attained top tier grades in university and are intrigued by the intellectual challenge of law. In many instances parents, professors and friends have told them they would make a good lawyer. Not knowing what else to pursue, they go to law school. Lacking definable career aspirations at point of entry, they're prone to drift into the law firm milieu and wake up a decade into practice and wonder how they got tangled up in a billable hour mire doing "corporate deals."

On the other hand, those who enter law school with a sense of purpose and career aspirations often find themselves quite satisfied with what is a real chosen profession. In short, there are happy lawyers and they've happy to be working in corporate legal departments for big businesses like insurance companies. According to research done by the authors:

Good news! If you're an attorney who is over fifty years old and work at a smaller firm, or work in-house or for a government, or work part-time, chances are you are among the happiest of lawyers. If you work part-time for a small branch of government, you could be in lawyer in nirvana. On the other hand, if you are a mid-level associate at a large firm who is stuck in a library with fourteen crates of discovery documents, then you have been thinking of jumping ship, haven't you?

The authors' analysis of the small firm/large firm dynamic contains points of interest for insurance litigation managers looking for effective outside counsel. Apparently lawyers who work for small- to medium-sized law firms in which they tend to have a both an equity position and sense of proprietary ownership are much more motivated to work smart and in the best interests of their clients. Once a firm reaches the 150 lawyer head count and over, the culture of professional camaraderie is lost. They feel that that they're just working for a billable hour machine where there primary obligation is to meet monthly and yearly billable hour targets. There is a lack of any sense of clients being their clients in whose best interest they should be acting. Clients belong to the firm and their job is to generate maximum revenue from working on files.

Should litigation managers be looking at linking with smaller- to medium-sized firms and seeking to nurture and develop personal relationship with lawyers in those firms? According to the authors, this would be the foundation for a mutually beneficial working relationship. The insurer would be seen as an important client to the attorneys and the attorneys would be seen as trusted legal advisors by the insurers.

Lawyers have difficulty understanding and empathizing with clients on fee dispute issues. To the lawyer most individual fees to a client are small in proportion to the overall revenue base of that lawyer and the firm. For example, a legal bill for 100 hours of work at the rate of $500 represents a $50,000 fee for services rendered to the client; a substantial sum of money. However, for a lawyer with an annual billable hour target of 2,500 hours this represents a mere 4% their revenue. Both the client and lawyer are angry but for different reasons. The client is outraged at the amount of the bill relative to the resolution and the lawyer is frustrated with a client who continues to take up their time over a minor monetary matter that it is supposedly yesterday's news. The case is over and the lawyer wants to get on with the next assignment. Neither the client nor lawyer is happy.

This is where the small law firm relationship can work to the advantage of the insurers. Even though the lawyer may consider the bill to be small they consider the client to be important and will be prepared to work with them towards a reasonable resolution. In short, a lawyer in a small firm is far more inclined to modify the legal bill in the client's favor with minimum argument.

If a litigation manager notices a substantial turnover of lawyers in a firm at the junior to mid associate level, warning bells should go off. The reason isn't usually because of money. Lawyers at this level who exit are unhappy because of a combination of a lack of training and law firm culture. For the litigation manager, this may well be an indication that work is being assigned by partners to associates who aren't being properly trained or mentored.

The present recession is also bringing another related factor into play that should be a warning sign to litigation managers concerned with containing legal fee costs. Law firms are letting associates go in order to salvage billable hours for partners. Work that could arguably be done more cost effectively by associates is now undertaken by partners at their billable hour rates. Are you as a litigation manager suddenly being presented with legal bills that appear to be partner-heavy for routine case work? This isn't making you happy and isn't making the partner doing associate-level work happy.

In the end analysis, the authors believe that the key to making lawyers happy is to get rid of the billable hour. It's the root cause of almost every dysfunctional situation in the modern day law firm. It induces lawyers to work inefficiently. It degenerates law firms to billable hour machines and reduces lawyers from professional service providers to "timekeepers." However, the authors fall short of proposing strategies that that either law firms or clients can gravitate to as the core solution. It's obvious they've never heard of the Uniform Task Based Management System (UTBMS). They've got some reading up to do themselves.

