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Summer Convention registration inside.

Meeting the Market for Legal Services

The Jury is In: Legal Services are a Tough Sell

by John R. Lund

Over three million people now call Utah home and over 250,000 small businesses operate in our state. Those businesses employ over 500,000 people, which is nearly half of the private workforce. <https://www.sba.gov/sites/default/files/advocacy/Utah.pdf>. These numbers are from 2013. They are probably higher today as a result of Utah having one of the strongest economies in the nation since then. <http://www.businessinsider.com/the-15-us-states-with-the-strongest-economies-2017-3>. That is a lot of prospective clients and upside potential for lawyers, right? Well, maybe.

Of course there are thousands of us Utah lawyers who are ready, willing, and able to provide legal services to these Utahns and Utah businesses. And we lawyers know that there is an abundance of good advice and valuable assistance that we can provide to them. Hey, we are educated. We are smart. We know the law. We work hard.

Yet, very few of these people and businesses routinely use legal services. Indeed, the vast majority have never used a lawyer for anything. They look for solutions online. They buy forms. They go it alone in court. Even larger businesses increasingly try to solve legal issues on their own and only bring in outside counsel as a last resort.

Why? Why don't they call on us? We have nice websites describing our accomplishments, listing our specialties, and even offering free initial consultations. Did I mention that we are smart and could provide valuable assistance? Yet, people and businesses in all economic strata simply don't call, except maybe when they have been injured and know, from exhaustive advertising, that they should.

I wrote about this in my first President's Message in the Sep/Oct 2017 *Bar Journal* and suggested that one way to find answers is to get proximate to the people involved. We've done that now. At least we've started. We have actually asked numerous Utahns and Utah businesses why they don't utilize legal services and

similar questions. I write to report some of those results to you. They present both opportunities and challenges for anyone seeking to be gainfully employed by practicing law in Utah.

The research was conducted by Lighthouse Research, a well-regarded market research firm based here in Salt Lake City. These are people with degrees in statistics and marketing who have conducted both quantitative and qualitative research in Utah on a wide range of issues for a wide range of clients. We asked them to quantitatively research the Utah market for legal services. We asked them to focus on individuals and small businesses, where the potential to expand the demand for lawyers seemed most promising.

Specifically, Lighthouse Research was asked to determine:

- Why individuals and small businesses do or do not use lawyers?
- What obstacles or barriers prevent them from using lawyers?
- What value do legal services have to clients, and what they are willing to pay for those services?
- What sort of fee arrangements were more or less appealing to them?

Lighthouse started with phone surveys to get its answers. Statewide, they conducted 808 surveys of individuals about their legal needs. They did another 217 phone surveys of businesses, most with between three and forty-nine employees, about business-related legal needs like contracting and compliance issues. Lighthouse has tabulated the results of these surveys and has presented them with a confidence level of 95% and a margin of error of 3.45% for the individuals and of 6.64% for the businesses.



Then, based on those results, Lighthouse also conducted four focus groups, two of individuals and two of business owners and managers. Those evening efforts each involved ten to twelve participants, led by a moderator, who dug more deeply into the issues identified by the phone surveys. A subcommittee of the Bar Commission, led by Mark Morris, was able to observe these discussions from behind a one-way glass wall.

Lighthouse now has produced reports for the Bar Commission with the results of these efforts. Lighthouse has also provided some analysis of the data. Those reports are now available to all bar members via their member log in to the Practice Portal. Here is the link: <https://services.utahbar.org/Practice-Portal>.

So, what is the verdict? Well, most individuals only think they need a lawyer for things like divorce or a criminal charge. And even for those problems, many would turn instead to a friend or family member. As for other sorts of help, only 4% would go to a lawyer about problems buying or selling a home, only 9% would go to a lawyer for a personal finance matter such as a tax issue, and only 25% would go to a lawyer for help with estate planning.

In the focus groups, individuals explained a bit more of the reasoning behind this. Here are some of the comments:

“I would try to do everything on my own at first. I feel like there are a lot of things you can do on your own.”

“For me to engage a lawyer, it would take a lot.”

