Section VII

Expert Interviews: Balancing Supply And Demand

Introduction

We undertook the research reported here realizing that quantitative methods for profiling California’s lawyers today and projecting future labor market conditions for the profession were likely to leave a number of important questions unresolved. We sought to supplement those analyses with interview data providing interpretive insights about both supply and demand trends. We also reserved time at the end of the study to solicit deliberation and comment on still-outstanding issues from a small number of experts in selected fields.

As the appended protocol suggests (see Appendix D), expert interviews were largely unstructured. The protocol was intended chiefly to stimulate reflection on major themes involved in balancing expected future supply and demand trends. The resulting material complements information generated by other quantitative and qualitative methods, contributing to the study’s overall goal (see Section 1).

Procedures

A number of approaches were taken to converge on a small set of experts to interview. Some were identified in the course of the literature review as authors of relevant and noteworthy articles; others were chosen by virtue of holding an office, position, or role of recognized significance to this research; and still others were suggested by previous interviewees.

These procedures yielded 10 experts, most of whom satisfied at least two of the selection techniques outlined. Among them, about half have law schools as their primary affiliations; however, these individuals typically also engage in the practice of law or provide consulting services. The remainder are chiefly associated with nonacademic organizations, including traditional law firms as well as a major business consulting firm, a high-technology company and a nonprofit organization; but they typically also hold—or have held—either adjunct or regular professor positions in law schools. Collectively, the group of 10 comprised male and female interviewees from both white and ethnic minority (black, Latino) backgrounds.

In all cases, initial contacts with potential interviewees were made either by telephone or in person to explain the purpose of the study and the nature of the interview, as well as to arrange a time to conduct it. The interviews ranged in duration from about 20 minutes to an hour, depending on the extensiveness of interviewees’ comments.

While the interview protocol guided these discussions toward major supply-and-demand themes that had been identified as worthy of further pursuit, respondents were not asked to limit their comments to these topics. Rather they were encouraged to range freely in their remarks.
Findings

What follows is an account of information gained through expert interviews, organized along the lines of the interview protocol. All findings reflect interviewees’ judgments; we did not acquire any independent record data from them.

Supply Considerations

As is evident from the contemporary profile (Section 3) and the literature review (Section 2), most law school graduates eventually pass the Bar examination and a very high proportion of graduates from California’s top law schools pass it on the first try. Yet a nonnegligible and growing proportion subsequently become inactive Bar members, meaning that they cannot practice as lawyers. This subset of Bar-certified attorneys present a challenge for understanding both present and future supply trends. Below we summarize experts’ responses to this challenge.

First, all interviewees agreed that inactive Bar members in fact constitute a key piece of the supply-side puzzle about which definitive data are lacking. It is likely that there is still some oversupply of lawyers, of which this reserve pool is, in part, a manifestation. On the other hand, there are probably multiple interacting factors underlying the persistence of this trend, rather than a single explanation.

Disaffection with the Profession

Disaffection with the profession was probably a significant part of the explanation in the early and middle 1990s, when the economic downturn sharply reduced law firm revenues and resulted in major layoffs. These problems have by now been alleviated to a great extent, although two sources of dissatisfaction remain. Presently, there is intense competition for jobs in visible high-prestige firms known for offering six-figure starting salaries. But very few law school graduates enter such positions; so, in many cases, career expectations—albeit unrealistic and unfounded—are disappointed. Such individuals may well leave the practice of law for other fields.

Additionally, there is probably some level of dissatisfaction associated with the quality of working life in very large firms, for at least some of those who enter these prestigious settings. However, in perhaps a majority of cases, the earnings that go with such positions appear to be rewarding enough to overcome the disadvantages that accompany life in a large firm. One interviewee noted that in the 1950s it was solo practitioners who were unhappy with the profession, commenting that the popularity of different practice settings might in part reflect general social expectations and perceptions that can vary over time.

Diversification of Career Opportunities

Diversification of career opportunities outside of the traditional practice of law is now probably at least as strong a factor as disaffection—if not stronger—in explaining inactive status. Although historically the oversupply of lawyers in the early 1990s pushed Bar-certified attorneys out of traditional practice, by now other fields constitute a positive attraction pulling them away.
from law. As one interviewee put it, lawyers discovered they could go elsewhere and do very well, and they enjoyed it.

This trend is particularly evident in regions of California where high-technology startup firms and new venture capital firms are proliferating. While the quality of working life in such firms is perceived as at least as stressful and intense as in most high-prestige law firms, the rewards for success (e.g., from stock options) are seen as potentially greater.

Other Factors?