Key Quote

"A step in the direction of greater lawyer autonomy, one that probably would not undermine other firm goals, would be to turn over smaller files to associates (combined with good mentoring of progress). If this were done at a significantly reduced hourly rate, more junior lawyers could gain valuable experience – and clients would be more satisfied with the fees." ■

About Litigation Management Report

Mission

The Litigation Management Report provides litigation managers in the insurance defense community with strategic insight on best practices in the application of subject matter expertise to legal expense management with leading edge e-billing technology platforms and business intelligence systems.

Vision

Cost effective legal expense management of insurance defense though the leveraging of subject matter expertise into e-billing solutions.

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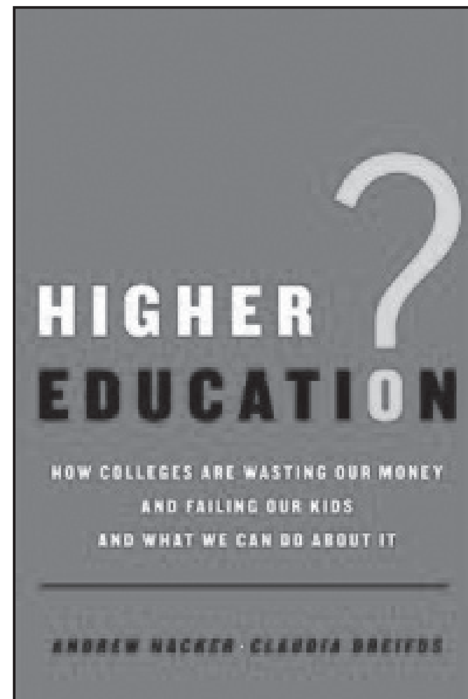

Higher Education? How Colleges Are Wasting Our Money and Failing Our Kids and What We Can Do About It

Andrew Hacker and Claudia Dreifus

Times Books Henry Holt and Company (2010)

The title and trailers are a give-away on what this book is not about and, conversely, about. This book is a strong attack against every conventional belief we have in post secondary education in America. The authors are college professors at Queen's College and Columbia University respectively which brings a semblance of credibility to what is unquestionably a polemic. This is not an "on the one hand... and on the other hand..." boring academic screed. This is an outright attack on conventional post-secondary education. The authors' overall critique of what's so wrong with conventional college/university education is best summed up in the following quote attributable to Nobel Prize Laureate Freeman Dyson and his equally esteemed Internet guru daughter, Esther Dyson.

At least forty years ago, when computer guru Esther Dyson was a Harvard undergrad, her father, the famed physicist Freeman Dyson, admonished her for essentially majoring in the Harvard Crimson and not her coursework. "Dad, we're not here for those classes", she sagely replied. "We're here to meet each other."

In short, the central thesis of the book is that university education has lost sight of its focus. It's no longer intent on imparting knowledge on its students. Nor are students attending university primarily for education purposes. A university degree is all too frequently about getting into the "right" university and plugging into the appropriate networks.

There is considerable merit in many of the arguments put forward in this book. However, it's important to keep in mind that that university education was never about the pure pursuit of learning in its own right. The following observation uttered in 1776 is instructive.

Long apprenticeships are altogether unnecessary. The arts, which are much superior to common trades, such as those as making clocks and watches, contain no such mystery as to require a long course of instruction.

Spoken by none other than the master Adam Smith, the inventor of the modern day "dismal science" of economics, was well versed on economies of the trades and learned professions. He was, after all, an esteemed university professor in moral philosophy in his own right. Smith made that observation to draw attention to the fact that the term of years associated with professions and guild memberships was designed to limit entry, not for imparting the skill from the learned to the student. Only those with means, usually within a family network, could afford the luxury of foregoing full time pursuit of employment and pursue the luxury of the classic Oxford/Cambridge (Oxbridge) university education.

Some things never change and education as a socialization process is one of those. Moreover, there is nothing inherently wrong with socialization. That's how a society ensures its sustainability and longevity. The authors may be a bit too harsh in attacking both universities and students for perpetuating this aspect of the status quo of universities. However, what they do point out is the ballooning cost of the socialization cost on the overall cost of a university education.

