

Committee Report on Lighthouse Research

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EXECUTIVE SUMMARY

Abraham Lincoln is often quoted as saying, “A lawyer’s time and advice is his stock and trade.” After surveying members of Utah’s public and business community, we believe the nuances of this concept are largely unknown and unappreciated by people who likely should, but do not consume legal services. It is also undisputed that there is a gigantic swath of potential consumers of legal services whose needs have gone, and continue to be, unmet. Yet strangely, the market is not responding to meet this acknowledged consumer demand.

Armed with the data provided by the Lighthouse Survey, we believe the Bar can be instrumental in educating, and in fact has a duty to educate the public about the benefits of obtaining a lawyer’s time and advice. The Bar also is probably best suited to educate its members about the opportunities of not just serving unmet legal needs, but profiting thereby. Because the market is not organically reacting to meet this need, doing so may require some thinking outside the box that the Bar could help facilitate.

PROJECT SUMMARY

The Utah State Bar Commission selected Lighthouse Research to conduct a market survey to help determine the public’s usage and perception of legal services and attorneys, and identify perceived barriers to the public using those services. This is a summary of the data developed by Lighthouse and some thoughts on how to use this data.

METHOD

The survey was conducted in two parts, a telephone survey and two focus groups. One survey focused on the general public, and the other on businesses of varied types and sizes. The full data derived will be published on the Bar’s website following discussion with the Commission.

SUMMARY OF THE PUBLIC TELEPHONE SURVEY

The public telephone survey sought to identify reasons why the public would most readily use an attorney, and the perceived barriers discouraging potential clients from choosing to see an attorney.

When asked where they would go for assistance with specific matters, participants were most likely to use an attorney for Family Law—divorce, separation or custody (59%). The second most frequent was for a serious traffic citation or criminal charge (58%). Farther back was estate and retirement planning (25%).

When facing other challenges, many people turn first to a family member or friend. For example, when facing bankruptcy or tax issues 19 percent said they would seek advice from a family member or a friend, as opposed to just nine percent who said they would consult an attorney.

Interesting to note are the differences between the situations where individuals said they might use an attorney, and those when they actually used an attorney. Of those who used an attorney, 27 percent said they would consult an attorney for advice on family law matters, yet only 18 percent did so. Of the 19 percent who said they would use an attorney if faced with a serious traffic or criminal charge, only eight percent had in fact sought legal counsel. Conversely, of the 20 percent who said they would use an attorney for estate planning, 22 percent of respondents indicated they had done so.

The public's perception of attorneys was mid-range, coming in at 4.74 on a seven-point scale. On the positive side, 27 percent of respondents gave attorneys a rating of six or seven, while only five percent gave a rating of one or two.

The key barriers to the public's use of attorneys identified by the survey contained few surprises. The number one barrier is cost, with 88 percent naming pricing as the biggest factor in choosing not to seek legal counsel. The second barrier was lack of trust, at 23 percent, with "not knowing how an attorney can help" and "not knowing where to start" coming in at 13 and 11 percent respectively.

As to fee structures, 28 percent of respondents said they would prefer a "firm quote for an entire case or project," with 24 percent saying they would prefer a fee based in part or whole on the result. The third highest fee preference was "a set amount for a specific task," with 23 percent of respondents preferring this billing method.

Some other items:

- Utah County had a higher perception of attorneys than the Wasatch Front
- Women have a higher perception of attorneys than men.
- Household incomes over \$50,000 are more likely to use attorneys.

SUMMARY OF THE PUBLIC FOCUS GROUPS

Lighthouse Research conducted two public focus groups representing a cross section of the community. These groups were gathered and observed at Lighthouse's offices in Salt Lake City on February 6, 2018. Each group consisted of 12 individuals from Salt Lake, Davis, Summit and Utah counties. Incomes ranged from under \$30,000 per year to over \$150,000 per year. Education ranged from high school graduate to post-graduate education.

The focus groups rated their perception of attorneys at 4.92 on the one-to-seven rating scale. Participants described attorneys as powerful and knowledgeable advocates for their clients. Many

participants had negative perceptions of attorneys in general, perceiving them as aggressive, contentious, argumentative and dishonest. Most of the group who had used an attorney or who knew attorneys in their personal life had a positive perception of that individual attorney.

Participants who had not used attorneys saw little value in hiring an attorney. Participants who had used attorneys overwhelmingly stated that using an attorney had been worth it. The value of a perceived cost or loss was a key factor in choosing to use an attorney.

Participants indicated if they needed an attorney, the first step would be to consult family and friends, with 44 percent relying on a referral. Another 30 percent said they would use the internet to search for an attorney.

Perceived barriers to seeking legal services mirrored the phone survey: Cost, fear of attorneys and not knowing how to engage an attorney.

