

ACCESS TO JUSTICE CHAMPIONS

THE WSBA LOW BONO SECTION'S NEWSLETTER



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**Low Bono
Section**

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THE DIGITAL DIVIDE IN THE ERA OF COVID-19

BY CECILY JURMAN, 3L LAW STUDENT

Increased use of technology in the legal field has improved efficiency of hearings, filings, and service—however, its use also illuminates a stark disparity in access for low bono clients. Prior to COVID-19, technology had started to become a frequently used tool by attorneys, courts, and clients alike to efficiently practice law. And in the COVID-19 world in which we currently are practicing, dependence on technology has only become more prominent.

Many hearings are occurring telephonically, or over Zoom instead of in person, and electronic filing and service have become more widely accepted. Like most innovation in the legal field, however, dependence on technology highlights a digital divide between those who have access and the requisite knowledge to use it, and those who do not. Pre-COVID-19, the digital divide was apparent—but community resources often diminished the bleakest disparity. Free wifi is commonplace in most coffee shops, malls, and libraries; however, nearly all of the resources for free wifi have been closed or are operating

with greatly restricted access. As a result, many who depend on free access to internet and computers are excluded from the technological boom in the legal field, which adds another layer to the access to justice disparity inherent in our system.

When practicing low bono legal services, attorneys frequently face obstacles in working with clients. Many low bono clients are reliant on public transportation, the use of public services such as printers at a library, and work schedules not conducive to an attorney's schedule. And while some of these issues are resolved by telephonic and remote hearings, they are only resolved if we assume all clients have access to a computer or smart phone, internet, a quiet and private space to discuss their case or attend hearings, and the knowledge to properly use this technology. This is not, however, always the case.

In 2019, Pew Research Center surveyed a number of Americans within a range of incomes.¹ Of the population surveyed, only 56 percent of those who had an income at or below \$30,000 a year reported they had access to home broadband. Data from the survey illustrates a trend most would predict; as a person's income increases, that person is more likely to have access to home broadband. However, e-signatures, e-filing, and attending Zoom hearings or trials require more than just home broadband.

Only 54 percent of individuals making at or below \$30,000 a year reported having access to a desktop or laptop computer.

The clear digital divide for low-income individuals in the United States creates yet another obstacle to representing the very individuals low bono legal practice is designed to serve. And while courts are scrambling to ensure hearings occur, trials move forward, and individuals can access justice, few have mentioned or acknowledged the impacts on low-income clients of the legal field's newfound reliance on technology.

Judges and attorneys previously have adapted and continue to quickly adapt to our "new normal"; similarly, governments, organizations, and firms must also jump into action and bring solutions to clients facing this technological conundrum. A model I have recently learned about in a CLE is nonprofit based, but could likely be converted to work in other settings. Nonprofit organizations have pulled resources and funding to create dedicated spaces in their buildings to house computers, printers, and webcams for clients to utilize in order to attend hearings and fill out paperwork for their cases.

To ensure proper COVID-19 precautions are present in these settings, organizations may require appointments to use the services,



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limiting the number of individuals allowed to be in the room at once. Cubicle-like walls can be utilized for social distancing and privacy concerns. Additional measures can easily be taken to ensure clients are wearing masks, have access to hand

sanitizer, and are practicing social distancing.

¹ Monica Anderson and Madhumitha Kumar, “Digital Divide Persists Even as Lower-Income Americans Make Gains in Tech Adoption”, Pew Research Center (August 30th, 2020), www.pewresearch.org/fact-tank/2019/05/07/digital-divide-persists-even-as-lower-income-americans-make-gains-in-tech-adoption/.



Cecily Jurman is a 3L at Seattle University School of Law and completed her Bachelor of Arts at Michigan State University. She strives to create equitable access to justice in the legal field and plans to pursue a career that supports community members in need of legal assistance.

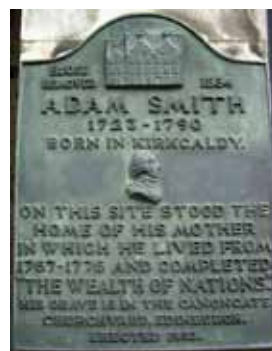
DEADWEIGHT LOSS

BY MARYA NOYES, LLLT, MBA

While the matter of the justice gap has many moral or ethical elements, I will leave those aspects of the conversation to those better positioned to undertake them. A large portion of my formal education is in the areas of economics and business. Consequently, I view most societal issues through the lens those disciplines have bestowed upon my point of view. Fear not, however, for I will endeavor to convey this knowledge to the readers of this newsletter without boring them to tears. Trust me. I am well acquainted with looks of shock, horror, and dismay by the unsuspecting when I bring up the subject of economics. I get it—I really do. That being said, legal professionals cannot possibly hope to sell a service in a semi-capitalistic system without confronting the economic repercussions of some of their choices.