For most students the costs of instruction are not the main economic burden. What causes the cash crunch is that over half of public college students pursue their degrees at a distance from their homes. In other words, they "go away" to college, even if it's to miniscule Monmouth in Oregon. For them, the principal cost of education is not their classes, but living and dining in college housing or fraternities or sororities, or off campus apartments.

The reason that many of these students are going away to university is to gain access to a "name" school. Rumor has it that going to an Ivy League or major research university with international name recognition is the ticket to a rewarding career. The authors reinforce what Adam Smith and Esther Dyson have maintained: you do meet the right sort of people at the right sort of colleges and universities. But whether and to what extent getting in with the right crowd will ensure access to a rewarding career is open to question. The authors selected a cross section of alumni from Princeton:

Greater resources are poured into Princeton on the premise- and promise- that most of its graduates will develop distinctive lives and recognized careers. The alumni we've come to know seem like pleasant people, but on the whole, few of them have been making history.

What the authors are certainly on track with is the extent to which university education has overemphasized non-learning at considerable expense to its core learning mandate. For example, college football now consumes a major portion of university resources and budgets. Although professor/student ratios are constantly increasing, no measures are spared when it comes to coaching/player ratios. The authors do an excellent job in exploding the myth that college football pays its way. With the exception of a small cohort of power football schools, the great majority of universities either lose money or, at best, break even with football. And where does the subsidy come from to cover the deficit? Not from mythical alumni but from cutbacks on the academic side in most cases.

Another aspect of the athletics bubble the authors break is the conventional wisdom that athletic scholarships give otherwise disadvantaged athletes an opportunity to obtain university educations in top tier universities they could otherwise not afford to attend. They refer to a number of well- documented sources that confirm the majority of these high profile athletes never actually obtain university degrees. They're pressured into taking "bird" courses that won't interfere with grueling sports schedules. Once their four years of playing eligibility is up they find out they can't qualify for a degree because of a lack of substantive courses.

Faculty tenure has degenerated in a sinecure for the chosen. Although the theory behind tenure was to grant esteemed academics the freedom to pursue topics of intellectual importance without fear of reprisal it's become a class divide mechanism. A cohort of tenured faculty obtain guaranteed jobs for life absent any performance obligations while a substantial majority of associate, assistant and adjunct professors do most the academic leg work with heavier teaching loads. Tenured professors have lighter teaching loads on the understanding that they will devote their free time to research, the end product of which is questionable in many instances. "Tenure creates an inverted pyramid with safeguarded senior professors far outnumbering their junior colleagues." Non-tenured professors who represent the future of university teaching expertise are at constant risk of not having their contracts renewed in the event of course cutbacks or a budget crunch. Universities are stagnating under the restraints being placed on academic growth and renewal by an over-extension and abuse of the tenure system.

The authors take pains, as academics in their own right, to embrace freedom of expression and opinion. However, they believe that overall, universities are promoting one train or brand of thought at the expense of another at many of the prominent universities.

On one factual ground conservatives are correct. A study of professors' party registration at the Berkley and Stanford found that Democrats outnumbered Republicans by a nine one. Among philosophers, there was a fourteen to one tilt; for sociologists, it was almost double that. Only economists, with a three to one Democratic edge, came within shouting distance.

So what's to be done to fix the problem? The prescription for the cure, in the opinion of the authors, is for universities to re-embrace general arts education and get away from the over commitments being made to athletics and other extraneous endeavors. Shift from awarding tenure to academics and subject them to rigorous regular performance review that is linked to demonstrable success in teaching, not nebulous research.

Quotable Quote

More controversy yet was heard in June 2009 when university (University of Notre Dame "the Catholic Harvard") invited the president of the United States to give the commencement speech. Because Barack Obama had been elected on a pro-choice platform, this irked some anti-abortion conservatives. For weeks, (President) Reverend Jenkins was denounced and pressured to rescind the invite. His answer to the angry voices: "You cannot change the world if you shun the people you want to persuade and if you cannot persuade them, show respect for them and listen to them." ■

Big Ideas
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WC360 – Commentary & Practice Tips

- This code includes all site inspections/visits.

