

ABSTRACT

An Introductory Exploration of Five Broad New Ideas on How to Cut Through the Access to Justice-Commercialization-Deregulation Conundrum

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Most of the current deregulation discussion focuses on permitting both non-lawyers and lawyers to do more than currently authorized. While such changes would presumably contribute to solving the problem of increasing access to justice while maintaining quality and consumer protection, such discussions alone are unable to offer any realistic hope of achieving the 100% access to justice services for all envisioned by the recent [Resolution of the Conference of \(State Court\) Chief Justices and the Conference of State Court Administrators](#). This paper discusses the potential for fully achieving that 100% goal by integrating broad regulatory changes with economic incentives on courts, bar and legal aid to increase efficiency and reduce costs, and with politically achievable ways of bringing in additional resources.

The five proposed, albeit potentially controversial, solutions are:

- A. Releasing non-profit legal-serving entities from almost all regulation, and moving the subsidy system of legal aid to a genuinely competitive model,
- B. Deploying a mix of more limited de-regulation on the bar as a whole, combined with inter-related mandated sliding fees and tax incentives, for both litigants and providers,
- C. Maintaining almost all regulation, but placing the obligation of 100% access to justice on the bar as a whole, and giving the bar the authority to tax its members to fulfill that obligation,
- D. Internalizing all costs of access to justice into the court system, in order to incentivize court simplification and some appropriate deregulation,
- E. Allow for National Technology Limited Practice Licenses on condition of free services for the poor and reasonable ones for middle income, and with appropriate regulatory relaxations.

The paper proposes a conceptual framework for assessing such solutions, as follows:

- Does it ensure that everyone with significant legal need would be appropriately served, regardless of financial or other barriers?
- Does it provide the resources to fill the resource gap?
- Would it meet the political and economic requirements of being highly cost effective?
- Would services be varied, flexible and matched to need?
- Would the solution incentivize changes in the system as a whole?

- Would the solution protect the consumer, either through the relevant traditional formal values of the profession or through some other means such as a structuring of market incentives?
- Could one be sure that any new resource mechanism would not introduce or exacerbate any additional general non-neutrality into the system?

The solutions are then compared in detail under the framework, with the conclusions summarized below in this table from the paper.

<u>Requirement</u>	Deregulation of nonprofits, with competitive grants	Limited Deregulation, Sliding Fees and Tax incentives	Continued Bar-based regulation, bar responsible for access, lawyer taxing by bar	Internalizing all access costs into the court system	National Safe Harbor for Technology Delivered Services, Free for Poor	Comparison of assessment of this requirement for all solutions
<i>Serves All?</i>	Only with sufficient resources, not inherent to model	Not certain, but likely, particularly if incentives adjustable	Yes, provided eligibility set appropriately.	Subject to details of system established	Only simpler solutions within the limited license.	Bar responsibility and tax incentives models appear to have greatest chance of success
<i>Provides Sufficient Resources?</i>	Not inherent in model	Yes, unless incentives were not politically sustainable.	Yes, unless politics intrudes.	A major area of uncertainty.	Likely for the limited services, given potential for efficiencies.	Bar and tax benefits systems offer best chance by far. Non-profit deregulation unlikely enough.
<i>Efficient?</i>	High	Dependent upon extent of regulatory changes.	Depends on details.	Opportunities, but depends on politics within the institutions,	Very high	Nonprofit might be most likely to be efficient, because of full deregulation in safe environment.
<i>Varied Services, Matched to Need?</i>	Somewhat, lack of court integration has risks in this area.	Deregulation should encourage.	Yes, strong incentives	Depends on institutions. Triage should be much easier.	Incomplete range of services, with effective triage	Most likely in bar and court- internalized solutions, with triage easiest in court internalized solution.
<i>Incentivizes Changes in all Parts of the System?</i>	Likely with the bar, possibility with the courts.	Lack of court integration may offer limits in this area.	Depends on court involvement.	Very high chance of cross maximized change.	Should put major efficiency pressures on other segments	Most likely with court-internalized solution. Additional ris solutions.
<i>Consumer Protection Risks?</i>	Little change likely	Some potential risk from nonlawyer services	Little likely change	Risk from removal of role distinctions between court and legal aid.	Higher risk. Perhaps monitoring algorithms could control the risk.	1. Some risk from nonlawyer services in some models. 2. Lowest in nonprofit dereg. 3. Court-internalized may have additional.
<i>Avoids additional general non-neutrality?</i>	Little risk	Little if any risk	Risk of lawyers interests producing non-neutrality.	Risk of less neutrality from court-legal aid integration	Important that monopoly and oligopoly be restricted by license process	Little risk, except possibly from court-internalized.
<i>Summary of Assessment of Each Solution</i>	1. Significant increase in access. 2. Full 100% would require additional resources. 3. Low risk.	1. High chance of 100% access, provided regulatory changes permit efficiencies.	1. High change of success provided players willing to adopt the bargain. 2. Court involvement needed.	1. Big increase in access. 2. Full 100% would require additional resources, could be raised from within this system. 3. Neutrality risks	1. Not all services. 2. Significant reduction in costs, increase in efficiency, and change incentives. 3. Higher consumer protection risks.	Depends on estimates of politics with both lower case and capital “P”.