

Chicago-Kent College of Law

From the Selected Works of Harold J. Krent

February, 2004

Leadership Opportunities Hiding in Plain View (with Ronald W. Staudt)

Harold J. Krent, *Chicago-Kent College of Law*

LEADERSHIP OPPORTUNITIES HIDING IN PLAIN VIEW

Harold J. Krent and Ronald W. Staudt***

LAW schools and the justice communities in which they operate face two contemporary challenges. First, study after study shows that there is a vast unmet need for legal services by the public. Second, thousands of law students wish to enrich their education with more practical, hands-on opportunities to learn lawyering skills. Traditional legal clinics provide one option, but few students can participate, and the number of individuals served through clinics is modest, at best. This essay urges greater use of technology to provide additional opportunities to students and to help more individuals in need of legal representation. Neither the challenges nor the suggested use of technology to address them are new. But, as we will suggest, new tools and infrastructure may improve the likelihood of success.

Such efforts should yield another benefit. All law schools currently offer skills-based training to students. Some courses are based on simulations, some are structured as externships, and still others are offered as clinical experience. Providing more students the opportunity to work with individuals who cannot afford attorneys should help develop those very same skills in ways that will directly benefit students in their future practice. Technology can be used to restructure the way law schools train students while furthering the school's commitment to public service. Indeed, many law firms now use pro bono opportunities to train new associates.

The Public Needs More Affordable Legal Services

Legal needs studies have provided insight into the legal problems experienced by individuals. In 1993, the ABA sponsored a national legal needs study.¹ Nearly every state has undertaken such a study to help understand how its system of legal services is functioning. For example, in 2004 the State of Washington released the results of its legal needs study. The study found that more than a million serious legal problems were experienced by low income residents of Washington each year. Most of those legal problems involved basic human needs such as housing, family safety and security, and public safety.

In all of these studies, from the ABA sponsored national project to the periodic state studies, the results are consistent. We have built a justice system that denies justice to most of the people in the country. More than 70% of the legal needs of the public go unmet. Millions of serious problems that the legal system could

* Dean and Professor of Law, Chicago-Kent College of Law.

** Associate Vice President, Law, Business & Technology and Professor of Law, Chicago-Kent College of Law.

1. There are several reports derived from the data gathered in the 1993 Comprehensive Legal Needs Study. The central report is entitled LEGAL NEEDS AND CIVIL JUSTICE: A SURVEY OF AMERICANS (1994), available at <http://www.abanet.org/legalservices/downloads/sclaid/legalneedstudy.pdf> (last visited Oct. 14, 2004).

address, and that lawyers are trained to solve, are ignored or bungled by self-represented litigants.

Although the ABA Comprehensive Legal Needs Study is now more than ten years old, its findings about the unmet needs of low income people were similar to the more recent Washington document: three in ten low income households with legal problems did not attempt to use the legal system to resolve them.² The ABA study also examined people of moderate means and found that those individuals were only slightly more likely (four of ten households) to seek resolution of their legal problems within the legal system.³

Law Students Need Skills and Pro Bono Opportunities

Descriptions of the third year of law school are rife with criticism. Boredom, dissatisfaction, apathy, disenchantment, and alienation are the terms that appear again and again in the literature describing law school experiences after the intellectually challenging first year. Often, this boredom and apathy is blamed on the repetitious nature of substantive law courses delivering more statutes, more cases, and more legal analysis. The profession complains that law students are unprepared for the real tasks and challenges of law practice and is demanding a shift in education. Law professors continue to teach doctrine because that is what they know.

Partially in reaction to complaints by lawyers about the quality of law school graduates and partially in response to complaints by law school students about the lack of excitement in law school, the ABA Section on Legal Education and Admission to the Bar has recently attempted to increase the number of offerings in law schools focused on skills instruction and to encourage creation of more pro bono opportunities delivered by law schools to their students.

The ABA Council of the Section of Legal Education and Admissions to the Bar similarly has proposed a new accreditation standard to force law schools to reexamine both skills training and opportunities for pro bono activities for their students:

Standard 302(a)(4) establishes a new requirement that all schools require that each student receive substantial instruction in "... professional skills generally regarded as necessary for effective and responsible participation in the legal profession,"

....

New subsection (b)(2) requires that schools provide substantial opportunities for participation in pro bono activities.⁴

2. *Id.*

3. The study reported that at least 26% of moderate income people, when confronted with a situation raising significant legal issues, made no effort whatsoever to resolve the problem. Similarly, only 39% of moderate income people facing such a situation brought the matter to the legal system; the remainder either tried to solve the problem on their own or used a non-lawyer to try to resolve the matter. FINAL REPORT: ABA PRESIDENTIAL COMMISSION ON ACCESS TO LAWYERS (July 21, 2003), at <http://www.abanet.org/legalservices/delivery/accesscommn.html#I> (last visited Oct. 5, 2004) [hereinafter FINAL REPORT].

