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**CHALLENGING THE ACADEMY TO A DUAL (PERSPECTIVE):  
THE NEED TO EMBRACE LAWYERING FOR  
PERSONAL LEGAL SERVICES**

WILLIAM HORNSBY\*

I. INTRODUCTION

From the mid-nineteenth century through the mid-twentieth century, the legal profession saw historic changes, but the nature and structure of the practice of law was relatively unaltered.<sup>1</sup> Since the 1960s, however, the practice of law for those who provide personal legal services, in areas such as domestic relations, personal real estate transactions, and individual debtor's bankruptcies, has been influenced by a series of dynamics resulting in substantial changes.<sup>2</sup> These dynamics include the consumer movement that took form in the 1960s and 1970s,<sup>3</sup> the emergence of the Internet as a commercial vehicle beginning in the mid-1990s,<sup>4</sup> and the economic contraction for legal services that began with the financial downturn in 2008.<sup>5</sup> This Essay explores each of these dynamics and their impact on those who provide personal legal services. It concludes with a look at the responsibility of law schools to reexamine their values, dedication, and responsibility to the vast number of students who will provide personal legal services at some point in their careers.<sup>6</sup>

II. A CENTURY OF STABILITY: FROM ABRAHAM LINCOLN TO  
PERRY MASON

Lawyers of the mid-1800s were largely mentored and self-taught, worked in small firms or solo practice settings, and handled a wide

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1. *See infra* Part II.

2. *See* RICHARD L. ABEL, *AMERICAN LAWYERS* 8 (1989).

3. *See infra* Part III.A.

4. *See infra* Part III.B.

5. *See infra* Part III.C.

6. *See infra* Part IV.

range of business.<sup>7</sup> Typified by Abraham Lincoln, they would “ride” circuits representing clients with disputes about stolen livestock in the morning and perform transactional work for the railroads, among the largest corporate clients of the time, in the afternoon.<sup>8</sup> At that time, there were few requirements for legal education,<sup>9</sup> and bar examinations were “casual, local and undemanding.”<sup>10</sup> Once practicing, frequently after self-study and a period of mentorship, lawyers did not have ethical rules to follow or disciplinary procedures to face.<sup>11</sup> Between the late 1800s and the early 1900s, these aspects of the legal profession changed.<sup>12</sup> By the mid-twentieth century, the mentoring system was replaced, with a few exceptions, by requirements that lawyers must graduate from an accredited law school, sit for a bar examination, and undergo the scrutiny of state character and fitness committees.<sup>13</sup> Lawyers became obligated to follow a code of professional responsibility, and the failure to do so triggered disciplinary actions that could lead to disbarment.

Despite these systemic changes in the legal profession, Lincoln’s practice setting was not much different from that portrayed by the fictional lawyer Perry Mason in the 1950s and 1960s television show.<sup>14</sup> Mason worked as a solo practitioner, and while he specialized in criminal defense, he also provided representation in small business matters, high wealth estate planning, and other transactional matters with

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7. See JEROLD S. AUERBACH, *UNEQUAL JUSTICE: LAWYERS AND SOCIAL CHANGE IN MODERN AMERICA* 15 (1976) (“Practicing alone in a small town, [the country lawyer] prepared for his profession by reading Blackstone and Kent and by apprenticing himself to an established practitioner for whom he opened and cleaned the office, copied documents, and delivered papers.”).

8. *Id.* (“An independent generalist, he served all comers, with no large fees to turn his head toward a favored few.”); see also ABA COMM’N ON ADVER., *LAWYER ADVERTISING AT THE CROSSROADS* 32 (1995) [hereinafter ABA ADVERTISING] (“Lincoln is reported to have been ‘an absolute hustler’ as a lawyer who wanted to make money. He handled 5,000 ‘nickel and dime cases’ over 15 years.”).

9. See ABEL, *supra* note 2, at 51 (“We have seen that nineteenth-century requirements were very lax: in 1879, twenty-three out of thirty-eight jurisdictions required no legal study whatsoever; and of the fifteen demanding some, only seven insisted on three years.”).

10. *Id.* at 62.

11. See ABA ADVERTISING, *supra* note 8, at 33 (“The first code of ethics promulgated by the organized bar was adopted by the Alabama State Bar Association in 1887.”).

12. ABEL, *supra* note 2, at 52.

13. *Id.* at 71 (noting that lawyer associations in the twenty-first century devoted much of their collective energy “to constructing entry barriers that would control both the number of lawyers and their characteristics” and “by demanding more prelegal education, limiting access to legal education, encouraging more rigorous bar examinations, excluding noncitizens and nonresidents, and imposing character tests”).

14. *Perry Mason*, starring Raymond Burr, aired on CBS-TV from 1957 to 1966 and was based on the mystery novels of Erle Stanley Gardner. William Grimes, *Obituaries, Raymond Burr, Actor, 76, Dies; Played Perry Mason and Ironside*, N.Y. TIMES, Sept. 14, 1993, at B9.

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nothing more than a suave private investigator, a paralegal, and a secretary (who was never seen but who apparently made sure that Mason's desk was never bothered with paperwork).<sup>15</sup>

### III. THREE DYNAMICS OF CHANGE

During the second half of the twentieth century, the evolution of law firm practice extended into two hemispheres.<sup>16</sup> Firms that represented corporate and institutional clients began to grow rapidly, increase compensation, and hire top students from top-tier law schools.<sup>17</sup> With few exceptions, such as high wealth estate planning and white collar criminal defense, these firms rarely represented individuals.<sup>18</sup> In contrast, firms that provided personal legal services remained small and frequently yielded limited compensation because their clients often could not pay for the services they needed.<sup>19</sup> It is reasonable to assume that these practices were filled with lawyers who did not set out to work in these settings but who defaulted into them after failing to be hired by corporate and institutional law firms or by government entities. Although some of these firms have not changed substantially since Lincoln's era, let alone Perry Mason's, three dynamics have evolved that promoted change: the consumer movement, the availability of the Internet, and the recent economic contraction.

#### A. *The Consumer Movement*

Post-World War II society included a strong middle class with increased consumer legal needs.<sup>20</sup> People were able to buy homes because of the G.I. Bill and therefore needed lawyers to assist with the

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15. See generally PRIME TIME LAW: FICTIONAL TELEVISION AS LEGAL NARRATIVE (Robert M. Jarvis & Paul R. Joseph eds., 1998) (discussing specific episodes and cases from *Perry Mason*).

16. See JOHN P. HEINZ ET AL., URBAN LAWYERS: THE NEW SOCIAL STRUCTURE OF THE BAR 6 (2005) (describing the two hemisphere distinction between "lawyers who represented large organizations and those who represented individuals or the small businesses owned by individuals").

17. See AUERBACH, *supra* note 7, at 278 ("Private firms saw their buyers' market of the fifties tumble. Led by the Cravath firm, Wall Street offices raised the salaries of first-year associates from \$10,500 to \$15,000 in an effort to retain their flow of graduates.") R

18. See HEINZ ET AL., *supra* note 16 (discussing the "two hemispheres" of the legal profession—large organization and individual representation—and noting that lawyers typically reside in one or the other, but usually not in both). R

19. *Id.* at 159.

