



Portfolio Media, Inc. | 111 West 19th Street, 5th floor | New York, NY 10011 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Why Have Lawyers Forgotten About The Middle Class?

Law360, New York (September 27, 2016, 11:00 PM EDT) -- When we think about commerce in the U.S. and abroad, there's no question that many industries have evolved tremendously over the past two centuries.

In the past 20 years in particular, e-commerce and mobile technology have put power into the hands of consumers in ways that were almost unimaginable 50 years ago.

Alongside this consumer-centric evolution, another incredible development has occurred. As a recent TechCrunch article points out, the world's largest taxi company (Uber) doesn't own any vehicles; the world's largest media owner (Facebook) doesn't create any content; the most valuable retailer on Earth (Alibaba) doesn't have any inventory; and the world's biggest accommodation provider (Airbnb) doesn't own any real estate.



Chas Rampenthal

But what about the United States' legal system? Why hasn't it undergone a similar level of evolution during this time frame? To the everyday legal consumer — the person using Uber, Facebook and Airbnb while working a 9-5 (or more) job to scrape out a decent living — the only noticeable difference is that lawyers have moved from fountain pens and piles of paper to laptops, tablets and digital files.

While risking oversimplification, I think the reason for this underwhelming amount of evolution is pretty simple: The U.S. legal system is not set up with the types of checks and balances that keep other industries honest. There's no real competitive pressure on the profession.

We, as lawyers, self-regulate the system. Our cohorts working in the public sector write the laws that we prosecute, adjudicate and defend in our practices. As a result, we've created a totally self-contained perpetual motion machine of an industry — one that's built and maintained mostly for our own benefit, often at the detriment of the end user.

Sorry, fellow lawyers, judges and legislators, but the jig is up. It's time to show the public the cards up our sleeves and give them a chance to weigh in on the fairness of a system that touches so many aspects of their everyday lives.

Right now, they're not seeing much value in what we do for a living.

What's Holding Us Back?

The way law is "required" to be practiced — in law firms that are exclusively owned and

controlled by lawyers — is the largest impediment to real consumer progress. The legal monopoly is rooted in the belief that restrictions on competition are necessary to ensure client protection. And, unfortunately, providing equal access for all does not make the cut under this model.

At this point, we all know that, if you have money, you're more likely to be able to afford great legal help. We know that if you run a massive company, there are lawyers clamoring to help solve your problems while charging big hourly fees. And if you're living at or below 125 percent of the poverty line, there are some (but not nearly enough) opportunities for low-cost legal aid.

But when it comes to the middle class — your average American family or small business owner — the only real model for this demographic is the same one that serves the rich and powerful.

Access to the law and legal help is a fundamental right. Consumers should not have to demand equal access to legal services, but that's *exactly* what our current system forces them to do.

Access Matters (Especially Today)

Legal issues have become more and more complex, and regulations most people can't understand govern everyday aspects of their lives. Understanding the underlying agreements that come with renting an apartment, applying for a credit card, buying or selling a home, or signing up for a gym membership is next to impossible if you don't have a law degree. Most of the people handing out these contracts don't even understand most of the provisions!

Because law now touches so many parts of everyday life, it follows that access to the law must be considered a fundamental right — and not just for the rich or the injured. It must be a fundamental right for everyone.

Instead, we have too many lawyers striving to only represent the wealthy, too many lawyers convincing the injured to quickly settle personal injury claims, and too many lawyers looking to get rich off the next consumer class action.

Frankly, the legal profession is doing a terrible job of letting average Americans know it can help them. Most lawyers don't advertise, most don't like to be reviewed or rated online, and many are known for turning small problems into big ones, draining client wallets in the process.

This is not a recipe for inclusion. Countless middle-class Americans require legal help, but there are not nearly enough lawyers reaching out to them.

The Self-Representation Epidemic

In a 2013 American Bar Foundation study, nearly two-thirds of adults reported experiencing a "civil justice situation," with the most common issues revolving around employment, finances, insurance and housing. Nearly half resulted in a significant negative consequence for the consumer.

An overwhelming majority of these consumers are facing their difficult legal situations without any help. Ask any courtroom employee, judge, clerk or stenographer: The number of self-represented litigants is staggering. In Utah, for example, 83 percent of divorce cases, 87 percent of protective order cases, and 98 percent of eviction cases have self-represented litigants. And in New York, 97 percent of child support cases, 99 percent of eviction cases, and 99 percent of consumer credit cases have self-represented litigants.

These are just a few numbers from a few states; you don't have to look hard to find that underrepresentation is endemic to the legal system here in America.

As you might imagine, this trend isn't producing positive outcomes — which only confounds the issues at hand. Too many Americans see the legal system as something that's only there to make them homeless, jobless or incarcerated. When people believe the system cannot help them and doesn't cater to them, they feel betrayed and they give up on it.

Is this really the result a civilized society wants?