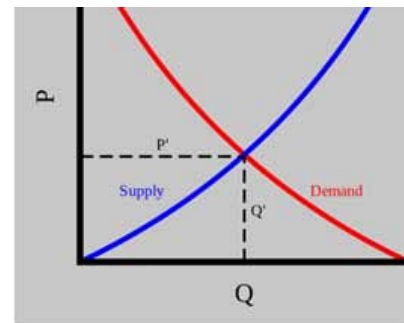
I posit the justice gap’s existence can be explained by what economists refer to as “deadweight loss.” Simply defined, deadweight loss is the measurement of the cost to society of a market working inefficiently.

This market inefficiency can be created by any number of limiting factors, such as monopoly pricing or an artificial pricing floor. Regardless of the source of the inefficiency, society incurs a cost for this inefficient allocation of resources equivalent to the deadweight loss. While that explanation of this term and its relation to the legal marketplace may seem random, at best, I promise I have a point. First, I must detour through the definition of an efficient market. Please understand, those of you not familiar with economics, there is quite a lot of discussion in the field on what makes a market efficient. Possibly, at some point, I might even write a follow-up article on this controversy and the general misappropriation of Adam Smith’s “invisible hand.”



“Adam Smith” by duncan is licensed under CC BY-NC 2.0

Lucky for you, at present I do not have the room and will spare you my dissertation on the subject. In this article, I am referring to the basic definition of market efficiency referred to in the supply and demand model most of us were taught in Econ 101 and depicted in the graphic below.



“Supply+Demand Curve” by sustainablerural is licensed under CC BY 2.0

To review, the basic supply and demand model represents the relationship between the amount of a product sellers wish to produce at various prices (supply curve), and the quantity of goods that consumers wish to buy (demand curve). The point in which these two curves meet is referred to as the equilibrium price for that product. In equilibrium, the quantity of a good (Q_1) supplied by producers equals the amount of the demand

DEADWEIGHT LOSS - cont'd

for that good by consumers at the equilibrium price (P_1). A market is considered efficient if the supply and demand curves meet at the equilibrium price.

At times, various and sundry forces interfere with the market reaching the equilibrium price of a product. These forces might take the form of taxation, regulations, or monopolization. The graphic below depicts pricing in a monopolistic versus a competitive marketplace. Admittedly, there is a lot happening in this graph for the economically-uninitiated. For that reason, I will endeavor to be as clear as possible in my explanation.

In a monopolist marketplace, one seller controls the entire supply of a product. The monopolist sets the price to maximize their own profitability. The monopolist price (P_m) is typically higher than the equilibrium price set in a market with many sellers and buyers. Monopolists also produce supply at a quantity most profitable to the



"Engagement Ring Luxury Tax Monopoly" by Philip Taylor PT is licensed under CC BY 2.0

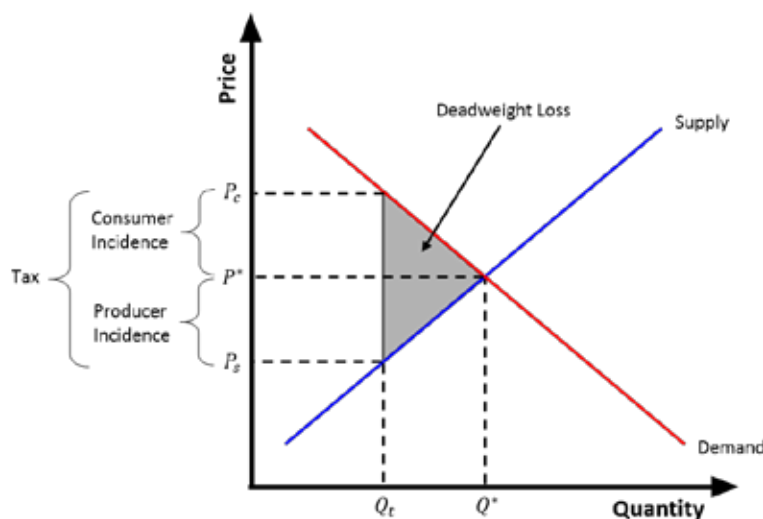
monopolist which has the effect of reducing supply of the good to the marketplace (Q_m).