20. See ABEL, *supra* note 2, at 160 (noting that demand for lawyers significantly increased in the first two postwar decades—by eighty-six percent in the 1940s and by seventy-six percent in the 1950s). R

subsequent mortgages and transactions.<sup>21</sup> Corporate employment caused people to become increasingly mobile, often moving up in status and sometimes moving across the country, which led to an increased need for legal service.<sup>22</sup> As society became more secular and the influence of religion weakened, divorce became more socially acceptable, leading to an increased need for legal work in domestic relations.<sup>23</sup> Personal bankruptcies began to carry less of a stigma, increasing the need for representation in that practice.<sup>24</sup> Simply put, more people had more legal issues and needed legal representation more frequently.

Increased demand resulted in a series of changes, some of which affected legal operations while others improved the pipeline of clients to lawyers who would provide personal legal services at affordable prices.<sup>25</sup> These interrelated functions center on the emergence of law firm clinics<sup>26</sup> (not to be confused with law school clinics or legal aid clinics) and the right to advertise legal services.<sup>27</sup> Changes of less con-

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21. See, e.g., *id.* (noting that personal consumption expenditures for legal services, which between 1929 and 1940 increased only from \$402 million to \$423 million, jumped to \$8.6 billion by 1976, for an annualized growth rate of fifty-one percent).

22. See Marion Crain, "Where Have All the Cowboys Gone?" *Marriage and Breadwinning in Postindustrial Society*, 60 OHIO ST. L.J. 1877, 1925 (1999) (noting that postwar society was marked by "less loyal and more mobile workers").

23. Divorce rates were "rising swiftly" in the 1960s and 1970s, according to the Gallup polling organization, which has found increasing support for divorce among younger generations. Jennifer Robison, *The Future of Marriage: Part III*, GALLUP (Aug. 13, 2002), <http://www.gallup.com/poll/6592/Future-Marriage-Part-III.aspx>.

24. For example, in her testimony before Congress, former member of the National Bankruptcy Review Commission Edith Jones said the following: "At one time in our history, filing bankruptcy was regarded as shameful, and filers suffered social stigma and permanently ruined credit. The shame and stigma are no longer compelling." Kartik Athreya, *Shame As It Ever Was: Stigma and Personal Bankruptcy*, FED. RES. BANK RICH. ECON. Q., Spring 2004, at 1, 1-2 (quoting Joseph S. Pomykala, *Bankruptcy Laws: The Need for Reform*, USA TODAY MAG., Nov. 1999, at 20-23), available at [http://www.richmondfed.org/publications/research/economic\\_quarterly/2004/spring/pdf/athreya.pdf](http://www.richmondfed.org/publications/research/economic_quarterly/2004/spring/pdf/athreya.pdf).

25. See ABEL, *supra* note 2, at 135-38 (noting the rise of lawyer referral services, legal clinics, and group legal plans); ABA SPECIAL COMM'N ON DELIVERY OF LEGAL SERVS., REPORT ON THE SURVEY OF LEGAL CLINICS AND ADVERTISING LAW FIRMS v (1990) [hereinafter ABA SURVEY] (describing operational changes at traditional law firms, including the use of advertising, more efficient operating systems, standardized forms, and routinized procedures).

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26. As used here, the definition of a legal clinic is that set out in the ABA's *Report on the Survey of Legal Clinics and Advertising Law Firms*. See ABA SURVEY, *supra* note 25, at 1 (defining a legal clinic as "a law firm that offers legal assistance at below-market rates for relatively routine types of personal legal services and that uses advertising, fixed-amount fees and standardized operating procedures and forms to increase volume and reduce costs").

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27. See *Bates v. State Bar of Ariz.*, 433 U.S. 350, 383 (1977) (holding that advertising by attorneys may not be subjected to blanket suppression).

sequence included certification of specialties,<sup>28</sup> enhancements to lawyer referral services,<sup>29</sup> and broader implementation of prepaid legal services.<sup>30</sup>

Legal clinics emerged in the 1970s as a consumer-friendly alternative to traditional law firms that provided personal legal services.<sup>31</sup> Clinics provided what came to be thought of as “routine” legal services.<sup>32</sup> To some, this notion was an affront to the traditional legal community that had advanced the concept that every case is unique and merits consideration.<sup>33</sup> Clinics, including multistate chains such as Jacoby & Meyers<sup>34</sup> and Hyatt Legal Services,<sup>35</sup> offered low fees that were sometimes set rather than hourly; leveraged paralegals who provided an array of back-office support; used standardized forms and rudimentary word processing for routine matters; established offices in locations that were convenient for clients, such as shopping centers, instead of near the courthouse, where it was convenient for the lawyer; and attracted high volume through advertising.<sup>36</sup> The legal clinic model was ultimately not successful, but its influence on the operations of law firms providing personal legal services was substantial.<sup>37</sup> Storefront lawyers, usually operating as solo practitioners or very small partnerships, began to set fees, use paralegals, develop standardized forms, embrace word processing, and advertise.<sup>38</sup> When these lawyers

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28. See ABEL, *supra* note 2, at 123 (describing the emergence of state-regulated specialties as a way in which the profession could reassert some control over the market that had been in part lost to legal clinics). R

29. *Id.* at 135.

30. See *id.* at 136 (noting that prepaid plans have not fulfilled lawyers’ hopes for increased business).

31. See ABA SURVEY, *supra* note 25, at i (“The legal clinic concept had been gathering momentum during the 1970’s as a possible mechanism for providing lower cost legal services to people of moderate means.”). R

32. *Id.* at 1.

33. See ABEL, *supra* note 2, at 138–39 (noting that the organized legal profession responded to the first clinics with “unqualified hostility” and that competitors of the clinics deplored their “routinization and lack of lawyer-client contact”). R

34. Jacoby & Meyers was founded in 1972 in Los Angeles and grew to comprise 150 offices in six states that offer mainly routine legal services, such as wills, bankruptcies, and divorces, at fixed prices. Stephen Miller, *Remembrances: A Pioneer in Delivering Discount Legal Services*, WALL ST. J., Sept. 2, 2010, at A5.

35. Hyatt Legal Services was founded in 1977 to “make quality legal services affordable and accessible for all Americans.” See *About Legal Plans*, HYATT LEGAL PLANS, <http://www.legalplans.com/brief.html> (last visited Jan. 9, 2011).

36. See ABA SURVEY, *supra* note 25, at 38. R

37. *Id.* at 1 (noting that in 1988 legal clinics held only a small, and probably declining, share of the market for personal legal services, but that advertising law firms had adopted many of the practices originated by clinics).

