

The Coming Transformation in the Delivery of Legal Services

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ABA House of Delegates Proposal 115 (Feb. 2020)

RESOLVED, That the American Bar Association encourages U.S. jurisdictions to consider innovative approaches to the access to justice crisis in order to help the more than 80% of people below the poverty line and the majority of middle-income Americans who lack meaningful access to legal services when facing critical civil legal issues, such as child custody, debt collection, eviction, and foreclosure;

FURTHER RESOLVED, That the American Bar Association encourages U.S. jurisdictions to consider regulatory innovations that have the potential to improve the accessibility, affordability, and quality of civil legal services, while also ensuring necessary and appropriate protections that best serve the public;

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ABA House of Delegates Proposal 115 (Feb. 2020) (The key amendment)

“FURTHER RESOLVED, That nothing in this Resolution should be construed as recommending any changes to any of the ABA Model Rules of Professional Conduct, including Rule 5.4, as they relate to nonlawyer ownership of law firms, the unauthorized practice of law, or any other subject.”

Growth in the Number of U.S. Lawyers

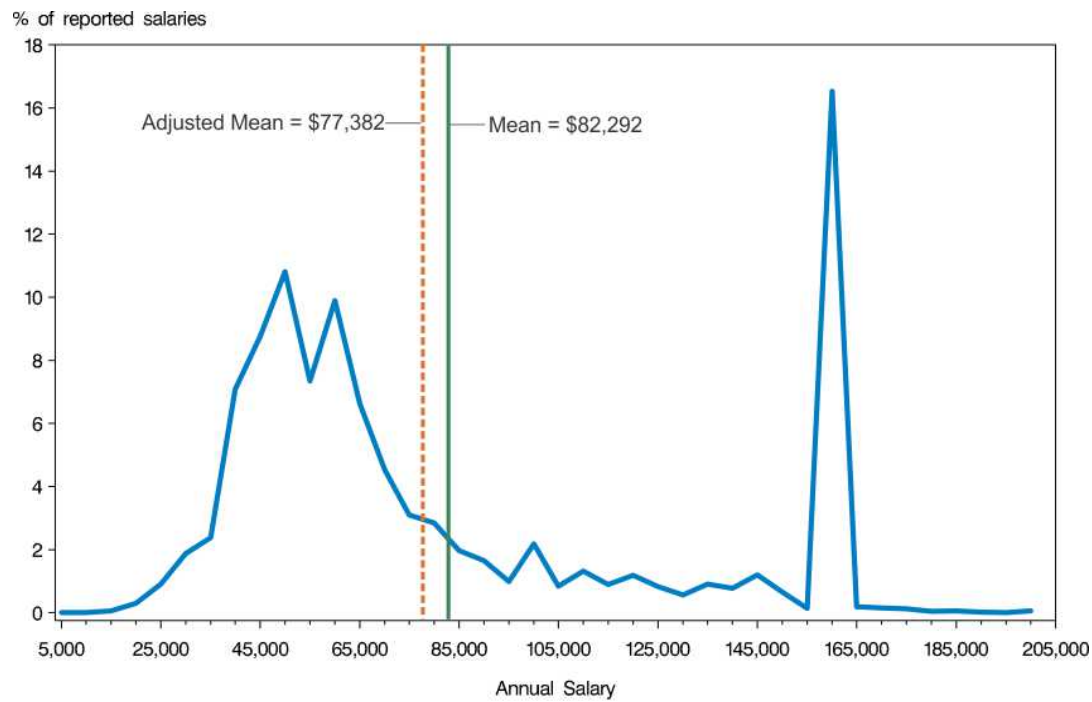
In 1970, there were a total of 300,000 lawyers in the United States.

In 2020, that total has doubled and then redoubled again to 1,350,000 lawyers.

Changes in the Hemispheres of the Bar

Year	Business Hemisphere	Individual Hemisphere
1960	45%	55%
1975	53%	40%
1995	64%	29%
2020	70% (est.)	25%

Distribution of Lawyer Incomes Today



How to meet the legal needs of people who don't now use lawyers

1. Do as much lawyer work as a client finds necessary or helpful, but not more.
2. Encourage allocation of legal work to those people prepared to do it best
3. Maximize the use of evolving technology to support the legal work, and
4. Allow assembly of capital sufficient to make work effective economically.