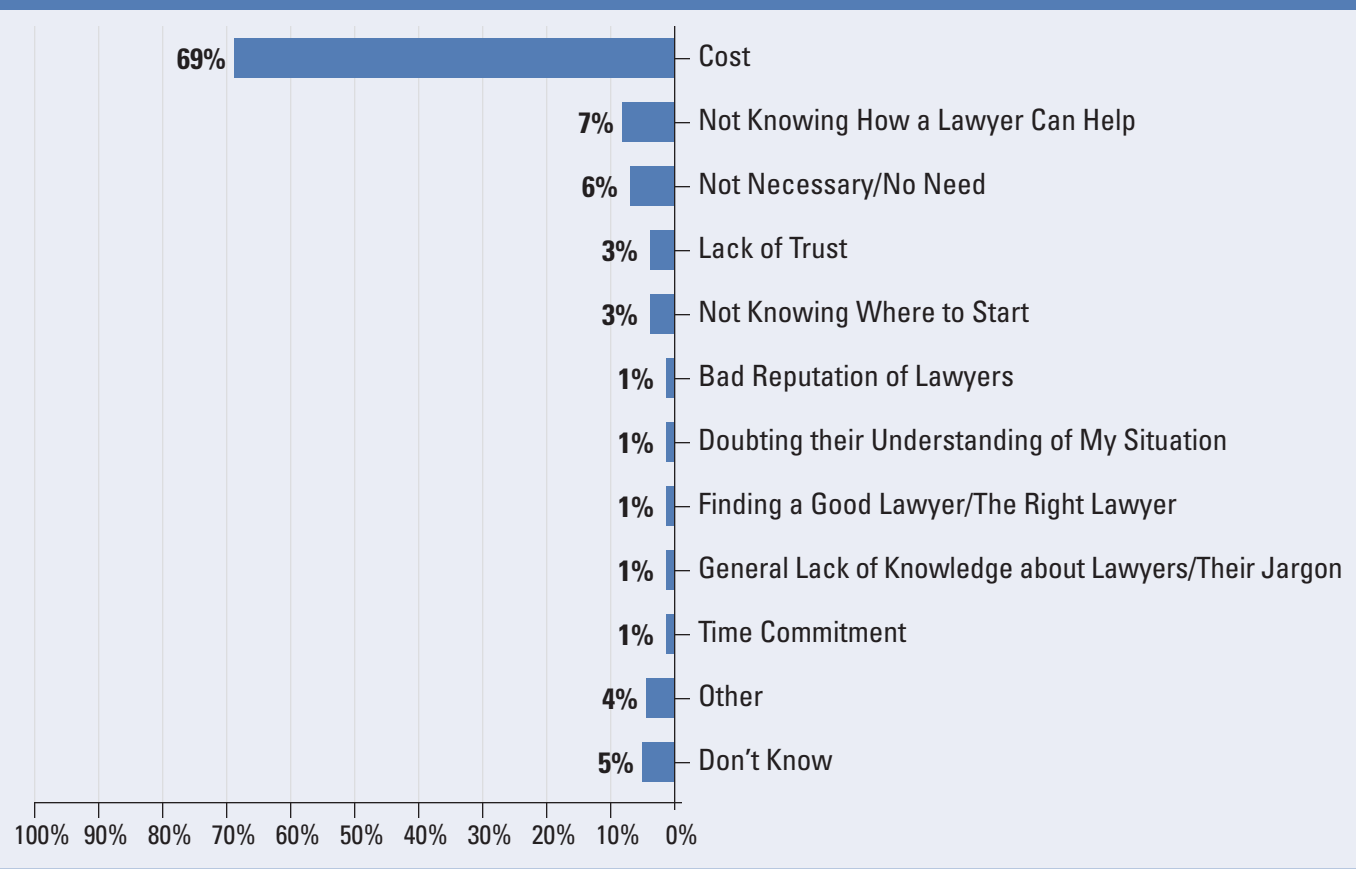
“I think mine would be probably quite a ways down the line before I get a lawyer because of the expense. The only time we ever had a lawyer they billed by the minute and it was very expensive.”

Among businesses, 59% would go to a lawyer for help writing or negotiating a contract. But only 33% would go for the purchase, sale, or creation of a new business. Only 25% would go for employee procedures or problems, and only 11% would go for help with tax rules and requirements.

As for the “why,” I suspect most of you could guess at the top reason the most people don’t call us, even in circumstances that cry out for legal advice and counsel. But for those of us who learn visually, here is Figure 14 from the phone survey of businesses:

FIGURE 14

What do you believe is the biggest barrier preventing businesses from using services provided by a lawyer?



