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James M. McCauley
Ethics Counsel of the Virginia State Bar, Richmond, Virginia

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THE FUTURE OF THE PRACTICE OF LAW: CAN ALTERNATIVE BUSINESS STRUCTURES FOR THE LEGAL PROFESSION IMPROVE ACCESS TO LEGAL SERVICES?

*James M. McCauley **

Nationwide, law school admissions have plummeted to levels not seen in years. From 2010 to 2015, applications were down by 38 percent and down by nearly one-half over the last eight years.¹ Excluding perhaps some first-tier law schools, on the average, law schools are only placing about half of their new graduates in jobs that require a law degree and a law license.² The American

* Ethics Counsel for the Virginia State Bar, Richmond, Virginia. J.D., 1982, University of Richmond School of Law; B.A., 1978, James Madison University.

1. "The number of applicants dropped from 87,900 for fall 2010 admission to 54,500 for fall 2015 admission—a 38 percent overall decrease in applicants, according to the Law School Admission Council." Daniel Coogan, *Drop in LSAT Scores Could Affect Applicants*, U.S. NEWS & WORLD REP. (May 3, 2016, 8:30 AM), <http://www.usnews.com/education/blogs/law-admissions-lowdown/articles/2016-05-03/drop-in-lsat-scores-for-law-students-could-affect-applicants>.

The 202 ABA-approved J.D. programs reported that 39,675 full-time and part-time students began their law school studies in the fall of 2013. This is a decrease of 4,806 students (11 percent) from the fall of 2012 and a 24 percent decrease from the historic high 1L enrollment of 52,488 in the fall of 2010.

ABA Section of Legal Education Reports 2013 Law School Enrollment Data, ABA (Dec. 17, 2013), http://www.americanbar.org/news/abanews/aba-news-archives/2013/12/aba_section_of_legal.html. Also, law school enrollments fell for the fourth straight year according to statistics released by the ABA.

The number of first-year students who showed up on law campuses this fall declined by 4.4 percent compared with the previous year, which amounts to 1751 fewer students. That means new student enrollment is down by nearly 28 percent since its historic peak in 2010, when many flocked to law school during the economic recession.

Karen Sloan, *Law School Enrollment Continues Historic Decline*, NAT'L L.J. (Dec. 16, 2014), <http://www.nationallawjournal.com/id=1202679988741/Law-School-Enrollment-Continues-Historic-Dcline>. "US law school applications are down by nearly half from eight years ago." Richard Gunderman & Mark Mutz, *The Collapse of Big Law: A Cautionary Tale for Big Med*, THE ATLANTIC (Feb. 11, 2014), <http://www.theatlantic.com/business/archive/2014/02/the-collapse-of-big-law-a-cautionary-tale-for-big-med/283736/>.

2. Jordan Weissman, *The Jobs Crisis at our Best Law Schools is Much, Much Worse Than You Think*, THE ATLANTIC (Apr. 9, 2013), <http://www.theatlantic.com/business/archive/2013/04/the-jobs-crisis-at-our-best-law-schools-is-much-much-worse-than-you-think/27>

Bar Association (“ABA”) mandated disclosure policies which forced law schools to reveal that they pay stipends to graduates to work short-term jobs in an effort to beef up their placement statistics.³

Yet law schools are currently graduating 40,000 plus graduates per year⁴ with well over 1.2 million lawyers already in the United States, which translates to four lawyers for every 1000 persons.⁵ Notwithstanding these disturbing statistics, new law schools continue to come on line each year. At the same time, significant increases in law school tuition coupled with widespread reliance on student loans as the primary funding source has left many young lawyers looking for work while facing significant financial challenges.⁶ Encouraging even more students to go to law school only to enter a shrinking legal job market places the legal profession in jeopardy of not being able to correct this course and self-regulate its membership.⁷

4795/ (“Nine months after graduation, just 56 percent of the class of 2012 had found stable jobs in law—meaning full-time, long-term employment in a position requiring bar passage, or a judicial clerkship.”). See *Most People Attend Law School to Obtain Jobs as Lawyers*, ABOVE THE LAW: TOP 50 LAW SCHOOLS 2014, <http://abovethelaw.com/careers/2014-law-school-rankings/> (reporting 43 percent of graduates failed to secure a job in law in 2013) (last visited Nov. 17, 2016).

3. *The Price of Success*, THE ECONOMIST (Mar. 15, 2014), <http://www.economist.com/news/business/21599037-some-american-law-schools-are-paying-many-their-graduates-salaries-price-success>. Even leading law schools like University of Virginia and George Washington University were paying many of their newly graduated stipends or salaries to work in private law firms, non-profit organizations, and government. *Id.* For example, GWU paid salaries to 22 percent of its graduating class of 2012 and UVA paid salaries to 17 percent in order to pump up their job placements statistics for rankings in U.S. News & World Report. *Id.*

4. Eric Posner, *The Real Problem with Law Schools*, SLATE (Apr. 2, 2013, 2:50 PM), http://www.slate.com/articles/news_and_politics/view_from_chicago/2013/04/the_real_problem_with_law_schools_too_many_lawyers.html (indicating median starting salaries have declined from \$72,000 in 2009 to only \$60,000 in 2012).