The higher price and lower supply in the monopolist's marketplace results in more unmet consumer demand than that which would be achieved in a perfectly competitive marketplace. The monopolist abandons those consumers willing to buy the product at the lower equilibrium price and denies participation to those sellers willing to produce the product at

a lower price. The result of this market inefficiency shrinks the entire market for the product. The measurement of the total loss to both potential buyers and sellers is equivalent to the market's deadweight loss.

It is fine if you did not follow the explanation. Bottom line is, one supplier controlling an entire marketplace typically results in less production and higher prices than what would be available in a perfectly competitive marketplace. The increase in price and associated loss in production results in an overall loss to society. (By the way, this loss is one of the reasons we have anti-trust laws.)

It is debatable if all deadweight loss created by regulations or monopolies always results in a loss to society. Clearly, we need things like regulations to protect the public against producers willing to produce substandard products at low prices. For example, a low cost, unlicensed doctor might be willing to perform Lasik eye surgery, but would it



"File:Detailed tax wedge.png" by Sbakker17 is licensed under CC BY-SA 4.0

DEADWEIGHT LOSS - cont'd

be in the public's best interest to allow that person to provide it? Personally, I would take a hard pass.

Now, to my point. The "justice gap," represents the substantive divide between those in need of legal services and the percentage of the population able to afford those services. I posit that a large portion of individuals currently unable to afford legal services are a measurement of the consumer portion of the deadweight loss of the legal marketplace.

Yes, that means I am stating there are consumers willing to purchase legal services at the less-than-going rate. If the economic model that applies to every other

marketplace also applies to legal services, it is reasonable to assert these consumers are in addition to the consumers already purchasing legal services at the current rate. This, of course, also means the legal marketplace is actually much larger than the limited portion of the population being served by the existing business model.

In my next article, I will propose a solution to accessing and serving this unmet consumer demand by reviewing Kim and Mauborgne's, "Blue Ocean Strategy." If I did manage to bore you to tears, I apologize. It is difficult to make economics sound riveting and relatable. I truly commend your perseverance for reading this article in its entirety.



Marya Noyes is a LLLT practicing family law at Genesis Law Firm in Everett. She was licensed as a LLLT in 2017, and earned her MBA at Seattle University in 2019. Marya regularly writes articles on economic analysis and market opportunities presented by addressing the justice gap.

UTILIZING VIDEO CALLS FOR ACCESS TO JUSTICE

BY JEFF HAMILTON, JD, MBA



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The use of video calls to connect with others has become almost mandatory in response to current social distancing restrictions. I am writing this article to explain why legal professionals should continue using video calls after these restrictions are lifted.

Why use video? The convenience of meeting by video with paid and/or pro bono clients is a good reason you should consider adopting video consults. However, your dedication to providing access to justice should be the primary reason. The distance between where potential

UTILIZING VIDEO CALLS FOR ACCESS TO JUSTICE - cont'd

clients live and where attorneys work and volunteer is a barrier to access to legal services. This barrier is almost completely removed by incorporating video consultations. Reach Enumclaw, the virtual clinic I run, utilizes video consults to address this problem.

Enumclaw and Seattle are cities in King County. Both are served by the King County Superior and District Courts and are therefore subject to the same local court rules. This means attorneys practicing in Seattle can help people living in Enumclaw without learning new rules for a case (the same goes for any city in King County).

Reach Enumclaw is a virtual legal clinic that provides four half-hour virtual consultations between people in Enumclaw and lawyers around King County. The clinic operates twice a month out of the Enumclaw Public Library, and has been designed to address the access to justice issues presented by the distance between those who need help and those who can provide it. The clinic has served roughly 250 individuals over five years at the cost of approximately \$20 in total.

