A Blueprint to Enhance Access to Legal Services and Alleviate Under-Employment of Lawyers

Executive Summary:

How is it possible that we have people of limited and modest means who need legal services at the same time we have lawyers who are un- and under-employed? How is it that we defy the laws of supply and demand? Reflexive answers to these questions often ignore the potential to improve this quandary through design and process changes.

This project calls for a multi-disciplinary approach to the creation of solutions to this dilemma. By combining insights from economists, design engineers, social scientists, business managers and demographers with the experiences of lawyers who provide personal civil legal services to those of low and moderate incomes, the project will identify solutions that can be implemented without substantial costs through the collaborative capabilities of stakeholders. The project will lead to ideas that will both increase access to legal services and alleviate under-employment of practitioners.

The Problem:

This project addresses two problems with the development of methods designed to contribute to their solutions simultaneously. The first problem is the unmet legal needs of those with low and moderate incomes. The second problem is the recent growth of un- and under-employed lawyers in the United States.

In its seminal 1994 research, the American Bar Association’s Comprehensive Legal Needs Study found that only three out of ten low income people and four out of ten moderate income people turned to the legal system when confronted with a legal need. More than 40 percent of low income people and over a quarter of moderate income people did nothing to address their legal problems.

More than a decade later, the Legal Services Corporation synthesized state research and concluded that less than one in five of the legal needs of the poor were addressed by a lawyer either in the private sphere or through legal aid.¹ In 2011, the World Justice Project ranked the United States 55th out of 66 countries in its peoples’ abilities to obtain legal counsel.² In this regard, the United States ranks behind Albania, Botswana, China, Pakistan and Russia, to name a few.

The reflexive answer to this circumstance may be that people simply cannot afford the cost of a lawyer. While this may be a major factor for many, it is not a full explanation. Consider, for example, the creation of a will. One study indicates a person can obtain a simple will for between

² http://worldjusticeproject.org/rule-law-index-map
$139 and $201.³ Yet, 55 percent of American adults do not have wills.⁴ More than half of Americans will not spend $200 to indicate who should take care of their children if they die. Similarly, many who may obtain legal services through contingency fee arrangements, where the person only pays legal fees out of an award for damages, somehow choose to forego representation. On the other hand, hourly billing systems may lead to either unknown expenses or those that are simply unaffordable for those who lack the discretionary income or assets for those costs.

For some, the answer to the unmet legal needs is the creation and licensing of non-lawyer practitioners, such as those now approved in Washington State and under consideration in California. For others, the answer is online document preparation services. However, neither can provide the services of a skilled lawyer and we currently have a second problem, a surplus of under or under-employed lawyers.

In the past 50 years, the population of the United States has increased about 60 percent. Over that time, the population of U.S. lawyers has increased about 425 percent, from 288,746 to 1,225,452, according to 2011 data from the American Bar Association.

Data from 2011 law school graduates shows that only 55.2 percent had full-time, long-term legal jobs and 26.2 percent were defined as “underemployed” midway through 2012. An “underemployed” lawyer is defined to be unemployed and seeking work, in a nonprofessional job, employed in a short-term or part-time job or seeking another degree.⁵

According to the Association of Legal Career Professionals, less than two-thirds of the lawyers in the 2011 graduating class were in jobs requiring bar passage nine month after graduation, while nearly 15 percent were unemployed.⁶

While a select few new lawyers become associates in large firms with starting salaries at or over $160,000, last year a Boston law firm advertised for associates, offering them annual salaries of just $10,000, which is $1,490 below the Federal Poverty Guidelines in 2013. The firm had 50 applicants.⁷ Lawyers are being offered jobs as associates below poverty wages.