"Appendix D"

UTBMS WC Code Set Users' Manual

How to Use This Guide

This guide is designed to enable insurance Workers' Compensation (WC) claims/litigation managers, WC insurance defense attorneys, and bill reviewers to develop a mutually beneficial working relationship.

- WC claims/litigation managers should use this guide as a mechanism to ensure that litigation management guidelines and standard reporting formats conform to best practices utilization of the **UTBMS – WC Code** Set.

1. Examine your guidelines and reporting requirements. Do they make sense when you compare them to the best practices utilization format for planning, budgeting and reporting as articulated in *Phase 100?*
2. Are your outside attorneys aware that the **UTBMS – WC Code Set** and the guide represent the foundation for your reporting requirements and of your expectation that they will adhere to these practices in their budgeting and billing?
3. Have they made their claims/litigation staff conversant with the **UTBMS – WC Code Set** and indicated that they are required to review legal bills by interpreting task codes in conformance with the **Commentary & Practice Tips**?
4. Does your e-billings vendor have the systems in place to support best practices application of the **UTBMS – WC Code Set** in bill transmission and bill review?

- WC insurance defense attorneys should use this guide as their primary resource for budgeting and billing for WC claims.

1. Have you participated in a Workers Compensation Group **UTBMS –WC Code Set** users workshop to become conversant in the use of the code set?
2. Do all of your attorneys have quick and easy access to the **UTBMS – WC Code Set and Commentary & Practice Tips** through an internal electronic link?
3. Has your law firm provided attorneys with easy access to the user guide through an internal electronic link and informed them that it is firm policy to use the guide as the primary resource in all WC insurance defense claims file management?
4. Have you familiarized your billings clerk/department with the role and function of the **UTBMS – WC Code Set**?
5. Have you installed a default mechanism in your billings department that provides your billings clerks with easy access to the UTBMS – WC Code Set and user guide with instructions to preview all bills prior to transmission to a client to ensure they are properly coded?

- E-Bill Systems vendors and bill reviewers should use the guide as their go to source for bill verification, first instance bill review and resolution of appeals.

1. Has your WC bill review team participated in a Workers Compensation Group **UTBMS –WC Code Set** users workshop to become conversant in the use of the code set?
2. Has your bill review team been instructed to utilize the **Commentary & Practice Tips** as the primary resource for validating a task code and/or bill submission?
3. Has your e-billings system been configured to support a full-service application of the **UTBMS –WC Code Set** for bill review and analytics?
4. Have you installed an easy to access source in your system that prompts bill reviewers to utilize the user guide as the standard for analyzing and evaluating legal bills? ■

Performance Management
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assessment isn't provided until July 20, it's late and the answer to the question is "no." This might seem harsh (it's only 7 days late), but other than the examples previously discussed, you have got to hold tight on your deadlines when you are evaluating. It is the only way to get a truly objective picture of the firm.

The next part of the process involves is the more subjective part of this objective review. This is where it can get a little tricky and you have to ensure that you take a consistent approach across the board. In evaluating panel counsel performance, it's not just about the timelines, but the work product itself. Is the firm providing sufficient information to the organization such that it can accurately evaluate the file and decide what course it wishes to take? Is the firm providing sufficient information about the organization's exposure so that the firm can reserve properly? Is the firm aggressively moving the case towards a conclusion, or is the case languishing? Is the firm making use of all the legal tools at its disposal? Is there evidence of a strategy and is it being carried out? Is the firm taking advantage of resolution opportunities during the life of the file? These are just some of the questions that you may wish to evaluate during this part of the review.

Understanding that you want as accurate and as objective as a review as possible, even when looking at subjective factors, it is important that you use a consistent system of evaluating the files in these areas. For instance, when I evaluate whether a firm has aggressively moved the file, I look at such things as how many extensions they have given to opposing counsel to respond to discovery or the length of time it takes to schedule and proceed with depositions. If the firm has given multiple extensions to respond to discovery (without a clear, satisfactory reason) or scheduling a deposition is taking months (through an exchange of multiple letters, again without a clear satisfactory reason), they receive a negative rating on the issue of "aggressiveness."

