

## **Session 1: Access to Legal Services: The Role of Innovation and Technology**

*Summary of Proceeding by Ayesha Falaknaz & Ian Ducey*

**Moderator:** *Dean Steven Bender*

**Panelists:** Stacy Butler, Anna Carpenter, Michael Cherry, Sands McKinley, Kimball Dean Parker, Miguel Willis

**Abstract:** This expert panel is addressing access to justice problems. People without access to lawyers and legal services suffer in many ways not limited to divorce, domestic violence, and educational roadblocks. This panel will ask what lawyers can do to help, in what ways can technology help or replace lawyers in the delivery of legal and non-legal services. It will also explore different legal services being offered by individuals who do not have a JD, online firms, and developing technology in a law firm owned subsidiary. There are six panelists who are broken into two categories: (1) the innovation and delivery of legal services; and (2) technology innovation and justice.

### **I. Introduction**

Providing legal services has long been an issue within the U.S. justice system. Now, as the world becomes interconnected and the power of the internet expands and improves the ability to access justice over the internet from lawyers, non-lawyers and AI augmented websites designed to help lower income people and others who traditionally do not have the same access to justice prepare important family law and basic contracts necessary for everyday life. In the modern day, the spread of technology has moved in both directions as tech companies look to push into the legal services sphere and legal services providers are investing in and developing extensive technology to better serve their clients.

Moderator, Associate Dean Steven Bender, opened the session by stressing the importance of affordable legal services. The United States ranks at the bottom of countries in access to justice and affordability of legal services. There is a raft of social problems that arise from the inability to access legal services, such as the inability to bring suit to protect individual rights, eviction, deportation, and small businesses suffering losses.

Discussions on how innovation and technology can (1) aid access to justice, (2) help augment attorneys and make them more affordable, and (3) help replace attorneys with non-

traditional legal services. The panelists discuss several sub-topics surrounding technology innovations and the law. The topics include the delivery of legal services, the balances, and risks of online legal services provided by non-lawyers, the ownership of law firms beyond just lawyers, online lending for disputes, the disruption of the Ethical Model Rule 5.4, and developing technology for people to represent themselves without attorneys. The panelists discuss technology coming from two directions, (1) the traditional technology companies looking to serve unmet legal needs and (2) lawyer-owned technology companies. The panelists also discuss law school clinics and how law students are addressing the problem of unaffordable legal services.

## **II. Innovation for Justice in Arizona**

Panelist Professor Stacy Butler began the discussion on innovation for affordable legal services. Professor Butler is Professor of Practice and the Director of Innovation for Justice at the University of Arizona James E. Rogers College of Law. She runs a social justice lab that designs, builds, and tests disruptive solutions to the justice gap. Professor Butler began the discussion by presenting statistics on the justice gap. A high percentage of low-income Americans have had civil legal problems. Meanwhile, there aren't enough agencies to provide low-income Americans with affordable legal services. For example, agencies such as legal aid cannot serve 72% of the people who need and qualify for its services. The more significant issue that we face as a society is the Justice Awareness Gap, in which only a small number of people know that they are experiencing a legal problem.

Since the onset of COVID-19 the Institute for Justice has been entirely virtual and like so much of the world has focused on providing virtual solutions to help close the justice gap during the pandemic. Some background on the pervasive issue of the justice gap; 76% of civil cases involve at least one pro-se litigant and 71% of low-income households have experienced at least one civil legal problem in the past year. This is an overwhelming cross-section of the low-income subset of the American population. To compound the problem many don't recognize they are dealing with a legal issue, commonly called the Justice Awareness Gap. This as Professor Butler notes is the most underrepresented group as most outreach programs in the U.S. are targeted at the smaller group who know they have a legal problem. This point is perhaps most important for budding attorneys who want to provide aid to those in need, they will have to confront the fact that most of the people they want to help will have to be reached to know they are even encountering a problem for which they would benefit from legal representation.

The Innovation for Justice program's relevant branch of work is to leverage the regulatory reform opportunities occurring in Arizona and Utah to legally empower underrepresented populations. The lab is working on three projects: (1) the licensed legal advocate pilot, (2) legal empowerment for people experiencing medical debt, and (3) the legal empowerment for people experiencing housing instability. The licensed legal advocate pilot is currently in place in Arizona. The innovation program provides social workers and caseworkers who are not attorneys with the tools to navigate Domestic Violence (DV) related issues. Although these social workers and caseworkers have to undertake a small curriculum, once they pass the curriculum, the Arizona State Supreme Court certifies them to provide limited scope legal advice on specific high need issues related to DV matters. The legal empowerment for people experiencing medical debt is currently running in Utah. A majority of debt cases result in default judgments, in which

defendants are not engaging with the system. These default judgments lead to civil arrests, monetary fines and affect a defendant's credit history. The project trains non-lawyers in Utah to deliver legal advice through the Unauthorized Practice of Law (UPL) restrictions.