38. See, e.g., *id.* at 128 (describing the ways in which general practice firms adopted the practices of legal clinics).

adopted the same efficiencies used by the multistate clinics, they had the competitive advantage over clinics because they did not have the overhead entailed by the clinics' corporate umbrellas.<sup>39</sup> These solo practitioners and small firms had all of the upside of the clinics and none of the downside.<sup>40</sup>

Lawyer advertising was the lynchpin that enabled legal clinics to provide an economy of scale and that increasingly enhanced the flow of clients to personal service legal providers in all settings.<sup>41</sup> Lawyer advertising was deemed unethical from the time the American Bar Association ("ABA") first adopted the Canons of Professional Ethics in 1908<sup>42</sup> until 1977 when the United States Supreme Court ruled in *Bates v. State Bar of Arizona*<sup>43</sup> that the states had the constitutional authority to govern legal advertising, but not to ban it.<sup>44</sup> The *Bates* decision was based in part on research from the American Bar Foundation demonstrating that people of low and moderate incomes had difficulty finding lawyers who would provide services at affordable costs.<sup>45</sup> Not only did advertising drive clients to the legal clinics, but it also drove clients to storefront lawyers who successfully competed with the clinics' services.<sup>46</sup>

The right to advertise also played a role in the emergence of other changes that opened pipelines bringing people to lawyers.<sup>47</sup> Bar-sponsored lawyer referral services emerged and expanded at this time as an important method of linking people with competent law-

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39. Cf. Miller, *supra* note 34 (noting that "[e]ventually the Jacoby & Meyers model became widespread, and margins for ordinary legal services declined" and that "most of the [Jacoby & Meyers] field offices were shuttered and the partnership fell apart" by the early 1990s).

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40. *Id.*

41. See ABA SURVEY, *supra* note 25, at 22 (describing a survey conducted of lawyers for the American Bar Foundation in 1977, which found that forty-one percent of nonlegal clinic lawyers thought clinics increased awareness of need among potential clients).

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42. See ABA ADVERTISING, *supra* note 8, at 4 (noting that lawyer advertising was banned by the ABA's original canons in 1908).

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43. 433 U.S. 350 (1977).

44. *Id.* at 383.

45. *Id.* at 370 ("Studies reveal that many persons do not obtain counsel even when they perceive a need because of feared price of services or because of an inability to locate a competent attorney." (footnote omitted)). The Court further noted in a footnote that the American Bar Foundation research indicated that 48.7% strongly agreed and another 30.2% slightly agreed "that people do not go to lawyers because they have no way of knowing which lawyers are competent to handle their particular problems." *Id.* at 371 n.23.

46. See *supra* note 41.

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47. See ABA ADVERTISING, *supra* note 8, at 3-4 (noting the increasing number of people finding lawyers through lawyer referral services, prepaid services, group legal plans, and advertising).

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yers.<sup>48</sup> As referral services evolved, they began to offer specialty panels in various practice areas that enabled lawyers to move away from general practices and toward focused fields of representation.<sup>49</sup>

With the emergence of a middle class demand for greater legal services, the legal profession attempted to embrace a model of specialization similar to the model developed by the medical profession after World War II.<sup>50</sup> According to this model, general practitioners would refer their clients to certified specialists, just as family practitioners did for medical care.<sup>51</sup> A handful of states began to provide certification of specialties, setting rigorous criteria that included peer review, minimum practice standards, continuing legal education requirements, and testing.<sup>52</sup> Additionally, private entities began to provide specialty certifications.<sup>53</sup> Although the legal profession has never successfully copied the medical model, lawyers have become de facto specialists without the certification credentials.<sup>54</sup>

To manage the costs of personal legal services, which are often unforeseen, prepaid legal service plans emerged as a type of insurance, with low or sometimes no monthly payments.<sup>55</sup> Companies,

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48. *Id.*

49. The ABA Model Rules for Operation of a Lawyer Referral and Information Service include a requirement for panels. See ABA Standing Comm. on Lawyer Referral & Info. Servs., *Lawyer Referral Clearinghouse: Subject Matter Panels, Discussion of the Rationale*, AM. BAR ASS'N, <http://www.abanet.org/legalservices/lris/clearinghouse/discussion.html> (last updated Sept. 11, 2008).

50. See ABEL, *supra* note 2, at 125 (noting that lawyers were following the path laid down by physicians by specializing). R

51. See, e.g., ABA STANDING COMM. ON THE DELIVERY OF LEGAL SERVS., *INNOVATIONS IN THE DELIVERY OF LEGAL SERVICES: ALTERNATIVE AND EMERGING MODELS FOR THE PRACTICING LAWYER 8* (2002), available at <http://www.abanet.org/legalservices/downloads/delivery/innovations.pdf> (noting that lawyers "often find it beneficial to make referrals rather than compete with niche experts").

52. ABEL, *supra* note 2, at 123. Currently, twelve states provide specialty certifications, and an additional eight accredit certification agencies. ABA Standing Comm. on Specialization, *Sources of Certification*, AM. BAR ASS'N, <http://www.abanet.org/legalservices/specialization/source.html> (last updated Nov. 22, 2010) (showing that state-sponsored certification plans exist in Arizona, California, Florida, Louisiana, Minnesota, New Jersey, New Mexico, North Carolina, Ohio, South Carolina, Tennessee, and Texas, and that state-accredited certification agencies exist in Alabama, Idaho, Indiana, Maine, Minnesota, Ohio, Pennsylvania, and Tennessee). R

53. *Id.*

54. In 2008, fewer than 35,000 lawyers were certified as specialists. ABA STANDING COMM. ON SPECIALIZATION, *2009 NAT'L ROUNDTABLE ON LAWYER SPECIALTY CERTIFICATION, LAWYER SPECIALTY CERTIFICATION BY THE NUMBERS: 1994-2008* (2009), available at <http://www.abanet.org/legalservices/specialization/downloads/2009census.pdf>.

55. See ABA ADVERTISING, *supra* note 8, at 94 (noting the increase of impersonal methods of selecting a lawyer, including prepaid plans, after the *Bates* decision). R



such as ARAG,<sup>56</sup> began to provide prepaid services on both a retail and a group basis, with plans commonly offered as part of companies' employee assistance plans.<sup>57</sup> Employers encourage prepaid plans under the notion that employees who have access to affordable legal services are able to address problems effectively and are able to maximize their effectiveness on the job.<sup>58</sup>

Operational efficiencies, advertising, referral services, certification of specialties, and prepaid legal service plans all contributed to the legal profession's ability to meet people's legal needs. In the mid-1990s, the second dynamic emerged, changing the delivery of personal legal services yet again.

### B. *The Emergence of the Internet*

The Internet has proven to be a mixed blessing for lawyers who provide personal legal services. The Internet has created unparalleled opportunities for lawyers to publicize their practices and operate efficiently. Lawyers, however, have never seen as much competition—not just with each other but with an array of information service providers in the private and public sectors.

Like the consumer movement of the 1970s, the Internet has provided an improved pipeline for client development and entailed fundamental changes to the delivery of personal legal services. Lawyers began publishing websites that promoted their services in the mid-1990s. These electronic billboards were unremarkable by current standards, but at that time provided advantages that had never existed: they were available constantly, like print directories, but at a fraction of the cost; the information lacked geographic restraint and was accessible everywhere;<sup>59</sup> and the cost per space for Internet com-

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56. ARAG is a German-based company that has been selling legal plans in the United States for more than thirty-five years. See *About ARAG*, ARAG, <http://www.araggroup.com/about-arag/index.htm> (last visited Jan. 10, 2011).