The crisis in un- and underemployment is not limited to newly admitted lawyers. In January 2013, a California lawyer posted an ad seeking a job. It states in part:

Experience Attorney Seeking Employment – Single Father, Please Help

After my last company went out of business, I have been unable to find another job. Quite frankly, I am quite desperate and willing to learn and dedicate myself to any area of

⁴ http://wiki.answers.com/Q/What_percentage_of_people_in_the_US_die_without_a_Will
⁶ Id.
⁷ http://www.abajournal.com/news/article/more_tha_50_have_now_applied_for_10000-a-year_boston_law_firm_associate_job/
law. Anyone who hires me will get a loyal and grateful employee who will learn fast and excel in the job . . . 8

It is more difficult for a person in the United States to find a lawyer than a person in Albania while at the same time tens of thousands of newly admitted lawyers in recent years cannot find full-time employment for jobs that require bar passage.

The ABA Mission and Goals:

The project is designed to promote Goals I and IV-4 in equal parts.

Goal I states that it is an objective of the ABA to provide benefits, programs and services which promote members’ professional growth and quality of life.

Goal IV-4 states that it is an objective of the ABA to assure meaningful access to justice for all persons.

Project Description:

The project begins with the creation of a steering committee comprised of members of each sponsor and the selection of a consultant who will administer the project under the direction of the steering committee and in collaboration with the staff of the sponsoring entities. Experts from other disciplines will then be recruited to participate, along with those within the legal profession who have expertise in the delivery of legal services. In addition to U.S. lawyers, lawyers from Canada will also be included, as they have focused on this issue there.

After creating its infrastructure, the project will develop the methodology for broad-based input, including simple calls for papers, open online platforms, online focus groups of recently admitted lawyers and incubator participants, and targeted requests for insights from stakeholders. The project may go beyond traditional methods of input and host solution-oriented online methodologies, such as hackathons 9 and an xprize 10 platform in an effort to attract input from those who may not otherwise participate.

The steering committee and multi-disciplinary experts will convene twice, near the beginning of the project and near its conclusion. The goals of the first meeting will be to exchange ideas among the inter-disciplinary participants and define and structure the information-gathering outreach methodologies to be undertaken by the project. The goals of the second meeting will be to provide a critical assessment of the information and insights that have been gathered, discuss the viability and pragmatics of solutions and begin to tailor the project’s recommendations.

After the second meeting, the consultant will draft the blueprint setting out solutions that will enhance access through the resources of un- and under-employed lawyers. The steering

8 http://jobs.aol.com/articles/2013/01/30/unemployed-lawyer-craigslist/
9 http://en.wikipedia.org/wiki/Hackathon
10 http://www.xprize.org/
committee will reach decisions about the recommendations, establish plans for their implementation and reach out to those in positions to actualize those plans.

The deliverables for this project will be a series of recommendations focused on the processes of business development and the delivery of legal services. Here are three possible examples of changes that could have an impact on the delivery of affordable legal services, increase work for un- and under-employed lawyers, and may be outcomes of this process.

First, matters in litigation sometimes include aspects that are inefficient for the practitioner, the court or both. The project may recommend that courts collaborate with local bar associations to conduct process audits to identify these inefficiencies and work toward solutions that may be based on technological interfaces, uniform forms and unbundled services in ways that reduce the lawyer’s time and the client’s costs.

Second, demographic analysis may lead to determinations that some rural areas are in need of lawyers. The project may recommend that bars in states with large rural areas advance rural practices. Incentives for lawyers to consider rural practices may be tuition waivers, scholarships or loan forgiveness programs, which would involve collaboration from law schools and/or state legislatures.

Third, some states do not permit credit for continuing legal education programs that have to do with business development. The project may determine that this is the type of information that lawyers need to have and that states should be encouraged to provide credit in this area. There may be a need to credential providers to assure that lawyers are not submitted to little more than sales pitches for the vendor’s services or products. However, the outcome would be lawyers who are better able to reach out to potential clients and better offer their services. These are nothing more than possible examples to illustrate the potential for changes that could collectively address the problems.

**Outcome Measurements:**

The outcome of the project will be measured by the changes in the percentages of those who are able to obtain a lawyer to meet their personal legal needs and the percentages of lawyers who provide services requiring bar passage. This cannot be measured within the scope of the project, but will be long-term and ongoing. Scholars associated with the American Bar Foundation will be engaged to help us develop a data collection schema that would facilitate the longitudinal study. No project of this nature has ever been attempted. The urgency is clear and present. The potential for positive change is dramatic.