Arizona's programs provide trained professionals with the ability to provide limited legal advice and aid in narrowing the Justice Awareness Gap. In addition, these non-lawyer professionals equip individuals with the tools to understand that their specific situation is a legal issue without paying copious amounts of money to attorneys. Therefore, these individuals who would have never known they were a part of a legal issue will have information on protecting their rights and taking the next appropriate steps. Debt collection may be the most lopsided type of legal case in terms of party representation, with just 2% of those facing debt collection represented and roughly 99% of those collecting the debt represented. This disparity creates serious dangers for debtors and can lead to serious problems.

The overall development of non-lawyer legal aid to help alleviate the justice gap should become a critical aspect of the legal system going forward. The states that have started these programs should be applauded and duplicated across the country. Supplying more legal aid to overcome the justice gap across the country will be critical in the future because the legal aid gap is not going anywhere without significant change at the industry level.

### **III. Regulatory Reform**

Panelist Professor Anna E. Carpenter is the Professor of Law and director of clinical programs at the University of Utah S.J. Quinney College of Law. Professor Carpenter begins her discussion by providing background on the regulatory agencies in the State of Utah. One form of the regulation platform in Utah is the regulatory sandbox, which began at the end of 2020. The regulatory sandbox is an experimental testing ground for the rules of lawyering in Utah. The two sources of rules for lawyering come from either the Model Rules of Professional Conduct or the prohibition of the Unauthorized Practice of Law. The office of legal services and innovation, also known as the “sandbox office,” considers the risk of individuals or entities who want to deliver legal services in a non-traditional way that violates the existing rules of practice. Then, if it is approved in the public interest, provides a scope of what an individual is authorized to do and requires the individual or entity to report back to the sandbox office.

Utah has developed the LPP program, which acts as a mid-level legal service provider between paralegals and attorneys. Modeled on the Washington LLLT program, the system was designed to be more streamlined to ensure that more people are able to become LLPs. They operate a form-based practice helping fill out forms and documents, and they assist with family law and debt collection. The current crop of LPPs is small in Utah, just 13 people, but the program’s current success bodes well for the future of the program.

Utah has also developed an office of legal services innovation, otherwise known as the Sandbox office, which allows the state to create and develop new ethical and unauthorized practice of law doctrine in a creative way that can expand legal aid and representation. All states should investigate a model similar to Utah’s Sandbox Office because it allows for greater development

and change by the legal industry including expanding legal non-profit resources that are not strictly owned and managed by non-lawyers owners which is typically against all legal ethical rules.

Utah's development of a model by which non-lawyers can own and manage lawyers in a law firm setting is almost certainly a divisive issue for the legal field but the success Utah is having and the lack of sky falling in the Utah legal community bodes well for the practice especially in the public interest legal sector. Allowing any reform options that increase access and visibility to ensure that more people are able to bring their legal problems to competent representation and resolve their issues is a net good for society and should be expanded upon.

In Washington, the State Supreme Court has looked to expand the ability to provide legal services through those who are generally considered outside the bounds of who is licensed to practice law. The practice of law board in Washington has three jobs, namely education on legal avenues as well as recommending new ways for providing legal service. This board also handles complaints about unlicensed practice of law. The Supreme Court can expand or contract the lawful practice of law as necessary to meet the needs of the state. The state has undergone recent expansions in how to expand the practice of law to develop increased access to justice through technology. Washington is looking to target low risk solutions that will still help drive down the access to justice gap. While keeping risk factors low and ensuring that the new avenues to legal aid are providing competent representation is important, there is concern about the risk adverse nature of the legal industry continuing to stifle the more ingenious solutions to help close the gap that may be viewed by the Bar and the Supreme Court as too risky. At a time where the gap in justice access is massive and rife with creating social problems, the time is ripe to taking daring risks that can help drive down the gap in access to justice.

Washington is looking to develop a more comprehensive data set by creating data sharing across states. For example, Washington and Utah are looking to share data and compare responses to try and see the data in a greater scale which will allow for increased focus on accurate and viable solutions.