57. See *Your Introduction to Legal Plans*, AM. PREPAID LEGAL SERVS. INST., <http://www.aplsi.org/legal> (last visited Dec. 19, 2010) (explaining that prepaid legal plans are those in which a "participant prepays or an employer pays on behalf of the employee for legal services" that may be required in the future).

58. See, e.g., Brian Heid & Eitan Misulovin, Note, *The Group Legal Plan Revolution: Bright Horizon or Dark Future?*, 18 HOFSTRA LAB. & EMP. L.J. 335, 338 (2000) (quoting an executive vice president of Pre-paid Legal Services, Inc. as stating that "by providing a prepaid legal plan, employers can show concern for their employees and make them feel better").

59. By 1999, the number of U.S.-based Internet users had reached 117 million. Edward Still, *Enfranchising the Disenfranchised*, 9 J.L. & POL'Y 249, 259 (2001). By 2009, eighty-one percent of adults in the United States said they had Internet access at home. Steve Crabtree, *Countries with High Home Internet Access Span Regions*, GALLUP (July 28, 2010), <http://www.gallup.com/poll/141581/countries-high-home-internet-access-span-regions.aspx>.

munications was, and continues to be, unparalleled in any medium.<sup>60</sup> Solo and small firm practitioners created websites using templates and participated in online directories published by traditional publishers and dot-com upstarts.<sup>61</sup> The directories typically provided a matrix of geographic areas and fields of practice.<sup>62</sup> Users anywhere could find real estate lawyers in Wisconsin, divorce lawyers in Tennessee, or probate lawyers in California.<sup>63</sup>

These rather primitive directories were the first step taken by solo and small firm practitioners to join together to use the Internet effectively. Since the 1990s, lawyers have participated in question and answer sessions, legal matching, sophisticated group advertising, and rating websites.<sup>64</sup>

One category of sites, such as JustAnswer<sup>65</sup> and LawGuru,<sup>66</sup> enables users to visit a segment of the site, ask a legal question, and get an answer—sometimes (but not always) from a lawyer. Lawyers participate to demonstrate their expertise and presumably to obtain clients.

Rating sites, such as Yelp<sup>67</sup> and LawyerRatingz,<sup>68</sup> provide similar opportunities. Colleagues, former clients, and other users can rate their lawyer and add comments. Presumably, lawyers with high ratings and kind words will attract new clients.

Matching and group advertising sites take a more direct approach. Matching sites, such as LegalFish and LegalMatch, enable users to enter information that is then made available to participating lawyers.<sup>69</sup> Participating lawyers can follow up directly with the con-

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60. On GoDaddy.com, for instance, one can register and maintain a dot-com website for as little as \$11.44 per year, and the company provides hosting for as little as \$2.99 per month. GO DADDY.COM, <http://www.godaddy.com> (last visited Dec. 19, 2010).

61. See, e.g., *FindLaw Lawyers Directory*, FINDLAW, <http://lawyers.findlaw.com> (last visited Dec. 19, 2010) (providing a search engine that allows individuals to search for a lawyer by state, city, or legal issue).

62. *Id.*

63. *Id.*

64. See, e.g., Catherine J. Lanctot, *Attorney-Client Relationships in Cyberspace: The Peril and the Promise*, 49 DUKE L.J. 147, 151–55 (1999) (describing the types of websites in which lawyers participate).

65. JUSTANSWER, <http://www.justanswer.com> (last visited Dec. 19, 2010).

66. LAWGURU, <http://www.lawguru.com> (last visited Dec. 19, 2010).

67. YELP, <http://www.yelp.com> (last visited Dec. 19, 2010).

68. LAYWERRATINGZ, <http://www.lawerratingz.com> (last visited Dec. 19, 2010).

69. See, e.g., *Become a Member Attorney*, LEGALFISH, <http://www.legalfish.com/cgi/bcmatny.php> (last visited Dec. 19, 2010) (explaining that LegalFish markets itself as “an effective and inexpensive forum for [lawyers] to market [their] services online”); LEGALMATCH, <http://www.legalmatch.com/> (last visited Dec. 19, 2010) (offering users the ability to find “pre-screened” lawyers through a “simple, three step process”).

sumers to discuss representation. Group advertising models similarly provide information (and sometimes online intake) that is made available to lawyers participating in the group.<sup>70</sup>

Beyond these somewhat direct pipelines for clients, lawyers are participating in a wide variety of Web 2.0 communications.<sup>71</sup> Web 2.0 is defined by its interactive nature;<sup>72</sup> examples include blogs, social networks, such as Facebook and LinkedIn, and social media, such as YouTube and Twitter.<sup>73</sup> In some cases, lawyers use these media to make direct pitches, but they often use them simply to demonstrate their expertise and to show they are the “go-to” lawyer for a certain subject matter.<sup>74</sup> Participation in Web 2.0 is personal, can convey far more information than traditional advertising formats, and is far less expensive. Web 2.0 is moving toward “Web Squared”—“the Web engag[ing] the real world”—with the development of online communities resulting from the interactive communications.<sup>75</sup> These communities will probably be more welcoming to those who are good “citizens” and contribute information, rather than those who are transparently out selling their wares.

In addition to the client-development aspect of the Internet, lawyers are beginning to interface with clients through the Web.<sup>76</sup> For

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70. Cf. Louise L. Hill, *Change Is in the Air: Lawyer Advertising and the Internet*, 36 U. RICH. L. REV. 21, 31 n.50 (2002) (observing that paying an online service provider to list a lawyer in an online directory is a way for lawyers to comply with ethics rules in states where for-profit lawyer referral services are not permitted).

71. See Seth P. Berman et al., *Web 2.0: What's Evidence Between "Friends"?*, B.B.J., Jan.–Feb. 2009, at 5, 6 (noting that “[t]he vast amount of user-created content of Web 2.0 applications is a growing resource for lawyers”).

72. See *id.* at 5 (noting the “participatory” nature of Web 2.0).

73. An ABA survey in 2010 found that fifty-six percent of the respondents maintained a presence in an online community or social network, such as Facebook, LinkedIn, LawLink, or Legal OnRamp. *The Linked-in Lawyer: How Lawyers Are Using Social Networks*, ABA BOOK BRIEFS BLOG (ABA Legal Tech. Res. Ctr. ed., June 11, 2010), <http://new.abanet.org/publishing/bookbriefsblog/Lists/Posts/Post.aspx?ID=161> (excerpted from IV ABA LEGAL TECHNOLOGY SURVEY REPORT: WEB AND COMMUNICATION TECHNOLOGY (2010)). The most common reason for having an online presence was for professional networking (seventy-six percent), followed by socializing (sixty-two percent), client development (forty-two percent), career development (seventeen percent), and case investigation (six percent). *Id.*

74. See, e.g., MaierAndMaier, *Pitfalls of Provisional Patent Applications*, YOUTUBE (Feb. 6, 2009), <http://www.youtube.com/watch?v=Q9cbgKmg1Bg&feature=related> (showing a patent attorney discussing the difference between provisional patent application and non-provisional patent applications).

75. TIM O'REILLY & JOHN BATTELLE, *WEB SQUARED: WEB 2.0 FIVE YEARS ON 2* (2009), available at [http://assets.en.oreilly.com/1/event/28/web2009\\_websquared-whitepaper.pdf](http://assets.en.oreilly.com/1/event/28/web2009_websquared-whitepaper.pdf).