A third part of the inactive puzzle might be explained by the early retirement of lawyers who fared extremely well during the late 1980s boom years. On the one hand, profile data indicate that lawyers generally retire comparatively late in life. On the other hand, anecdotal evidence suggests that earlier cohorts of principals in major firms would not have relished a lean, downsized high-stress environment. Such individuals may have had both the means and the motivation to retire early as the economy took a down turn.

Interviews also suggested ways in which women, who now constitute about half of the graduating classes of lawyers, may account for still another part of the inactive population. Large law firms, according to interviewees, typically have excellent health benefits and generous maternity leaves, which would make them initially more attractive to women than solo or small firm practice. However, over the long term, other businesses (e.g., entrepreneurial or managerial roles in startup firms or staff positions in government agencies or nongovernmental organizations) may offer careers more readily combinable with family life. Most such jobs would not require retaining active status.

Finally, increasing numbers of young lawyers are seeking international experience. It is doubtful whether this shift in career direction has been sizable enough as yet to exert a noticeable influence the proportion of California inactives, but it might be a trend to monitor for the future.

Among the several factors summarized above as possible influences on the supply of practicing lawyers in California, it should be noted that most are in principle reversible. That is, greater numbers of openings in high-prestige firms, increased wages, improved quality of working life, and combinations of these could draw a substantial proportion of inactive lawyers back into practice.

Demand Considerations

On the demand side, our research surfaced several factors that might affect the future market for lawyers, such as the growth of ADR, the emergence of MDPs, and the roles that pervasive new information and communication technologies might play in legal service delivery in the coming decade. However, their expected overall effect on demand was unclear. We therefore asked expert interviewees to comment on each of these factors in relation to the future demand for lawyers.
Alternative Dispute Resolution

The demand for ADR began in relation to domestic disputes but has expanded far beyond that domain. Now it is written into contracts with clients, mandated by courts, and in other ways becoming a standard component in the repertoire of legal services. The demand is driven by the desire to avoid delays and costs associated with litigation.

However, ADR is largely controlled by and done by lawyers, which is probably why law schools have so fully embraced it in their curricula. For this reason, ADR is not expected to affect the overall demand for lawyers in noticeable ways, although it could reduce the demand for litigators. As an aside, two interviewees noted that the kinds of skills promoted by ADR curricula in law schools (objective problem-solving, negotiating, advising) might help explain why lawyers are increasingly in demand in varied other business fields.

But a downside to the growing popularity of ADR, according to one interviewee, is that such informal dispute resolution processes work to the advantage of those higher in power or prestige; poor or underrepresented groups usually have less voice. So they tend to be better served by formal due process when public interest lawyers are available to them. As this interviewee noted, however, public interest lawyers are in comparatively short supply.

Multidisciplinary Practices

Expert interviewees generally regard the trend toward MDPs as one that will grow in importance, driven by business consulting firms and/or modeled after them. But it was viewed as unlikely that the growth of MDPs would affect overall demand for lawyers; more probably, it will instead redistribute them over different types of work settings.

According to some interviewees, the increasing role for MDPs is linked to the needs of large business clients—and especially to the needs of international clients—for global availability and consistency of all types of business services, including legal services. In some countries, the Big Five business-consulting firms are already able to offer legal services; and they expect to do so soon in the United States.

Effects of expanded roles are nevertheless expected to be felt at the level of the firm. That is, MDPs will be competing with large law firms for the same business clients. Expert interviewees believe that large law firms will survive such competition (in some cases via national or international mergers), as will small, high-quality specialized (“boutique”) firms. Mid-sized general-practice firms, however, may increasingly be squeezed out of the market.

One interviewee raised the possibility that the rise of MDPs and legal megafirms might eventually affect both supply and demand because they are structured more like traditional pyramid organizations with hierarchical reporting relationships. Lawyers, this interviewee believes, are accustomed to working more autonomously and to delivering products and services tailored in unique ways to highly individualized client problems. Given other opportunities, graduates from better law schools may not be attracted into MDPs or megafirms with standardized processes. And, on the demand side, the most desirable clients might not choose
such firms with they have other options. In any case, another interviewee noted, the growth of these kinds of firms constitutes another indication that California’s law schools are chiefly producing attorneys geared to work for business clients rather than for individuals, whose needs for legal services are increasingly likely to go unmet.

Technology Roles

When we inquired about the roles for new information and communication technologies in future demand trends, the experts we interviewed raised common themes but sometimes offered quite different impact assessments. Their divergence parallels the diversity of opinions about technology effects elicited in earlier interviews with representatives of law schools and firms (see Sections 5 and 6).

First, expert interviewees corroborated the view that high technology areas—including intellectual property but also other challenging questions in varied domains ranging from e-commerce to genetic engineering—would present demands for legal services requiring greater substantive knowledge on the part of attorneys. While affecting market conditions for particular specialties and perhaps imposing stronger interdisciplinary skill needs in some areas, such demands were expected chiefly to affect distribution of lawyers over substantive domains but not to affect overall level of employment for lawyers.