Imagine if our health care or education systems were run this way, where more than 90 percent of Americans were opting to deal with serious medical problems on their own or a majority of our citizens felt forced to school themselves rather than attend a university.

We wouldn't put up with this in other professions, so why is nothing changing in law? Why isn't the legal profession doing more to fix these problems?

The Ripple Effect

It's easy to solely focus on the plight of the consumer because it's so massive, but it's also worth noting that our ongoing access and trust issues are negatively affecting lawyers, too.

If you look at how things have trended over the past 10 years, you'll see that the future doesn't look very bright. It's well-documented that law school applications are down, the cost of a legal education is skyrocketing, and the biggest buyers of legal services are pressing lawyers to do more for less money.

Still, I don't believe these problems are the largest current threat to the legal vocation. Instead, lawyers should be most worried about the rampant underconsumption of what they're selling.

Face it: We have something to offer nearly every American, yet an overwhelming majority of consumers are buying absolutely nothing.

It's basic economic theory. When a system pushes away demand, it has a detrimental effect on supply — in this case, lawyers looking for paying work make up the supply. If legal professionals want to flourish in the future, they need to become relevant to new legal consumers — namely, the middle class and small businesses.

If the profession is able to focus on providing high-quality legal services to the millions of middle-class Americans who currently feel shut out from the system, I believe tens of thousands of legal professionals struggling to find work will be able to enjoy full employment.

Wait, did I just say that lawyers can actually create *more* work for themselves? You bet I did.

I hear time and time again that there are too many lawyers. While I can't debate that in our current state of affairs, once we begin wholeheartedly serving middle-class consumers, I can even imagine a call for *more* lawyers. Consumers would see more newly minted attorneys — with less school debt — serving more of America than ever before.

When that happens, you can almost guarantee that opinions will shift about the legal profession as a whole.

Of course, it's simple for me to call out the profession's problems; fixing them is an entirely different story. I believe lawyers have the tools, knowledge and power to make this happen, but they still need to find two things: the motivation to effect change and the skills necessary to set the wheels in motion.

This endeavor requires a type of expertise that isn't taught in law school and a type of investment that's not typical in the law firm business model. Lawyers have to start listening to professionals from different industries — professionals who deeply understand the cost-reducing advantages of scale, branding and technology. And they need to allow for the creation of a "consumer-first" business model.

Prior to the passage of the Legal Services Act in the U.K., a man by the name of Sir David Clementi issued a report that presented a blistering review of his country's legal framework. In one particular passage, he wrote, "Research shows that [consumer] complaints arise as much from poor business service as from poor legal advice. If certain lawyers continue to reject the notion that they are in business, such complaints will continue until they are indeed out of business."

We have reached a similar inflection point here in America. Lawyers are indeed "in business" — but we also have a professional obligation to help consumers navigate the legal landscape and solve legal problems.

It's time to fix the glaring issue of access and right the ship. Both lawyers and consumers need this to happen.

Focus on "What Is" — Not Just the What-Ifs

When the topic of accessibility and consumer protection comes up, people in the legal profession often shoot back, "But what if ...?" They follow that up with some hypothetical disaster akin to the collapse of Enron or Arthur Andersen. As a practicing lawyer, I too often lie awake at night thinking about the what-ifs.

But the time has come to put a little less focus on the what-ifs of the future. Let's not let them overshadow our present state of "what is":

- We have a system that turns away most Americans
- Most middle-class consumers would rather represent themselves than deal with a lawyer.
- Millions of Americans have little to no faith that the legal system will benefit them.
- Millions of people need help navigating our complex legal system, and lawyers aren't lending a hand to most of them.
- Countless lawyers are willing to do meaningful work and help underrepresented consumers, but overly stringent regulations and restrictions on business models forbid it.

Don't allow the what-ifs to paralyze the legal profession. Lawyers need to team up and start making headway in solving these problems.

Once all consumers — poor, rich and middle-class — have access to legal services that are appropriate to their needs, they'll feel like the system works *for* them instead of *against* them. Shifting this tide is paramount to ensuring a bright future for the legal profession.

Whether you're a lawyer, legal academic, judge or legal regulator, it's time to get on the accessibility bus or get out of the way.

I'm already there. Who's with me?

—By Chas Rampenthal, LegalZoom.com Inc.

legalzoom.com/about-us/executive-bios">Chas Rampenthal has served as LegalZoom's general counsel since 2003 and as its corporate secretary since 2007. Before joining LegalZoom, he was a partner at Belanger and Rampenthal LLC and an associate at Testa Hurwitz & Thibault LLP, and at Thelen Reid & Priest LLP. He also served as an officer and aviator in the United States Navy.

The opinions expressed are those of the author(s) and do not necessarily reflect the views of the firm, its clients, or Portfolio Media Inc., or any of its or their respective affiliates. This article is for general information purposes and is not intended to be and should not be taken as legal advice.

All Content © 2003-2016, Portfolio Media, Inc.