76. See Erin Walsh, *Some Call It eLawyering: Is It a Brave New World or an Ethical Quagmire?*, BUS. L. TODAY, Jan.–Feb. 2003, at 51, 51–54 (discussing how lawyers are providing legal services over the Internet).

example, document preparation has become automated, creating efficiencies that save time and money. HotDocs<sup>77</sup> and Rapidocs<sup>78</sup> have enabled electronic document preparation for several years.<sup>79</sup> Lawyers, or their clients, enter information into fields that produce the documents necessary for filing in court or for the transaction in question.<sup>80</sup> More recently, a project at the Chicago-Kent College of Law resulted in a document preparation technique known as Access to Justice Author (“A2J Author”).<sup>81</sup> The software tool starts with an avatar on a pathway to the courthouse.<sup>82</sup> The avatar then asks questions through text or audio format.<sup>83</sup> After receiving an answer to each question, the avatar moves closer to the courthouse.<sup>84</sup> The avatar reaches the courthouse once all of the necessary questions have been asked, at which point the program formats those responses into the forms necessary for filing.<sup>85</sup> Access to Justice Author is increasingly being used in legal aid offices around the country.<sup>86</sup>

Beyond document preparation, lawyers are establishing virtual law offices.<sup>87</sup> These online sites include an array of client interface options that enable lawyers and clients to collaborate on documents, share a calendar, monitor billing, and communicate in a variety of ways.<sup>88</sup> Examples include [www.vlotech.com](http://www.vlotech.com),<sup>89</sup> [www.virtuallawoffice.net](http://www.virtuallawoffice.net),<sup>90</sup> and [www.anywherelegal.com](http://www.anywherelegal.com).<sup>91</sup>

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77. HOTDOCS, <http://www.hotdocs.com> (last visited Dec. 20, 2010).

78. RAPIDOCs, <http://www.rapidocs.net> (last updated Feb. 29, 2008).

79. The makers of HotDocs launched the online site in late 2000. David Kiefer & Marc Lauritsen, *Recent Developments in Automating Legal Documents*, 52 SYRACUSE L. REV. 1091, 1099 (2002). Many websites have used Rapidocs software since 1999. Catherine J. Lancot, *Scritters in Cyberspace: Online Document Preparation and the Unauthorized Practice of Law*, 30 HOUSTON L. REV. 811, 815, 817–18 (2002).

80. Lancot, *supra* note 79, at 815.

81. *See A2J Author*, IIT CHI.-KENT C. OF LAW, <http://www.kentlaw.edu/cajt/A2JAuthor.html> (last visited Dec. 20, 2010).

82. Ronald W. Staudt, *All the Wild Possibilities: Technology That Attacks Barriers to Access to Justice*, 42 LOY. L.A. L. REV. 1117, 1131–32 (2009).

83. *Id.*

84. *Id.*

85. *See id.* at 1135.

86. *Id.* at 1133–34.

87. Aviva Cuyler & Nicole Black, *Virtual Law Practice: A Passing Trend or the Wave of the Future?*, GP SOLO MAG., June 2009, at 48, 49.

88. *Id.*

89. VIRTUAL L. OFF. TECH., <http://www.vlotech.com> (last visited Dec. 20, 2010).

90. *Virtual Law Office Demo Site*, LEGAL ACCESS MGMT. GROUP, <http://www.virtuallawoffice.net> (last visited Dec. 20, 2010).

91. ANYWHERE LEGAL: VIRTUAL L. FIRM, <http://www.anywherelegal.com> (last visited Dec. 20, 2010).

Even though the Internet has provided a large number of opportunities for lawyers who provide personal legal services, it has also increased the competition for services. This competition comes from nonprofit entities, governmental units, and for-profit companies. Since 2000, the Legal Services Corporation has awarded tens of millions of dollars under the Technology Initiative Grant (“TIG”) program to legal aid entities and similar nonprofit organizations for the purpose of advancing the online delivery of legal information and services to low income populations.<sup>92</sup> Entities such as Illinois Legal Aid Online<sup>93</sup> provide a great deal of legal information to the general public and are beginning to work with court and library-based self-help centers to enable users to prepare documents online.<sup>94</sup> In some jurisdictions, the courts provide information and document preparation.<sup>95</sup> Other governmental units, such as state secretaries of state, provide online forms for the licensing and creation of corporate entities.<sup>96</sup> With few exceptions, these sites are free to the public.<sup>97</sup> The users are not means-tested to determine if they are below an economic threshold, but rather documents are available to any consumer.

In addition to competition from nonprofit and governmental entities, personal service lawyers face competition online from for-profit organizations that run multimillion dollar advertising campaigns, in which they compare themselves to lawyers even though their services are limited to document preparation—in other words, despite the fact that they offer services of much less value than those offered by lawyers.<sup>98</sup> Websites like LegalZoom,<sup>99</sup> Nolo,<sup>100</sup> and Rocket Lawyer<sup>101</sup> pro-

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92. Staudt, *supra* note 82, at 1124–25; *see Grant History: Completed TIG Cycles*, LSC’s TECH. INITIATIVE GRANTS PROGRAM, <http://tig.lsc.gov/completedtigcycle.php> (last visited Dec. 20, 2010) (reviewing grant allocations from 2000 to 2009).

93. ILL. LEGAL AID, <http://www.illinoislegalaid.org> (last visited Jan. 11, 2011).

94. *See generally* Staudt, *supra* note 82.

95. Sande L. Buhai, *Access to Justice for Unrepresented Litigants: A Comparative Perspective*, 42 LOY. L.A. L. REV. 979, 992–93 (2009); *see, e.g., Judicial Council Forms*, JUD. COUNCIL OF CAL., <http://www.courtinfo.ca.gov/forms/> (last visited Dec. 20, 2010) (providing a list of legal forms); *Welcome to the Forms Library!*, N.Y. ST. UNIFIED CT. SYS., <http://www.courts.state.ny.us/courthelp/forms.html> (last updated Oct. 8, 2010) (same).

96. *See, e.g., Department of Business Services*, CYBER DRIVE ILL., [http://www.cyberdriveillinois.com/departments/business\\_services/home.html](http://www.cyberdriveillinois.com/departments/business_services/home.html) (last visited Dec. 20, 2010) (providing businesses with a variety of legal forms).

97. *See* Deborah Rhode, *Access to Justice: Connecting Principles to Practice*, 17 GEO J. LEGAL ETHICS 369, 400 (2004) (explaining that many court, nonprofit, and commercial websites offer free forms while others provide legal forms for a low fee).