The profession is placing pressure on law schools to impart greater skills to students with the hope in part of reinvigorating the law school experience. The ABA Presidential Commission on Access to Lawyers echoed these sentiments:

[S]ome observers have suggested that one way to insure that more lawyers consider a career in personal legal services would be for law schools—in the process of acculturating students to the profession—to provide a more directed perspective on potential career paths and to make it clear that a career path leading toward delivery of legal services to individuals is just as desirable as one leading toward employment in a large law firm serving corporate clients. Similarly, some observers suggest that law school courses should include more material relevant to personal legal services practice, and that law schools which matriculate a substantial number of students who enter such practices should offer a course in law firm management. Few law schools, they argue, are able to claim that they are equipping students, upon graduation, to be able to manage or start a law firm, or to operate a small business.⁵

Despite the need to acknowledge the existence of varied perspectives about the appropriate role and utility of legal education, the Commission concluded that there is more that legal educators, lawyer practitioners, and the organized bar can do to improve clients' access to lawyers and lawyers' ability to respond to the needs of clients.⁶

These two challenges, unmet legal needs and legal education deficiencies, are not inevitably interconnected. Unmet legal need could be met by hiring more attorneys, by changing legal standards so as to make the law more transparent, or by redefining entitlements. Law student restlessness could be addressed through more creative externships, more dynamic simulation courses, or better softball leagues. Nevertheless, the potential linkage between the challenges should not be missed.

Internet Technology Innovation

Technology offers the promise to meet the two challenges simultaneously on both fronts. New models for commerce, education, and personal services have been invented and delivered to the public using internet technology. The legal profession, including institutions delivering legal services to low and moderate income people, can and has adopted web technology to improve access to justice. New Business-to-Consumer models of legal services delivery have recently been launched after an early cluster of dot.com failures. Robert Shapiro's LegalZoom⁷ and the document preparation service site from We the People⁸ are two highly publicized businesses seeking revenue in the legal services market.

4. John A. Sebert, Memorandum to Deans of ABA-Approved Law Schools (Aug. 23, 2004), at <http://www.abanet.org/legaled/standards/memor302and305standards.pdf>.

5. FINAL REPORT, *supra* note 3, at <http://www.abanet.org/legalservices/delivery/accesscommn.html#I>.

6. *Id.*

7. Robert Shapiro, at <http://www.legalzoom.com> (last visited Oct. 13, 2004).

8. We the People, at <http://www.wethepeopleusa.com> (last visited Oct. 13, 2004).

The lure of internet technology has not been lost on those who would solve the problem of unmet legal needs. The Legal Services Corporation has offered a series of Technology Innovation Grants to legal aid offices funded by the federal grants program. These TIG grants have successfully funded the launch of statewide legal services web sites in nearly every state. These sites are managed by legal services organizations and funded primarily by the Legal Services Corporation. In Illinois, the websites are built and maintained at Chicago-Kent College of Law by the Illinois Technology Center for Law and Public Interest, a unique collaboration of legal services programs, the Lawyers Trust Fund of Illinois, the Chicago Bar Foundation and Chicago-Kent College of Law. But in every state, the coordination that makes it possible for one website to serve the entire state requires approval by each state's justice planning organization. Bar associations are invariably tied into the justice planning process for each state. These websites are becoming mature support resources for law practice and providing public access to courts and other legal processes. They feature internet platforms for delivery of advice, information, referral, and direct service to low income clients.

A Modest Proposal for Collaboration

Law students can use technology to help resolve unmet legal needs not only by assisting in creating infrastructures, but also by using technology to help those underserved by the legal community learn of and protect their rights. Such efforts should instill greater purpose in many third-year students and help solidify the skills that the student will take into practice. Participating students can develop skills that may be critical in their future careers—cultivating client relations, managing technology, distilling legal options, and so forth. Indeed, the web itself has been a useful tool for many attorneys entering the profession to market themselves and manage their caseloads. A good example is www.visanow.com.

An opportunity exists for law schools to afford law students education in skills while delivering legal services to low income individuals. Schools can forge closer relationships with bar associations and practicing lawyers in legal aid offices and private law firms in the pursuit of greater access to justice for underserved populations. For decades, traditional clinics and poverty law courses have been aimed at the civil legal services needs of the poor. These clinical courses and associated law offices teach interviewing, fact investigation, counseling, negotiation, pretrial and trial skills in settings that mirror a community legal aid office. Some, like the Hale & Dore project at Harvard, locate the law office within the community at some distance from the law school.

