

Once in a Lifetime Opportunity: Accessing Justice for All

By

Michael R. Arkfeld

If a person does not have access to the justice system in a timely, affordable and efficient manner is that a threat to our society? Does it affect the resolution of disputes if there are long trial delays, high filing fees and complex pleading requirements? Don't we in fact threaten equal justice under the law if we do not have equal access to the law? There are constant reminders that justice is not equally nor timely accessible to all. In fact "about half of all low- and moderate-income families in America have a legal need . . . but never turn to the justice system . . ." A Shunned Justice System, ABA Journal, April 1994

The legal profession, and Arizona in particular, has recognized this threat and has stepped forward and implemented significant reforms including alternative dispute resolution, procedure and discovery reform.. But have we gone far enough and does technology hold the answer for revolutionary changes for access to our justice system? In an in-depth study on accessing justice the American Bar Association wrote:

The "agenda for justice" reflects three overriding principles:

- First, any change to the justice system should be based on a desire to protect and enhance the ability of all persons to use the justice system.
- Second, reform should be directed to building a justice system that is more efficient and more effective for members of the public who use it, not just for lawyers, judges and others who work in that system.
- And third, the justice system must ensure equal justice under law for all.

An Agenda for Justice: ABA Perspectives on Criminal and Civil Justice Issues, July, 1996.

The Information Technology (IT) revolution we are experiencing can revolutionize access to justice by protecting and enhancing the ability of persons to use the system in an efficient and effective manner. However, all branches of the government must come together and follow the "agenda for justice". Diverting from these principles by even one branch can have profound, yet unintended consequences to the whole system. For example consider the fact that if the clerk's offices impose a \$2.00 a minute tax to electronically access court data then this will have a chilling impact upon lawyers and citizens trying to electronically use the justice system. It would cost \$20 for 10 minutes of access time to check the status of a case. This will discourage access to the courts by lawyers and the citizenry and will not "protect and enhance" the ability to use our justice system. Access to our justice system will again depend on economic status and not a citizen's right for equal access to equal justice.

For this reason it is imperative that we carefully examine and build a strong accessible justice technology infrastructure for the benefits of the citizens and the legal profession. The change to an IT economy and infrastructure presents a once in a lifetime opportunity to significantly increase access to justice. However, there are some key IT policy decisions that have to be made to open up and make the justice system easily accessible.

1. Free electronic access to statutes, case law and other government legal data.

In order to understand the law, write a brief, advise your clients or present your case in court access to statutes, case law and other legal materials is required. Governmental and judicial information such as legal opinions in their basic form are created as part of the governmental process whether they are statutes, case law or other legal data. This information should be in an electronic format and available free on the Internet and easily accessible for use by citizens and the legal profession. Equally important to accessing such data is the needed authorization by the courts to permit reference to this legal material without using a proprietary citation system, but one that is open for use by all. The Arizona legislature has already recognized the need for citizens and lawyers to have access to statutes and pending bills by providing them free over the Internet.

2. Free electronic access to court, agency and other government digital data.

Data is entered daily into government computers in an electronic format for internal government agency functions. Oftentimes this information is provided to citizens by telephone or over the counter for no cost. However, many government agencies recently have decided or are considering imposing a user tax, sometimes up to \$2.00 per minute, on citizens and others who want to access the data in an electronic format over the Internet. They are treating electronic access to public data as a revenue producer. The issue is whether users should be charged by public agencies to access public data they collect in their official capacities even if there is only a minimal cost to provide this digital public information to the users. This is why the American Bar Association and the State Bar of Arizona have both passed resolutions that there be no direct user cost to access government electronic data

3. Low cost telecommunications infrastructure.

The Internet provides a low cost telecommunications infrastructure which provides the capability to access justice system information on computers located anywhere in the city, state or world. The Internet enables users to share and access legal and other information using a computer, modem, software (freeware or low cost software) and an Internet access provider which starts as low as \$10 a month. As we transition into the electronic age the means to access public data is very inexpensive courtesy of the Internet.

4. Desktop computer tools to handle legal matters efficiently and effectively.

The legal profession has an obligation to use powerful desktop tools such as document assembly, personal information managers, full text search engines, the Internet and other tools to lower the legal costs for their clients. Investments will have to be made in hardware, software and training to pass these savings on to their clients. Value based billing as opposed to billing by the hour will need to be seriously considered and implemented by the legal profession.

5. Cooperation and commitment by the three branches of government to interconnect.

It is essential that all three branches of government interconnect and enable citizens to connect to their systems with minimal effort and for no cost. When governmental agencies disregard the need to enhance the accessibility of the justice system by empire building, criticizing others for their IT efforts and simply using IT as a tax and revenue producer, then accessibility to justice will be denied. Justice should be accessible to all in a low cost and timely manner. Technology has the capability of providing the procedural information structure for justice on this basis. If we choose to impose access fees, not allow for a public case law and statute database, and not interconnect then we all can be assured that justice will continue to be denied to millions of our citizens.