98. For example, Polaris Venture Partners funded LegalZoom for approximately \$25,000,000. Richard S. Granat, President, DirectLaw, Inc., *Online Legal Services: The Future of the Legal Profession* 5 (Feb. 5, 2010) (transcript available at <http://www.abanet.org/ethics2020/submissions.pdf>). Many for-profit legal service websites only profess to create documents. *See, e.g.,* LEGALZOOM.COM, <http://www.legalzoom.com> (last visited Dec. 20, 2010)

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vide document preparation for hundreds of thousands of people each year.<sup>102</sup> Although lawyers can unbundle their services,<sup>103</sup> they remain restrained by the rules of professional conduct and are therefore disadvantaged when competing with commercial services head-to-head.<sup>104</sup>

In addition to document preparation, lawyers also compete with online dispute resolution sites, such as iCourthouse<sup>105</sup> and Virtual Courthouse.com.<sup>106</sup> While these sites typically lack the financial resources of the document preparation services and are thus less well known, they are nevertheless becoming more widely used.<sup>107</sup> Because of their low costs, convenience, and ubiquitous nature, online dispute resolution venues are replacing the role of small claims courts and may well move up the ladder to compete more effectively with lawyers who provide personal legal services.<sup>108</sup>

Over the past fifteen years, the Internet has provided unparalleled opportunities in client development. It has changed the nature of client relations through online document preparation and virtual communications. Yet, it has also provided a platform for competition in the realms of document preparation and dispute resolution—not

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(“LegalZoom helps you make reliable legal documents from your home and office.”); ROCKET LAWYER, <http://www.rocketlawyer.com> (last visited Dec. 20, 2010) (“Answer simple questions to create unlimited, customized legal documents. Download, print, share, or e-sign your legal documents from your account. Store all your legal documents online, securely and in one place. Use our nationwide network of lawyers to review your documents, at a discount.”).

99. LEGALZOOM.COM, *supra* note 98.

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100. NOLO, <http://www.nolo.com> (follow “Free Legal Information” hyperlink) (last visited Dec. 20, 2010).

101. ROCKET LAWYER, *supra* note 98.

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102. See, e.g., Laurel S. Terry, *The Legal World Is Flat: Globalization and Its Effect on Lawyers Practicing in Non-Global Law Firms*, 28 NW. J. INT’L. L. & BUS. 527, 538 (2008) (noting that Nolo’s Quicken Willmaker Plus sales increased nearly thirty-three percent in 2006 and that LegalZoom has served 500,000 people since 2000); Granat, *supra* note 98, at 18 (claiming that LegalZoom has prepared one million wills).

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103. See *infra* notes 112–19 and accompanying text.

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104. See Joel Michael Schwarz, *Practicing Law Over the Internet: Sometimes Practice Doesn’t Make Perfect*, 14 HARV. J.L. & TECH. 657, 664–65 (2001) (arguing that lawyers cannot ethically engage in the legal services nonlawyers provide unless the lawyers are admitted in that jurisdiction); Terry, *supra* note 102, at 539 (finding a significant price difference between commercial document preparation services and lawyer services).

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105. ICOURTHOUSE, [www.i-courthouse.com](http://www.i-courthouse.com) (last visited Dec. 20, 2010).

106. VIRTUAL COURTHOUSE.COM, <http://www.virtualcourthouse.com> (last visited Dec. 20, 2010).

107. See Amy J. Schmitz, “Drive-Thru” Arbitration in the Digital Age: Empowering Consumers Through Binding ODR, 62 BAYLOR L. REV. 178, 183 (2010) (finding that online dispute resolution is inevitable based on the rise of e-communities and the Internet-savvy generation).

108. See *id.* at 181 (suggesting that online dispute resolution is being used to resolve small claims).

only from other lawyers but also from nonprofits, governmental entities, and commercial ventures.

### C. *The Economic Contraction*

The impact on the legal profession from the economic downturn that began in 2008 is unclear, but there is speculation that legal services will see a long-term or permanent contraction.<sup>109</sup> As noted above, lawyers appear to be losing business to alternative legal service providers, such as online document preparation and dispute resolution services. The changes resulting from this dynamic are not yet clear, but two developments seem likely: First, lawyers may further limit the scope of their representation or otherwise “unbundle” their services, and second, they may advance niche practices as an alternative to the traditionally segmented legal fields.

Over the past twenty years, some legal areas, particularly domestic relations, have seen a shift from representation by lawyers to self-representation.<sup>110</sup> This pro se movement has resulted in changes in the courts—in particular, self-help centers have become increasingly available to provide information and form preparation to pro se litigants.<sup>111</sup>

Similarly, personal legal service lawyers have begun unbundling their services or providing a limited scope of representation.<sup>112</sup> Unbundling involves an agreement with a client that the lawyer will provide some, but not all, of the tasks necessary to meet the client’s legal need, while the client will provide the remainder of those tasks.<sup>113</sup> For example, a lawyer may only provide legal advice, such as coaching

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109. See Eli Wald, *Foreword: The Great Recession and the Legal Profession*, 78 *FORDHAM L. REV.* 2051, 2051–52 (2010) (discussing the short- and long-term consequences of the economic downturn on law firms).

110. ABA STANDING COMM. ON THE DELIVERY OF LEGAL SERVS., AN ANALYSIS OF RULES THAT ENABLE LAWYERS TO SERVE PRO SE LITIGANTS: A WHITE PAPER 4 (2009) [hereinafter ABA ANALYSIS], available at [http://www.abanet.org/legalservices/delivery/downloads/prose\\_white\\_paper.pdf](http://www.abanet.org/legalservices/delivery/downloads/prose_white_paper.pdf).

111. *Id.* at 4–5. The first self-help center was established in Maricopa County, Arizona in the early 1990s. *Id.* at 5. Today over 130 centers are in operation across the United States. See ABA Standing Comm. on the Delivery of Legal Servs., *Pro-Se/Unbundling Resource Center*, AM. BAR ASS’N, <http://www.abanet.org/legalservices/delivery/delunbundself.html> (last updated Oct. 20, 2010) (listing self-help centers by state).

112. See ABA SECTION OF LITIG., HANDBOOK ON LIMITED SCOPE LEGAL ASSISTANCE: A REPORT OF THE MODEST MEANS TASK FORCE 41–50 (2003) [hereinafter ABA HANDBOOK], available at <http://www.abanet.org/litigation/taskforces/modest/report.pdf> (analyzing the experience of several attorneys whose firms have unbundled their legal services).

113. ABA ANALYSIS, *supra* note 110, at 6 (explaining unbundling as “separat[ing]” legal services or “provid[ing] a limited scope of representation to litigants”).

the client through a small claims case.<sup>114</sup> Or, the lawyer may provide document preparation for a simple, uncontested matter while the client docket and attends the hearing.<sup>115</sup> In some circumstances, the lawyer may represent a client before a court for a single aspect of the case.<sup>116</sup>

Unbundling enables a lawyer to broaden his potential client base because fees for individual cases are typically lower than fees for full service representation.<sup>117</sup> Clients who can afford \$700 for unbundled representation may not be able to afford \$3,000 for full service.<sup>118</sup> Consumers pay smaller fees for unbundled services, not because the lawyer has reduced his hourly rate, but because he has simply reduced the amount of time spent on the matter (which, in turn, ensures that his revenue remains unchanged).<sup>119</sup> Smaller fees for individual matters allow lawyers to compete with alternative service providers that offer an inherently more limited service while still resulting in the lawyer's full hourly rate.