Lighthouse anticipated that cost was going to be the top of the list, so they asked a follow-up question as to the next biggest barrier. And nearly 25% of the people surveyed said they did not even know what the next barrier might be! What of the few who had not listed cost as the biggest barrier? Many of them listed it as the next biggest barrier.

There are certainly other reasons shown, such as not knowing how a lawyer can help or where to start looking for one. But when you combine the biggest and the next biggest reasons given by businesses for not using lawyer services, they are telling us that a whopping 82% of the reason is cost. And the data are similar for individuals.

There is no avoiding this message. It is not only statistically valid, it is shown forcefully. Moreover, it doesn't matter whether we, the sellers, consider our services to be cost-effective or "worth it." The clear perception and, I dare say, the reality for the buyers in our market is that we are offering them a Ferrari when they can only afford a Hyundai. They fear we will tell them they need a complete engine rebuild, when they only wanted an oil change. Most are really only going to hire a lawyer if they feel they are forced to do so. They have a very limited understanding of what a lawyer might

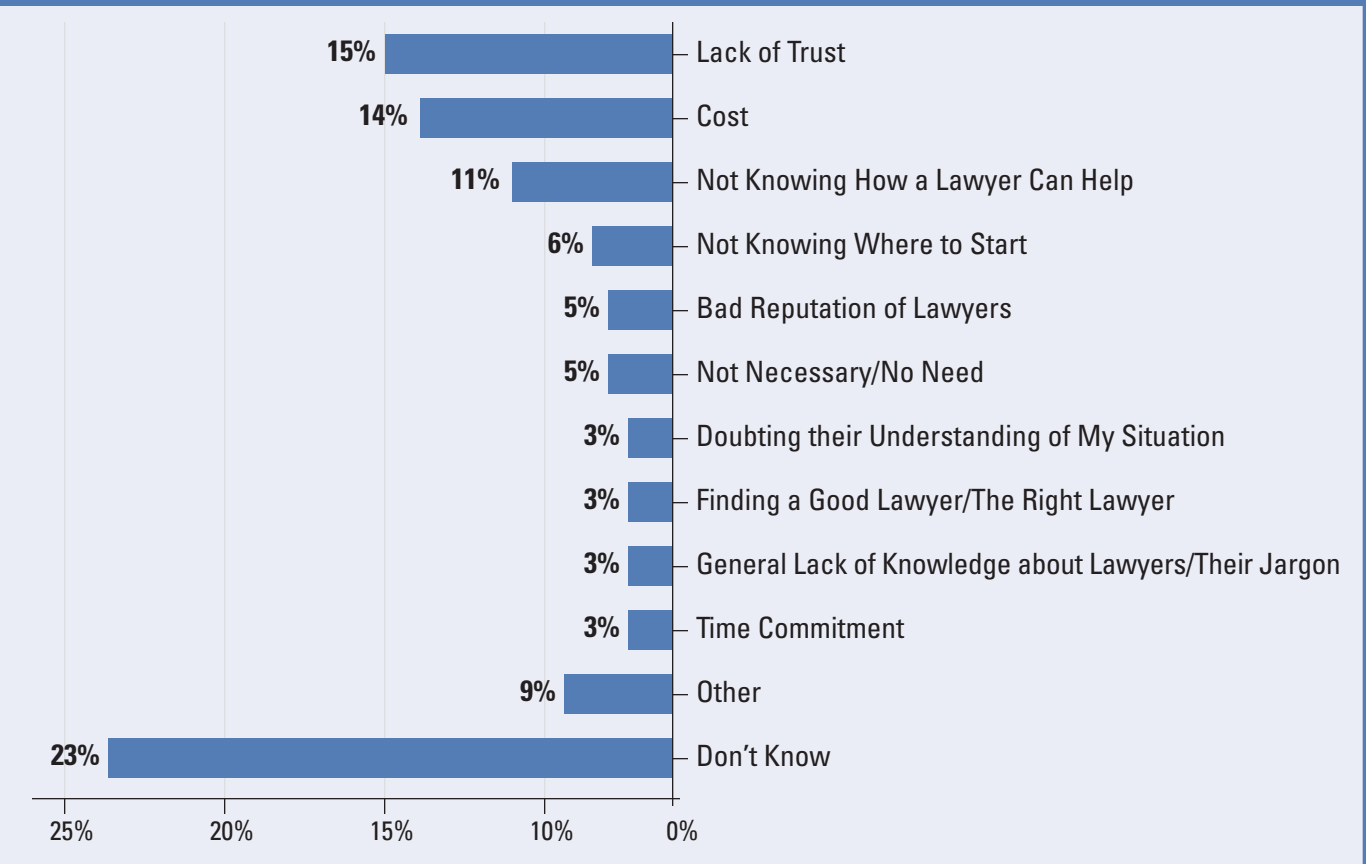
do, how much it will cost, and whether it will be worth the price.