Participants in general demonstrated only a basic knowledge of what an attorney could do for them. There was a general lack of knowledge of what attorneys do, how they operate, and what they charge.

Nearly three-fifths of participants said they would prefer to pay an income-based sliding fee for legal services, while two-fifths preferred a flat fee. The largest concern about costs was the idea of an open-ended, hourly rate for a case that would not be known until the end.

At the end of each focus group, participants offered suggestions for making legal services more attainable and appealing to the public. The top suggestion was free consultations, clinics or seminars highlighting specific areas of expertise.

SUMMARY OF THE BUSINESS TELEPHONE SURVEY

The business telephone survey highlighted some key differences between business and the general public. The perception of attorneys is similar to the public perception, with a 4.78 overall rating. Respondents said the biggest value of attorneys for a business is to advise and to protect the business assets. Respondents gave a six or seven rating 35 percent of the time, and a negative (1 or 2) rating only 7 percent of the time.

Businesses are most likely to use attorneys for writing or negotiating contracts (59%) and purchasing or selling a business. Of those starting a new business, 22 percent said they would not seek the advice of an attorney, and 26 percent said they would not seek legal advice when facing employee specific issues, including problems.

Overall, 71 percent of respondents said their company had previously used an attorney, 52 percent of those found their attorney through "recommendations or referrals," and 29 percent said their attorney was someone they personally knew.

Again, there was a significant difference between businesses who said they MIGHT use an attorney for situations and those who actually did. Companies that said they might use an attorney if they were sued (24 percent) indicated they actually used an attorney only 5 percent of the time when faced with that situation. This was very surprising. Of the 18 percent of businesses who said they would use an attorney to write or negotiate a contract, only 8 percent actually used attorneys. However, although

only 11 percent of respondents said they would use an attorney for debt related issues, 13 percent did so when faced with that situation.

The most likely uses of attorneys for businesses were copyright, trademark or patent issues, the purchase or sale of a business, and to write or negotiate a contract.

The top barrier to businesses using legal services was cost, named by 82 percent of respondents. Lack of trust was second at 18 percent, and not knowing how an attorney can help third at 17 percent.

SUMMARY OF THE BUSINESS FOCUS GROUPS

Lighthouse Research conducted two business focus groups representing a variety of businesses in the community. These groups were gathered and observed at Lighthouse's office in Salt Lake City on February 7, 2018. One group consisted of nine business owners and the other had eight. The businesses were based in Salt Lake and Davis counties. The businesses employed from 1-2, to 50-99 people, with sales from under \$1 million to \$50 million per year.

The focus groups rated their perception of attorneys at 4.88 on the one-to-seven rating scale. Positive aspects of attorneys included saving businesses from trouble and saving money. Negative aspects included dishonesty and too expensive for the services received.

Participants in these groups fell into two categories: those who have attorneys on retainer and utilize their services frequently and those who would engage an attorney only if the need arises.

Participants indicated if they needed an attorney, the first step would be to consult family and friends or ask other attorneys they know for a recommendation. The top factors for businesses in choosing an attorney are experience and area of expertise.

Perceived barriers to seeking legal service focused on cost. A close second was businesses not seeing a need for an attorney as they felt they could handle many situations on their own, and hiring an attorney wasn't "worth it."

When asked why cost is such a barrier, participants said:

- Legal services are far too expensive
- Small and new businesses can't justify the cost
- Business owners feel they can handle the situation on their own
- Less expensive to pay a claim than hire an attorney
- Don't recognize the value—"There's a lot of different things competing for my money."

Most business participants were aware attorneys charged by the hour and indicated they would be willing to pay \$100-\$200 per hour if the need arises. Some participants indicated they would be willing to pay a small retainer (\$100-\$200 per month) that would allow them to call an attorney with a question on an as-needed basis.

Half of the participants said they preferred flat-fee pricing for services as opposed to a sliding income-based scale.

Participants recommended that attorneys educate business owners on the benefits attorneys can provide to businesses. As with the public, many business owners had relatively vague ideas of the benefits an attorney could provide.

OPPORTUNITIES

The results of these surveys point out a few key things. First, people think legal services are too expensive. We have a 20th Century cost structure in a 21st Century world. Second, people don't understand the value of hiring an attorney *before* trouble arises. Third, people are afraid of hiring attorneys because of cost, and fear of uncertain outcomes. The following are opportunities presented by these challenges:

1. Educate the public and business consumers on the prophylactic as well as remedial services an attorney can provide.
2. Show the value of attorney services to the public and to business owners—introduce and demonstrate the concept of “preventive lawyering.”
3. Encourage development of specific service/price packages that fit a variety of needs and budgets. Create a commodity of legal services.
4. Improve the perception of attorneys, with a focus on honesty, integrity and community service. Many are not aware of how much attorneys serve in the community outside of their jobs, and without charging for their time.
5. Formulate and disseminate a “marketing menu” of suggestions for solo attorneys and law firms.