Statistics are unclear on the emergence of unbundling and its relationship to the economy, but there are signs, such as the number of articles in bar publications and trainings on unbundling by bar associations, that strongly suggest lawyers have increasingly added unbundling to their menus of service within traditional practices over the past year.<sup>120</sup>

A second change in the delivery of legal services due to the economic downturn is a trend toward niche practices.<sup>121</sup> Lawyers in both corporate and personal services settings have traditionally provided

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114. See ABA HANDBOOK, *supra* note 112, at 31 (describing how some lawyers coach pro se litigants without entering an appearance). R

115. See *id.* at 29–31 (describing document preparation as one service a lawyer provides a pro se client).

116. See *id.* at 33–36 (describing how some attorneys will represent a litigant in one proceeding but allow the litigant to be pro se in subsequent related proceedings).

117. Claude R. (Chip) Bowles, Jr. et al., *Lawyers in a Fee Quandary: Must the Billable Hour Die?*, 6 DEPAUL BUS. & COM. L.J. 487, 507 (2008) (describing how a large Washington, D.C. firm limits its practice to settlements and how that has caused one of its lawyers to have “much more work than he can handle”).

118. See, e.g., ABA HANDBOOK, *supra* note 112, at 47 (describing a Minnesota lawyer who offers unbundled services to “clients who can pay \$350–\$500 (or more) for a service, but not a \$3,000 retainer”). R

119. *Id.* at 62.

120. ABA STANDING COMM. ON THE DELIVERY OF LEGAL SERVS., AGENDA FOR ACCESS: THE 2009 ANNUAL REPORT OF THE ABA STANDING COMMITTEE ON THE DELIVERY OF LEGAL SERVICES 1 (2010), available at [http://www.abanet.org/legalservices/delivery/downloads/agenda\\_for\\_access.pdf](http://www.abanet.org/legalservices/delivery/downloads/agenda_for_access.pdf).

121. See, e.g., Andrea Malone, *Niche Marketing*, LAW PRAC. TODAY (Sept. 2009), <http://www.abanet.org/lpm/lpt/articles/mkt09092.shtml> (arguing that niche marketing gives attorneys a competitive advantage).



their services based more on law school courses than on client wants.<sup>122</sup> But, clients do not want a lawyer just for litigation, administrative law, or regulatory practices.<sup>123</sup> They want a lawyer to provide for the needs of their horse farm or their winery.<sup>124</sup> In the realm of personal legal services, clients may conduct an Internet search for bicycle law, biker law, or cottage law; in each case they would find law firms specializing in those areas. These lawyers become known as the “go-to” lawyers among their colleagues, who, for example, are then more likely to refer a defective products claim on a \$2,000 racing bicycle to the bicycle lawyer than to tackle it themselves. Niche practices are responsive to consumer legal needs and enable lawyers to use the Internet to expand their geographic boundaries. Niche lawyers can also provide virtual legal services to their specific clients, lessening the likelihood of competition from sources that provide document preparation and routine services generally.

#### IV. THE RESPONSIBILITIES OF LAW SCHOOLS

Given that a large percentage of the graduates from all but the top law schools will spend a portion of their careers providing personal legal services, law schools have a responsibility to reassess the career preparation and orientation they provide their students and to reexamine their values as they prepare law students to contribute to the moral fabric of society.

According to the American Bar Foundation, in 2000, seventy-four percent of lawyers were in private practice.<sup>125</sup> Of those practitioners, forty-eight percent were in solo practices, and an additional fifteen percent were in firms of two to five lawyers.<sup>126</sup> Nearly two out of three practitioners in the United States were in firms of five or fewer lawyers.<sup>127</sup> Only fourteen percent of practitioners were in firms consist-

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122. Clients visiting law firm websites will find a list of broad practice areas that resemble law school courses. For some examples, see *Our Firm*, SULLIVAN & CROMWELL LLP, <http://www.sullcrom.com> (last visited Dec. 20, 2010), and *Practice, Industries & Regions*, COVINGTON & BURLING LLP, <http://www.cov.com/practice> (last visited Dec. 20, 2010).

123. See Lauren Nicole Morgan, *Finding Their Niche: Advance Conflicts Waivers Facilitate Industry-Based Lawyering*, 21 GEO. J. LEGAL ETHICS 963, 976 (2008) (suggesting that clients want lawyers with expertise in their particular industry).

124. Some law firms have catered their practice to these types of needs and use URL names to advertise. For example, see CAMPBELL, LAUTER & MURPHY, <http://www.cvlawfirm.com/Environmental-Law/Wine-Law.shtml> (last visited Dec. 20, 2010), and MILLER, GRIFFIN & MARKS, P.S.C., <http://www.horselaw.com> (last visited Dec. 20, 2010).

125. CLARA N. CARSON, AM. BAR FOUND., *THE LAWYER STATISTICAL REPORT: THE U.S. LEGAL PROFESSION IN 2000*, at 28 (2004).

126. *Id.* at 29.

127. *Id.*

ing of more than one hundred lawyers.<sup>128</sup> Put another way, there were almost four times as many lawyers in solo practices as in large firm practices.<sup>129</sup>

Statistics about practice settings center on the size of the firm and do not correlate perfectly with types of practices: there are solo and small firm boutique practitioners who provide corporate legal services just as some large firm lawyers provide personal legal services, such as high wealth estate work and white collar criminal defense.<sup>130</sup> It appears, however, that solo and small firm practitioners tend to provide personal legal services, and large firm practitioners tend to provide corporate and institutional legal services.<sup>131</sup> Thus, it is safe to conclude that a large—perhaps a huge—majority of those who practice law is providing personal legal services. Yet, law schools are often not sensitive to this fact. For doctrinal courses, schools tend to employ faculty with little or no experience providing personal legal services.<sup>132</sup> In law school clinics, students learn how to practice law, often in areas of personal services, but they seldom learn much about practice management.<sup>133</sup> Simply put, law school graduates are ill-prepared for the future they are most likely to pursue.<sup>134</sup>

Law practice management is not a valued part of the law school curriculum.<sup>135</sup> A recent ABA survey of law school professionalism programs indicated that fewer than half of the responding schools taught

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128. *Id.*

129. *Id.*

130. For example, Lenrow, Kohn & Oliver is a Baltimore based firm of four attorneys that specializes in acquisitions and mergers, business consulting, business organization, and intercompany issues. *Areas of Expertise*, LENROW, KOHN AND OLIVER, <http://www.lkho.com/content/areasofexpertise.cfm> (last visited Dec. 20, 2010). In contrast, Covington & Burling LLP, a firm of over 500 attorneys, has a white collar criminal defense practice group. *White Collar Defense & Investigations*, COVINGTON & BURLING LLP, [http://www.cov.com/practice/white\\_collar\\_and\\_investigations](http://www.cov.com/practice/white_collar_and_investigations) (last visited Dec. 20, 2010).

131. Randolph N. Jonakait, *The Two Hemispheres of Legal Education and the Rise and Fall of Local Law Schools*, 51 N.Y.L. SCH. L. REV. 863, 869 (2006–2007).

132. Robert J. Borthwick & Jordan R. Schau, Note, *Gatekeepers of the Profession: An Empirical Profile of the Nation's Law Professors*, 25 U. MICH. J.L. REFORM 191, 219 (1991).

133. Debra Moss Curtis, *Teaching Law Office Management: Why Law Students Need to Know the Business of Being a Lawyer*, 71 ALB. L. REV. 201, 210–11 (2008).