How did we get here? Was it driven by the "hours x hourly rate = income" model used by the vast majority of private practitioners for the past fifty years? Did we decide litigation had to be more complex because it really is more complex or because we can make a good living writing motions and exchanging discovery documents? (I certainly don't claim innocence on the charge of undue motion practice.) But, for those of you lamenting the disappearance of jury trials in civil litigation, consider whether part of that is due to us fatiguing clients with endless extensions and motions, making the prospect of trial completely unappetizing.

Relatedly, why is information about the cost of legal services so obscure? I have scoured the internet for instances where a Utah lawyer is actually setting out the prices for certain tasks or for even estimates of the likely cost, and I have found precious little. To be clear, no you won't find my rate posted on my firm's website. But what is it we have to hide? Every customer, including us, wants to know up front what they will have to pay and what they will get for that payment. Perhaps our prospective buyers would be more inclined to consider using our services if they had that basic information.

FIGURE 15

What do you believe is the NEXT biggest barrier?



It is not as though the client actually sees a Ferrari at the end of the engagement. What we have to show for our efforts is usually much less tangible, albeit no less valuable. Maybe that means we should develop products and offerings for clients that are more defined and less open-ended. It might mean employing technology more aggressively. It might even mean advertising the value proposition of our offerings. "We do x, y, and z for your company. This is the price. This is when we will deliver it to you. And here is why it is worth it to you."

On that note, here are some other findings from Lighthouse that might be of interest:

1. There was a clear preference for fee structures other than hourly rate. Over 50% of the individuals surveyed said they would prefer a set price for the whole project or for a specific task or service. Only 8% said they would prefer an hourly rate.
2. Even in these days of Avvo, on-line ratings, and Superlawyers, both individuals and businesses are much more apt to find a lawyer based on a recommendation from a friend or a lawyer they know than go online.
3. While people who have used a lawyer seem to better appreciate our value, many people consider us to be confusing, mysterious, and even untrustworthy. They think we will make it worse.
4. The business respondents thought a one-hour meeting with a lawyer about the purchase or sale of their business would be "very valuable" but said they would be willing to pay an average of \$203.75 for that one-hour consultation.
5. By contrast, individuals thought a one-hour meeting with a lawyer about divorce, separation, or child custody would be "valuable" and said they would be willing to pay an average of \$527.40 for that.

I recognize that some of you may view all of this as somehow cheapening the profession. And others will be concerned that more information in the marketplace about the prices for legal services will create downward price pressure. But people, with our current approach, we are missing huge portions of the market. This is about reaching out to people who will probably not use a lawyer at all, about expanding the pie. We are becoming increasingly less relevant to both businesses and individuals as they work out other solutions to their problems. We haven't begun to convey the value lawyers can provide by giving preventative advice. We are ceding big segments of our potential market to tax advisers and financial planners and the like.

I am no market analyst. But I do think we have developed some

data that is worth analyzing. I've focused on Lighthouse's finding about cost as a barrier, but its reports contain quite a lot of other substantive information. For the bar as a whole, we intend to have it analyzed by some marketing experts. We will be asking them about how the bar, as well as practicing lawyers, can overcome the observed barriers. We will also be asking them to help Utah lawyers be innovative in developing packages of legal services that will be more attractive to the market.

What can you do with this data? You can use it. You can consider whether it suggests new approaches to your practice, not only to how you market but also what you market. If you don't consider yourself capable of doing that analysis, then you can certainly seek the advice of a marketing professional as well. Heck, you can even conduct focus groups for your own practice using the discussion guides in the appendices.

Albert Einstein said: "The world as we have created it is a process of our thinking. It cannot be changed without changing our thinking."

I encourage you to study these reports with an eye towards what opportunities they reveal for your practice. Change your thinking about the way you offer your services to Utahns and Utah businesses and you just might change your practice for the better.

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