Two Ethical Provisions Central to the Current Debates

Rule 5.5 – Regulation of Unauthorized Practice of Law

Rule 5.4 – Regulation of Lawyers Sharing Equity Ownership of
law firm with non-lawyers

How Corporate Clients & Law Firms Avoid These Rules

1. Organize internally to use lay people to handle matters that, outside a corporate client, would seem to be unauthorized practice of law.
2. Grow corporate law firms into large organization who can bring appropriate personnel to bear on client issues.
3. Use firm size to assemble technology necessary to serve clients.
4. Assemble or minimize need for capital by making use of litigation finance.

The Legalzoom.com Pitch to Consumers

- Your life, your business. We're your ally for both. How can we help?
- How does it work?
- We handle forms and filing. So long, red tape. All you need to do is answer one of our simplified questionnaires and we'll do the (not so) fun part.
- We charge flat fees We'll never "send the bill." Get help in business formation, contracts, estate planning, trademarks, and other self-guided services without getting charged by the hour.

Some States Taking the Lead for Change

- New York State Bar taking the lead in formulating a general ABA policy with respect to online document preparers such as Legal Zoom.
- Washington state's expansion of its definition of the practice of law to permit non-lawyers to provide services formerly reserved to lawyers.
- Illinois considering permitting for-profit "Connecting Services" to help clients find lawyers who can help them with needed work.

More Potential Change Leaders

- Arizona leading efforts to repeal ABA Rule 5.4 and allow formation of hybrid firms that give equity to nonlawyers as well as lawyers.
- California efforts to permit multidisciplinary organizations and to increase the use of technology lower costs and increase service.
- Utah and its creation of a “regulatory sandbox” to which people can bring new ideas for delivering legal services, determine their success, and decide how they should be regulated.

The Opposition to Change

- Some lawyers are happy with their personal situation and fear that change would only affect them adversely.
- The principal beneficiaries of radical change may be big accounting firms that some observers would reduce competition even more.
- It is not clear that changing the rules would actually stimulate more service delivery. The real goal should be reducing the cost required to comply with the law and resolve disputes.

The British Columbia System--How it Works

1	Tell Us About Your Case Create a secure account, then tell us: What is your dispute about? Who is involved? How much is the claim?
2	Defendant Responds We will use the email address you provide to invite the defendant to respond to the claim.
3	Negotiate Online Send messages to each other and explain your position. Upload evidence to support your case.
4	Settle the Dispute Use the platform to create a legal agreement – include payment terms and what happens if terms are not met.

Revisiting the Basic Objectives

1. Do as much lawyer work as a client finds necessary or helpful, but not more.
2. Encourage allocation of legal work to those people prepared to do it best
3. Maximize the use of evolving technology to support the legal work, and
4. Allow assembly of capital sufficient to make work effective economically.

Appendix

Some Additional Materials on the Future of the Legal Profession

- ABA Profile of the Legal Profession (2019), found at <https://www.americanbar.org/content/dam/aba/images/news/2019/08/ProfileOfProfession-total-hi.pdf>
- Arizona Supreme Court Task Force on the Delivery of Legal Services (2019), most easily reached at <https://www.azcourts.gov/cscommittees/Legal-Services-Task-Force>
- William D. Henderson, Legal Market Landscape Report (commissioned by the State Bar of California (July 2018), most easily reached at <https://www.legalevolution.org/2018/07/legal-market-landscape-report-058>
- Thomas D. Morgan, *The Vanishing American Lawyer* (Oxford Univ. Press 2010)
- Andrew W. Perlman, *Towards the Law of Legal Services*, 37 *Cardozo L. Rev.* 49 (2015)
- Nick Robinson, *When Lawyers Don't Get All the Profits: Non-Lawyer Ownership, Access, and Professionalism*, 29 *Geo. J. Legal Ethics* 1 (2016)
- Richard Susskind, *Online Courts and the Future of Justice* (Oxford Univ. Press 2019)
- Utah Work Group on Regulatory Reform, *Narrowing the Access-to-Justice Gap by Reimagining Regulation*, found at <https://www.utahbar.org/wp-content/uploads/2019/08/FINAL-Task-Force-Report.pdf>
- Virginia State Bar Special Committee, *Report on the Future of Law Practice* (2019), most easily reached at https://www.vsb.org/site/news/item/scfpl_releases_report