There are 42.5 miles (by a Google Maps estimate) separating King County Bar Association offices and the Enumclaw Public Library. Without traffic, it takes 45 minutes to drive to Seattle from Enumclaw or vice versa. With traffic, it takes 1.2 hours one way, at best. This travel time creates a barrier for lawyers to work in Enumclaw or for clients to access clinics and

attorneys. This barrier grows as we consider that some residents of Enumclaw may not have access to a car and instead depend on public transport. Relying on public transport increases the one-way travel between Enumclaw and Seattle to over two hours one way. In-person consults require either the lawyer or the person seeking legal services to travel. For the

three and a half hours to service an evening clinic. This is a greater time commitment than many attorneys may be able to provide.

Lawyers and clients can completely eliminate time wasted on travel by utilizing video meetings, thus increasing access to legal services for Washingtonians living outside of major cities. Removing the distance



"Public Transport" by Mahin Fayaz is licensed under CC BY 2.0

person in Enumclaw seeking legal services, this means that person will need to travel somewhere between one and a half to four hours to access legal services in Seattle, a burden parents and working people may not be able to overcome.

For example, perhaps an attorney not living in Enumclaw wishes to volunteer for a legal clinic in Enumclaw. The attorney will need to provide a minimum of two and a half hours (one hour clinic plus one and a half hours minimum travel time) to service a lunchtime clinic or

barrier further benefits low-to-moderate-income individuals who do not have a car and depend on public transport.

An added point of convenience can be the elimination of meeting spaces. An attorney may be able to build a home office and use video meetings. A home office can drastically reduce the cost of doing business and add flexibility to the work schedule. I say this as an attorney operating almost entirely out of my home.

Additional Benefits of Video Consults:

- Access to a wider range of clients. By removing the need to travel, you open your services to a wider range of clients, including those who have travel restrictions or related concerns.
- Clients can be in the comfort of their own homes, which may lead to a more comfortable and open dialogue.
- Chat boxes can be used to share information and links to websites.
- Built-in calendaring means video call information can be added to any calendar event with invitations sent out at the same time. This means less time typing up emails.
- In comparison to phone calls, video provides greater ability to see your client's reactions and better evaluate their understanding or emotional responses.
- There is a reduced risk of the client being unprepared because they likely have all their documents in their home.
- Built-in safety. You have the ability to see who is with the client and what the client is doing. Clients may have someone else present without your knowledge during a phone call.



"Video meeting" by The People Speak is licensed under CC BY-NC 2.0



Jeff Hamilton started his own law firm, Law Office of Jeff Hamilton PLLC. His practice focuses on small businesses, contract drafting and some commercial litigation. Jeff is the immediate past chair of the Low Bono Section and an at-large member of the Business Law Section.

CHAIR'S NOTE



BY JENNIFER ORTEGA, LLLT

I am excited to have officially begun my chairship of the Low Bono Section. We started off with a bang by hosting a CLE on the new guardianship act taking effect Jan. 1, 2021, which focused on guardianship of minors. We had 294 registrants and our presenters fielded many excellent questions.

Over the coming year, we plan to offer quarterly newsletters, Mini-

CLEs on current and interesting topics, special events, social hours (both virtual and hopefully in person one of these days) and of course there are our riveting monthly executive committee meetings open to all! We will continue to focus on providing valuable benefits to our members while increasing our membership. The entire executive committee

thanks the many people who believe in the value of low bono legal services to join—and remain a member of—our Section, and sends a special thank you to those who joined recently when our future as a Section was at stake. Please stay with us, and let's make 2021 a great year!



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UPCOMING EVENTS

Executive Committee Monthly Meeting

Section members are encouraged to attend any Executive Committee meeting! Click on or dial in and learn more about what's happening with our Section.

December 15, 2020

Regular meeting: 4:00 - 5:30 p.m., virtual happy hour: 5:30 - 6:30 p.m.

January 19, 2021

Regular meeting: 4:00 - 5:30 p.m., virtual happy hour: 5:30 - 6:30 p.m.

February 16, 2021

Regular meeting: 4:00 - 5:30 p.m., virtual happy hour: 5:30 - 6:30 p.m.

The Low Bono Section is committed to justice for all and invites participation by everyone involved in serving moderate-income individuals.

Join our section!
Visit <https://wsba.org/legal-community/sections/low-bono-section>.

Event Coming Soon - Pitch Your Low Bono Business Ideas!

Are you interested in pitching your ideas for incorporating low bono principles and practices into a profitable business model, and getting feedback from practicing legal professionals? Do you want to join a panel of people actively providing low bono services and provide valuable critiques to participants? Watch the Low Bono Section's listserv for information on this upcoming event!