Internet-based skills instruction and participation in pro bono activities can lower the costs and eliminate some of the time and distance barriers that traditional clinical courses face. Students can deliver internet-based services to low and moderate income people in person, by telephone, or over the internet through email and instant messaging. Supervision can be handled using the same tools. A supervising attorney can be in the same room with a student and client, across town, or even across the country.

Internet-assisted support for access to justice can be structured in a variety of ways. Some of the opportunities for students to assist people may be quite simple,

like helping someone who is unfamiliar with computers find the right information on a statewide website. Even first-year law students can be effective web site guides for low income pro se litigants seeking information about their legal options and court processes. For instance, Chicago-Kent College of Law operates a Self Help Web Desk at Chicago's Daley Center where thousands of self-represented litigants attempt to file or respond to civil claims. The Illinois Technology Center's web site for the public, www.illinoislawhelp.org, is made available on several computers in the main corridor of the office of the Clerk of the Circuit Court of Cook County, Illinois. Law students help these court customers navigate the web site and find helpful information.⁹

Other systems may be structured to enable students to provide more robust help, including sophisticated legal advice, drafting, document preparation, research, and analysis.¹⁰ Chicago-Kent has launched an initial attempt at combining telephone services, web-based professional support, and in-person supervision. With the Coordinated Advice and Referral Program for Legal Services (CARPLS), the school created a legal aid hotline clinical program in the spring 2004 semester. The two-credit clinical program is open to a maximum of five second- and third-year students, with preference being given to evening-division students. The participating students provide legal information and advice to CARPLS clients who call the CARPLS Hotline seeking legal advice in the areas of landlord-tenant and family law. The students are supervised by an experienced CARPLS attorney who is available in the telephone "war room" with the students when clients call.

In Texas each year, law students handle thousands of intake interviews, diagnosing the legal problems of rural low income clients of Texas Rural Legal Services. Technology helps to promote quality, facilitate supervision, track clients, and connect students, clients, and supervisors remotely. Web-based case management and interview guides keep students on track. Case analysis and proposed legal advice is reviewed by a supervising attorney over the web before clients are advised. Often the student, supervising attorney, and client are in three separate locations linked by telephone and intranet connections.

We are just beginning to explore the combination of internet technology, telephone technology and direct person-to-person interaction. Continued

9. The model of using web savvy volunteers to staff community legal services offices with remote support from staff lawyers has been described and implemented by Wayne Moore, Director of Advocacy Planning and Issues Management for AARP. Wayne describes this model as follows:

AARP arranges for legal services access points in agencies or churches that serve the target population. Staff and non-attorney volunteers at these access points are then trained to navigate a specially created website to find information and generate documents that the clients need. The volunteers consult with attorneys on the telephone advice lines to ensure they deliver what the client requires.

Wayne Moore, *Technology: Changing the Way Low- and Middle-Income People Receive Legal Services Around the World*, PERSPECTIVES, available at <http://www.aarp.org/international/Articles/a2003-09-17-ia-perspectives.html> (last visited Oct. 5, 2004).

10. Assisted self-help is another approach to deliver access to justice for some of the needs of both low and moderate income people. In addition, unbundled services can be delivered by lawyers and by law students supervised by lawyers to provide discrete task services for particular client needs.

experimentation is needed to understand the best combinations, to ensure the highest quality in the delivery of legal services and the best possible law student education. New models for telephone and internet assisted legal services have emerged in the past ten years that have different management, marketing, and mentoring requirements for success.

Conclusion

Every law school creates its own justice community. Formed of faculty, staff, alums, and students, such communities touch justice institutions in local, regional, and national spheres of interaction. Law school justice communities connect to courts, court clerks, administrative agencies, corporations, and every part of government. In fact, these connections are so natural and continuous that a justice community forms around each law school without any conscious planning.

We envision movement toward a virtual justice community. The new community can supplement without necessarily replacing the prior arrangements. Technology is the linchpin allowing schools to reach out to more students, individuals in need of representation, and bar associations. The resulting mix may be unfamiliar but as rewarding as the communities that currently exist.

Law students can perform a critical community service by working to fashion efficient means of delivering legal services to underserved populations. Many options are available. Evolving technologies suggest one path for reaching more individuals than can traditional legal clinics. The end result may include more dynamic legal education for the students and an opportunity to hone skills that will help prepare them for practice. And, the ultimate beneficiary may be the public.