Telecommuting, on the other hand, is viewed mainly as a supplement rather than an alternative to traditional interactions. As such, it will not affect overall supply and demand. However, it could both increase lawyer efficiency (by eliminating time spent in physical commuting) and increase hours worked (by supporting work done at home and on the road, after work hours, and on weekends).

Expert interviewees likewise tended to concur that information and communication technologies would likely enable at least some “substitution of capital for labor.” That is, online do-it-yourself services together with draft documents and even smart forms should allow many routine transactions and services to be carried out without the labor of professional lawyers. Some services of this nature may require help of the sort that a trained and technologically sophisticated paralegal could provide. In other cases, clients could use smart technology to draft initial versions of major document types themselves; lawyers would review and revise them, with the expectation that viable legal instruments would result at the cost of far fewer billed hours than if a lawyer had prepared the first draft. But the demand implications of such changes are not straightforward. While enabling technologies of the sort suggested could reduce the amount of lawyer time required per client, they could also increase the overall number of clients who could afford to purchase such services.

Last, two interviewees underscored the still-unknown capacity for these new media to stimulate innovative and dramatic change in the profession. A number of other professional service domains—especially those dependent on high-cost intermediaries—have undergone major restructuring in the past decade. The structural impact of information and communication technologies on professional legal services delivered by lawyers as intermediaries is potentially profound and well worth future investigation.
Supply Versus Demand

Taking into account the previous considerations as well as available supply-and-demand data, expert interviewees were asked whether they envisioned a large enough supply of law students graduating from ABA-approved law schools in California to meet the needs for professional services in the future. They were also asked to speculate about the major influences that would shape legal education and the legal profession in the coming decade.

At the outset, most expert interviewees underscored the extreme difficulty of making accurate supply and demand forecasts. Supply is to some extent controlled by the profession itself, and to some extent it is manipulable by political decisions (by permitting the proliferation of non-ABA-approved law schools or by making it possible for some legal services to be performed by nonlawyers without constituting “unauthorized practice of law”). In these ways, forces other than the professional labor market have considerable influence on supply. Demand is even more volatile; besides being highly influenced by shifts in the economy, it is also affected by changing government policies (e.g., regulation and deregulation in differing areas within trade, commerce and industry) and ABA decisions (e.g., for standards of legal practice within MDPs).

These caveats aside, experts believe there probably remains a moderate oversupply of lawyers in California today, in the aggregate, and that this trend is likely to continue. Inactive Bar member trends are taken generally to support this conclusion. However, major mismatches in overall supply and demand are rare and unlikely; huge changes in attorney salaries would be the indicator to monitor.

A major unpredictable source of future effect is the state of the economy, given the responsiveness of demand for legal services to business cycles. Opinions are divided with respect to whether it is sensible to bank on continued expansion of California’s economy for the coming decade. Other major uncertainties are the effects of globalization and technology on the profession. Although the time frame is indefinite and the ultimate nature of the resultant restructuring unpredictable, both trends—separately and in synergy—will have major long-term impact.

Last—and perhaps most important—some expert interviewees warned that future supply-and-demand trends might be the wrong questions to ask. On the one hand, it was noted that the very low unemployment rate among practicing lawyers plus the successful diversification of Bar members into other lines of work means that law school graduates can contribute to a viable economy in many ways. It is short-sighted, therefore, to assume their future employment will be based on demand for legal services per se. On the other hand, it was suggested that rather than trying to predict the market, we should instead be asking more complex questions whose answers can help shape the future. Examples include “How should we deliver legal services in the coming century? Which services? By what means? To whom? And at what cost?” Today most middle-income and lower-income citizens do not have the financial resources to use legal services—for instance, to handle job discrimination or unfair landlord practices or family law matters—despite the perception that Americans are too litigious. But the legal profession today is largely not interested in meeting these needs; instead, legal education and practice are generally oriented toward meeting the needs of business clients. Put otherwise, while there may
be an oversupply of lawyers in the aggregate, they are not well distributed in relation to the state’s legal needs. The big policy issues, then, for these experts, do not turn on supply/demand projections but rather have to do with better serving the diverse legal needs of the California public.

The final set of interviews with selected experts reinforced the caveats with which we began our discussion of labor force supply and demand trends in the legal market (see Section 4). While their views did not undermine the quantitative methods we employed—and in fact tended to confirm the findings that emerged—they emphasized the role that other considerations, including both exogeneous variables and policy interventions, could or should play in the future of legal education and the legal profession. In most respects, the judgments summarized above corroborate and elaborate on the themes that surfaced in our interviews with representatives of law schools and firms. In the next chapter, we draw together the implications from these multiple lines of inquiry.