Indeed this part of the review is somewhat an art, but it can be done and result in unassailable evaluations of a firm. The key here is the evaluator. This person must have a full understanding of the litigation process (usually an attorney) and also be committed to an objective evaluation process.

Having now developed the evaluation process, the next step is conducting the reviews.

Once the file review process is completed, you will bring all of the data you have gathered for each firm and put it together into a meaningful cohesive report of the law firm's performance. You can also use the information to compare law firms to each other, thereby providing you with the basis to make and fully support business decisions related to the retention of panel counsel. ■

Law Firm Profile
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in a conference call with the client because the message may be one that the client might not want to hear. We want to make it clear that our thoughts and recommendations have been fully vetted and are the opinion of the firm. Normally my role in the conference call or meeting is to support the partner and address any remaining client concerns.

At the other end of the spectrum I have, on occasion, gotten a call from a client who expressed concerns with the way their case is being handled. My initial response has always been to meet with our lawyer handling the case and get their informed opinion on the issue. The first step is to understand the problem and be sure we see it from the client's point of view. The next step is to develop a strategy with the lawyer and on how to talk with the client and achieve a consensus. Oftentimes, the client simply needs to hear from someone with more seniority and experience and be assured their lawyer is on the right track. We strive to develop mutually agreeable modifications so that we are in synch with the client.

Law firms are in business to do business and grow clients. Sometimes there just isn't the appropriate fit between a firm and client? How as a Managing Shareholder did you handle the disengagement of the firm from a client?

We have had situations where we had a client who refused to agree to a reasonable rate increase after several years of representation. Regretfully we informed the client that we would complete files in progress or refer the matters to another firm. That type of situation can usually be resolved amicably.

We've had other situations where our firm and the client had a fundamental difference of opinion about how a case should be managed and those are much more difficult situations. Thankfully these are few and far between but we have had to inform the client that in our professional opinion our approach to managing the case reflects our best practices and are not negotiable. In those highly unusual situations where we can not come to a meeting of the minds we've just had to part ways

To what extent to you think that insurers understand the dynamics and the costs associated with the management structure of a truly professional firm and are open to negotiate rates that reflect those costs?

Some clients are better at understanding it but unfortunately for others it's all about their bottom line. The latter don't fully appreciate that law firms are business operations with reasonable profit expectations. For example, just this year our health insurance premiums have increased by 50% for employees in the firm. Just like many other businesses our costs are rising. Those costs have to be factored into hourly billing rates for attorneys.

We understand that insurers are in a very tough business environment. We're prepared to work with them and toe the line on billing rate increases in the short term when they make a business case in their capacity as clients. However, insurers have also got to understand that law firms are facing comparable pressures and need to see a path that leads to light at the end of the tunnel within a reasonable period of time.

Do you think that insurers could benefit from a symposium that focused on the management and costs associated with maintaining a best practices insurance defense practice?

Absolutely, and we could benefit as much if not more. As litigators we understand that great communication is the key to success. This applies in the courtroom, in our shareholder meetings, and in client relations. We have heard on a number of occasions clients say: "we are looking to partner with our law firms". The carriers and corporations who really mean this are willing to sit down with us and discuss their business

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Law Firm Profile
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goals, their legal needs and their expectations from outside counsel. In these situations we are able to engage in a real dialogue to help the client achieve great results; maximize our efficiency; and allow us to maintain our profitability. Perhaps it is an overused cliché but we really can create a win win relationship with those clients allow us to understand their business goals and who also make the effort to understand our business model and capabilities. This is not just a dream because we have many such clients and they are our "dream clients". ■

Events and Happenings

Conference November 10-12, 2010
Expo: November 10-11, 2010
Las Vegas Convention Center

Legal Tech New York 2011
January 31 - February 2, 2011
Hilton New York Hotel, New York, NY

CLM Annual Conference 2011
March 23-25, 2011
New Orleans, LA

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