BARRIERS TO OPPORTUNITIES

There are barriers to maximizing the opportunities and increasing the use of legal services by the business community and the public. These include, but are not limited to:

- Disagreement among Bar members about the need for change.
- Perceptions that making changes would cheapen or commercialize the profession.
- Cost and time.
- Geographical challenges between rural/urban clients.
- Process: How to best tell the story of what attorneys do, and where.
- Increased risk of malpractice claims without a commensurate margin of profit.

ACTION PLAN FOR THE BAR

Based upon what we have learned, the Bar can do several things to assist in achieving its goals of increasing the public's access to the legal system and improving the practices of Bar members. Here are some first steps for the Bar Commission to consider:

1. **Educate the Bar by contracting with an outside marketing firm or business school to develop a set of packages and products that attorneys may choose to offer.** Offering more services at lower prices could nevertheless translate into significant revenue. Consult with outside sources to develop specific "products" attorneys sell. The best product attorneys sell is peace of mind. Discuss with people at the University of Utah and BYU how they would communicate the advantages of hiring an attorney to the public. Assuming that small or solo firms are the most likely candidates to offer services to those who do not currently use attorneys, offer a seminar to small/solo firms to show them some ideas on how to market their practice. Sell value.
2. **Address the intimidation/fear factor.** Give attorneys the opportunity to be seen in public in relaxed settings. Partner with local media providers to broadcast regular "Legal Panels" where a group of alternating or randomly selected attorneys get together to discuss legal issues that are common among members of society and businesses. This is not an original idea—several state Bars already do this, including Florida and Texas. Have public seminars about things like estate planning and wills, starting your own business, and tax law.
3. **Educate the public.** The average person has no idea what an attorney can do for them and no idea of the programs the Bar offers people of limited or modest means. More particularly, the average person or business does not see the potential for *avoiding* problems, rather than solving them once they arise, if only they were to seek counsel up front and regularly. Revive the "Have You Heard the One About the Attorney" campaign from several years ago. Show the public the good that attorneys do in the community. Tell stories of how attorneys have helped business and individuals.
4. **Offer more visible public support.** Fund a Scott M. Matheson scholarship for legal education, a Christine M. Durham "Women in Legal Education," and Raymond S. Uno "Minority in Legal Education" Scholarship for high school seniors. These would not have to be huge, full ride-scholarships, but smaller \$1-\$3,000 awards given to students who intend to pursue a legal career. Set aside a portion of revenues to sponsor community events, especially in outlying areas. It's amazing how much a small donation can mean to a community theater, or a rodeo, or a band that's going on a once-in-a-lifetime trip. Get involved with women's shelters like Safe Harbor and others, and the education foundation of the State's largest school districts.
5. **Increasing bar governance (board or subcommittee) to include more members of the public from the business, technology, education and nonprofit sectors.**

6. **Inviting our local universities to partner with the Bar to analyze the Lighthouse Research data** and to provide separate public relations and marketing proposals for Bar consideration which might include a public relations strategy and alternative service provision and fee structure proposals.
7. **Being more aggressive in being made aware of, partnering with and supporting existing clinics** and nonprofits that are providing services to underserved populations.
8. **Review and suggest potential changes to ethical rules and even statutes** that would provide protections to attorneys offering more accessible legal services, such that malpractice premiums and exposure can still be reasonably accommodated.

ACTIONS SPECIFIC TO LARGER FIRMS

Depending on practice areas, there are many things large firms can do to help grow their practice.

--Use social media and "Facebook Live" events to host legal Q&A's on a regular basis. Although there are some liability concerns, keeping questions general and avoiding specific legal advice make these a good way to attract clients. For example, an immigration attorney could use Facebook Live to discuss the ramifications of what is happening with DACA without giving specific legal advice. Or a tax attorney could discuss the top 10 mistakes he/she sees in tax returns.

--Buy into different fee structures. Although the hourly rate will work for some clients some of the time, there is an incredibly large pool of clients who have money they would be willing to spend on an attorney if they are shown the value in legal advice and they know those costs are fixed. Educate the public that going to an attorney and spending an hour to ask for advice will save time, money and stress in the future.

--Offer an initial consultation for a fixed amount and duration, and tell people about it. Most firms offer consultations for free or at a reduced rate, yet fail to notify potential clients of this great resource.

CONCLUSION

The Bar has dual obligations, to the public and to the profession. They are not necessarily in conflict, or mutually exclusive. The survey highlights opportunities to serve both.