134. See John O. Sonsteng et al., *A Legal Education Renaissance: A Practical Approach for the Twenty-First Century*, 34 WM. MITCHELL L. REV. 303, 342 (2007) (suggesting that law students, especially ones who will enter small firms, would benefit from classes, such as project management, time management, efficiency, planning, resource allocation, budgeting, interpersonal communications, staff relations, fee arrangements, pricing and billing, and governance decision making).

135. See Curtis, *supra* note 133, at 202 (“[W]hile focusing on teaching law students to ‘think like a lawyer,’ law schools often omit to tell students about the economic realities of surviving in practice.”).

any courses in law office management.<sup>136</sup> Of the schools that offer such a course, half of them are two hour courses, four-fifths are taught by adjunct professors, and attendance was between eleven and fifty students each year.<sup>137</sup> In no school was such a course required.<sup>138</sup> Crudely extrapolating from this information, in a profession where students are four times more likely to maintain a solo practice than to practice in a large firm, at best, only 3,000 law students per year (out of more than 100,000) have any exposure to law practice management through their course work.

The high percentage of adjunct faculty teaching practice management courses,<sup>139</sup> in my opinion, suggests that law schools' full-time faculty are fundamentally unfamiliar with the delivery of personal legal services, whether by traditional methods or through emerging technology. Except for those teaching family law, criminal law, and perhaps estate law,<sup>140</sup> it is possible, if not likely, that many law school faculty have never earned their livings providing personal legal services and are therefore fully unprepared to contribute to a student's understanding of how he will most likely spend his career.

On the other side of the coin, clinics sometimes create a conflict of values for law schools and participating students. Many clinical opportunities place students in politically liberal positions—working with environmental groups, pursuing fair housing, or advancing civil rights.<sup>141</sup> Indeed, some of these efforts are so successful that law schools suffer political blowback from legislators or others with political influence.<sup>142</sup> While instilling these values of social virtue during

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136. ABA STANDING COMM. ON PROFESSIONALISM, REPORT ON A SURVEY OF LAW SCHOOL PROFESSIONALISM PROGRAMS 38 (2006), *available at* [http://www.abanet.org/cpr/reports/LawSchool\\_ProfSurvey.pdf](http://www.abanet.org/cpr/reports/LawSchool_ProfSurvey.pdf).

137. *Id.*

138. *Id.*

139. *See id.* (finding that adjunct faculty taught a law office management course in eighty-one percent of responding law schools that offered the course).

140. *See, e.g.,* Wayne M. Gazur, *Do They Practice What We Teach?: A Survey of Practitioners and Estate Planning Professors*, 19 VA. TAX REV. 1, 13–15 (1999) (finding that over half of the estate planning professors had more than five years of practice experience).

141. *See* Suzanne Valdez Carey, *An Essay on the Evolution of Clinical Legal Education and Its Impact on Student Trial Practice*, 51 U. KAN. L. REV. 509, 533–40 (2003) (describing law school clinic programs that seek reform for indigent people, giving examples of The Innocence Project and environmental legal clinics that challenge coal, oil, timber, and chemical companies).

142. For example, Maryland state legislators wanted University of Maryland School of Law to reveal clients' names or risk budget cuts for the clinic's programs. Karen Sloan, *Independence of Maryland Law School Clinic Is Challenged by Lawmakers*, LAW.COM (Mar. 29, 2010), <http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202447072923&slreturn=1&hbxlogin=1>. The clinic filed a lawsuit against Perdue Farms on behalf of an environmental

the clinical program, law schools then seek to place the graduates in law firms that defend the polluters, the discriminators, and the exploiters of child labor.<sup>143</sup>

How is it that we view the pinnacle of the legal profession to be the partner in a megasized international law firm who spends time defending corporations that discriminate against their employees, exploit child labor, pollute our water supply, and seek out tax loopholes? How did we reach a state in which lawyers who protect children from unsafe homes in divorce proceedings or from uninhabitable conditions in housing court are viewed as the bottom feeders in our profession?<sup>144</sup> It is understandable that compensation disparities perpetuate this upside down value system.<sup>145</sup> But, it should be incomprehensible that our system of legal education so frequently fails to recognize the opportunities for law school graduates, the demands of clients for their personal legal needs, and the values of a society that professes its belief in justice for all.

Law schools need not accept this status quo. They can make the changes necessary to instill and advance moral virtue and to meet the legal needs of their future clients. To do so, they need to have a populist's counterbalance to concepts of law and economics.<sup>146</sup> How can we change the systems so that money flows to lawyers who provide for the public good as easily as it flows to lawyers who serve the corporate interest at the peril of all others? Clearly, class action, fee-shifting, and similar manners of economics can advance this change.<sup>147</sup> The

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group. *Id.* Many argue the legislators in these types of situations are trying to protect big business. *Id.*

143. See Glenn Harlan Reynolds, *Small Is the New Biglaw: Some Thoughts on Technology, Economics, and the Practice of Law*, 38 HOFSTRA L. REV. 1, 10 (2009) (arguing that law schools are focused on training students to work in large law firms).

144. Cf. Richard L. Abel, *Choosing, Nurturing, Training and Placing Public Interest Law Students*, 70 FORDHAM L. REV. 1563, 1566 (2002) (advocating that law schools should change their public interest programs to bring interested students together from the outset because students interested in public interest work feel isolated, alienated, and are reluctant to talk in class for fear of ridicule).

145. Cf. Patrick J. Schiltz, *On Being a Happy, Healthy, and Ethical Member of an Unhappy, Unhealthy, and Unethical Profession*, 52 VAND. L. REV. 871, 896-97 (1999) (finding that many students choose to pursue a career at a BigLaw firm even after coming to law school to do public interest work because of the money, but commenting that they nevertheless do not want to admit they have "sold out").

146. See Jill Chaifetz, *The Value of Public Service: A Model for Instilling a Pro Bono Ethic in Law School*, 45 STAN. L. REV. 1695, 1698 (1993) (explaining that one reason why students do not choose public interest careers is that law schools fail to counteract economic and social forces).

147. See Scott L. Cummings & Deborah L. Rhode, *Public Interest Litigation: Insights from Theory and Practice*, 36 FORDHAM URB. L.J. 603, 623-24 (2009) (arguing that class action litigation, fee-shifting, and contingency fees allow cause-oriented lawyers to avoid the prob-

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use of technology can take the profitability of providing personal legal services further still. In addition, law schools need to have as much respect for practice management as those at Wharton and other top business schools have for business management. It is not an area to be delegated to adjuncts, who, in my opinion, are little more than volunteers passing along the status quo of practice management, but an area that merits scholarly research.

Considering the needs for personal legal services throughout the United States, the likelihood that law students will eventually provide those needs, the social virtue that derives from meeting those needs, and the management challenges that can create a flow of money to lawyers who deliver personal legal services, legal education has a profound challenge—a challenge that can be met through a recognition of the problems and an understanding of the dynamics of lawyering for personal legal services.

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lem of low salaries and to build powerful practices around employment discrimination, housing discrimination, wage and hour violations, human rights, and policy abuse).