Panelist Michael Cherry is the Chair of the Practice of Law Board, governed by General Court Rule 25 in Washington State. The Board reviews complaints about UPL and decides whether they will turn it over to a county prosecutor or an enforcement agency. RCW 2.48.18 defines UPL as whether or not it has been authorized by the Supreme Court in some fashion to practice law and that you are still in good standing. General Court Rule 24 defines practicing law as to whether an individual applies legal principles and judgments about circumstances and objectives about entities or individuals. The Board has been looking to reword GR-24 to include online legal services.

Mr. Cherry discusses the spectrum of risk from low risk to high risk of implementing non-traditional online legal services in Washington. While seeing progress in different states, the Board decided to follow Utah by implementing a Sandbox regulatory office. The Board is looking for services that are (1) low risk and (2) going to reduce the gap in access to justice. Once they have analyzed that a specific service is in the low-risk category, they approve the service and then obtain data to view its impact. Next, the Board is looking at the future risk a service may cause. Services that come to the Board with a high future risk cause the Board to look for more data on that particular service. A problem that arises is the collection of data. The State of Washington has to

discuss with other states the benefits of having a shared data model to have a greater data set. Washington lacks data on the impact of services, therefore, making it difficult to make a decision.

#### **IV. Measuring the Justice Gap**

The barriers which impact the access to justice include structural and institutional barriers and overcoming those barriers will be critical for the implementation of technology to improve access to justice. Systemic racism is one of the largest barriers to accessing justice; whether because it chills their willingness to find attorneys and may limit their ability to find representation that can work with them across cultural lines. Panelist Professor Miguel Willis is the Founder & Executive Director to the Access to Justice Tech fellows at the University of Pennsylvania Carey Law School. Professor Willis discusses the importance of measuring the justice gap, as well as viewing each individual's story and taking into account institutional and structural barriers that are set in place. There are many factors that affect an individual's ability to obtain legal services, such as, (1) geography, (2) language access, (3) the digital divide, (4) lack of trust in the justice system due to systemic racism, and (5) individuals with limited transportation. The question posed is whether technology can close the gap to legal services? There are benefits and disadvantages to legal technology. A benefit includes providing guidance; however, technology lacks the ability to empathize with individuals and address systems of inequity. Willis discussed the risks of data driven societies and data driven systems and the impact they can have in dealing with and reaching minority groups who may be distrustful of the legal field.

#### **V. Financial Innovation**

Panelist Sands McKinley, the CEO of LexFin, an online service that provides financing for legal services, discusses the problem of financial access in the world of family law. A majority of clients struggle to pay their attorneys on time. McKinley concluded throughout his career that access to legal services is an issue of affordable legal services. Financial innovation in legal services allows individuals to qualify and serve more people than would traditional financing. While having online financial innovations, such as LexFin, provide a great benefit to certain clients, there is still a risk that low-income clients will be left with large sums of debt.

#### **VI. Technology Innovation**

Other innovations that have proved useful to expanding the access to legal services are in technology innovation. Kimball Dean Parker discussed the steps that he and his company, SixFifty, which he is the CEO of, are taking towards the automation of legal services and the issues that surround the access to legal services. He discussed the complexities that surround legal services and the barriers presented to those unable to complete higher education or those that do not speak English fluently. He was largely concerned with meaningful access to the law. He discussed the start of his company and how he discovered that the greatest need to those with barriers to the legal system starts with document creation. Prior to the creation of SixFifty he largely focused on the creation of legal documents, starting with debt collection.

At BYU he and his class on "LawX" focused on developing a software solution for those individuals who struggled to find legal assistance in dealing with debt collection. They ultimately

created a program that drafted an answer to debt collection complaints. After its release, almost 1000 individuals used the program within the first month of its release, proving the desperate need for basic legal services and documents. After the success of LawX, Mr. Park was offered the opportunity to take this idea of developing legal documents and transfer it to companies in need of legal documentation. As a result SixFifty was created. SixFifty focuses on building products for companies in need of legal documents. Additionally, the company still provides legal documents for individuals.

SixFifty and LawX developed, in collaboration with the University of Arizona, a website called “HelloLandLord.org.” This was released six months prior to the pandemic and was used by individuals in all fifty states to help tenants write letters to their landlords. The CARES Act and the protections it contained on eviction and foreclosures had a significant impact on this technology. This sparked a reframing and redesign of the HelloLandlord website as well as inspired a new technology called HelloLender to help individuals in need of legal services. The feedback that the technology has received demonstrates the necessity of technological and legal innovations. Technology and legal innovation have the power to change the course of lives and should be pursued to ensure equal access to legal services.