5. “In other words, one lawyer for every 265 Americans.” STEPHEN J. HARPER, THE LAWYER BUBBLE: A PROFESSION IN CRISIS 4 (2013); see also ABA NATIONAL LAWYER POPULATION SURVEY, 10-YEAR TREND IN LAWYER POPULATION BY STATE (2016), http://www.americanbar.org/content/dam/aba/migrated/marketresearch/PublicDocuments/2011_national_lawyer_by_state.autocheckdam.pdf.

6. See Gunderman & Mutz, *supra* note 1 (noting that 85 percent of law graduates carry at least \$100,000 in debt).

7. As Eric Posner notes:

The figures are grim, and the human cost is real. Ninety-two percent of 2007 law school graduates found jobs after graduation, with 77 percent employed in a position requiring them to pass the bar. For the class of 2011 (the latest class for which there are data), the employment figure is 86 percent—with only 65 percent employed in a position that required bar passage. Preliminary employment figures for the class of 2012 are even worse. The median starting salary has declined from \$72,000 in 2009 to \$60,000 in 2012. A while

Notwithstanding the oversupply of lawyers and the shrinking opportunities for placement in the legal services market, the unmet legal needs of the poor and middle class continues to grow. While there is approximately one lawyer for every 265 persons living in the United States,⁸ only one legal aid attorney is available for every 6415 low-income people.⁹ It is ironic that the job market challenges facing lawyers is occurring at a time when a substantial segment of the population cannot afford to retain a lawyer when confronted with a situation in which legal assistance would be advantageous. Multiple state and federal studies show that 80 to 90 percent of low and moderate income-Americans with legal problems do not obtain legal representation.¹⁰ In its final report, the Virginia State Bar's Study Committee on the Future of Law Practice observed:

Research shows that legal services in civil matters for low and moderate income persons or families are an unmet need. One study reports that 80% of civil legal needs of the poor and up to 60% of the needs of middle-income persons remain unmet. The reasons for this are varied: funding for legal aid for the indigent has been substantially reduced (legal aid funding in Virginia has been reduced by 20% and IOLTA revenue decreased from \$500,000 in 2006 to \$50,000 today); the cost of private legal representation has increased; individuals often fail to recognize that a problem requires legal assistance; some want to avoid involvement in the legal system and resolve the issue another way; and funding for the court system to assist unrepresented litigants is limited. The decrease in federal funding resulted in a 20% reduction of legal aid attorneys and staff statewide. At the same time, the population in poverty increased by more than 30%. There is no question that the need to increase legal services to these groups exists now and will continue to exist in the future.¹¹

back, the Bureau of Labor Statistics estimated that 218,800 new legal jobs would be created between 2010 and 2020. As law professor Paul Campos points out, because law schools graduate more than 40,000 students per year, those jobs should be snapped up by 2015—leaving only normal attrition and retirement spots left for the classes of 2016 to 2020. Meanwhile, tuition has increased dramatically over the last several decades. Students who graduate from law school today with \$100,000 or more in debt will default on their loans if they cannot get high-paying work in the law.

Posner, *supra* note 4.

8. See HARPER, *supra* note 5, at 4.

9. LEGAL SERVICES CORP., DOCUMENTING THE JUSTICE GAP IN AMERICA 21 (2007), <http://www.lsc.gov/sites/default/files/LSC/images/justicegap.pdf>.

10. See Robert Ambrogi, *Washington State Moves Around UPL, Using Legal Technicians to Help Close the Gap*, ABA J. (Jan. 1, 2015, 5:50 AM), http://www.abajournal.com/magazine/article/washington_state_moves_around_upl_using_legal_technicians_to_help_close_the_gap. The author attributes failure to retain a lawyer to the cost of legal services. *Id.* "The economics of traditional law practice make it impossible for lawyers to offer their services at prices these people can afford." *Id.*

11. VA. STATE BAR, REPORT: THE COMMITTEE ON THE FUTURE OF LAW PRACTICE 13

A consequence has been an explosion in self-representation in both transactional and litigation work.¹² Numerous commentators have sounded the alarm that the organized bar and its regulators need to rethink the nature and provision of legal services.¹³ Some commentators believe that if the legal profession fails to take heed and right its course, the profession and its self-regulation will become irrelevant.¹⁴

The Virginia State Bar's Study Committee on the Future of Law Practice has identified some other forces or trends challenging the profession and the traditional means by which it delivers legal services:

(1) advances in technology that have changed the way lawyers practice, giving clients the expectation that lawyers will provide services more efficiently and cheaply, and giving consumers the belief that they can obtain legal information and handle many legal matters on their own; (2) increasing competition from non-lawyer service providers that offer legal information and legal documents to consumers; (3) generational pressures that are likely to impact law firm business models—estimates are that 70% percent of law firm partners are baby boomers, while millennials are expected to make up half the global workforce by 2020; (4) clients' dissatisfaction with billable hour arrangements encouraging lawyers to offer fixed fees and other alternative billing arrangements; (5) increased insourcing of legal services by corporate clients, along with increased unbundling of tasks so that lawyers are only asked to complete the specific tasks that require legal judgment; and (6) accelerated globalization of legal services via both traditional models and technology, leading to an increase in multijurisdictional law practice and a decreasing relevance of geographical boundaries.¹⁵

As can be seen, some of the forces come from within the profession, i.e., law school policies and billing for legal services. Other forces, though, are external and are beyond the legal profession's

(Sept. 24, 2016), http://www.vsb.org/docs/FINAL_Report_of_the_Study_Committee.pdf.

12. Mark Andrews, *Duties of the Judicial System to the Pro Se Litigant*, 30 ALA. L. REV. 189 (2013) ("Across the United States, an increased number of litigants have chosen to forego attorneys and instead represent themselves in court, particularly in civil matters."); see also Madelynn Herman, *Pro Se Statistics*, NAT'L CTR. FOR STATE COURTS (June 21, 2006), https://www.nacmnet.org/sites/default/files/04Greacen_ProSeStatisticsSummary.pdf.

13. See generally RICHARD SUSSKIND, *THE END OF LAWYERS: RETHINKING THE NATURE OF LEGAL SERVICES* 7 (2010) (explaining that more efficient techniques for delivering legal services are emerging and lawyers should be encouraged to use them); HARPER, *supra* note 5 (explaining the current culture of the legal profession).

14. See, e.g., SUSSKIND, *supra* note 13, at 7 (discussing the sustainability of the traditional lawyer's role in today's legal marketplace).

15. VA. STATE BAR, *supra* note 11, at 1.

control. Further, some of these forces appear permanent in nature,¹⁶ indicating that there will be no turning back to “the good old days,” and therefore the profession must determine how to re-tool and reinvent itself in this post-recession global market.¹⁷

Enforcement of unauthorized practice laws against nonlawyer service providers will not be a cost-effective solution to stem the stronghold taken by companies like LegalZoom, a billion dollar enterprise which has served more than one million customers with its legal document preparation service.¹⁸ Companies like LegalZoom, Avvo and Rocket Lawyer are prepared to fight for their share of the consumer legal services market through litigation¹⁹

16. Jeff Jacoby states:

Only some of [these forces] is cyclical. The legal profession, like so many others, has been permanently disrupted by the Internet and globalization in ways few could have anticipated 10 or 15 years ago. Online legal guidance is widely accessible. Commercial services like LegalZoom make it easy to create documents without paying attorneys' fees. Search engines for legal professionals reduce the need for paralegals and junior lawyers.

Jeff Jacoby, *U.S. Legal Bubble Can't Pop Soon Enough*, BOS. GLOBE (May 9, 2014), <https://www.bostonglobe.com/opinion/2014/05/09/the-lawyer-bubble-pops-not-moment-too-soon/qAYzQ823qpf4GQJ2OiPZM/story.html>.

17. As Noam Scheiber explains:

There are currently between 150 and 250 firms in the United States that can claim membership in the club known as Big Law, the group of historically profitable firms that cater to the country's largest corporations. The overwhelming majority of these still operate according to a business model that assumes, at least implicitly, that clients will insist upon the best legal talent instead of the best bargain for legal talent. That assumption has become rickety. Within the next decade or so, according to one common hypothesis, there will be at most 20 to 25 firms that can operate this way—the firms whose clients have so many billions of dollars riding on their legal work that they can truly spend without limit. The other 200 firms will have to reinvent themselves or disappear.

Noam Scheiber, *The Last Days of Big Law*, NEW REPUBLIC (July 21, 2013), <https://newrepublic.com/article/113941/big-law-firms-trouble-when-money-dries>.

18. Robert Ambrogi, *Latest Legal Victory Has Legalzoom Poised For Growth*, ABA J. (Aug. 1, 2014, 8:00 AM), http://www.abajournal.com/magazine/article/latest_legal_victory_has_legalzoom_poised_for_growth/. LegalZoom had provided services to about two million customers as of August 2012, according to a prospectus it filed with the U.S. Securities and Exchange Commission in advance of a planned, but still postponed, initial public offering. *Id.* In 2011, LegalZoom's revenues reached \$156 million and it was on track to bring in almost \$200 million in 2012. *Id.*

19. VA. STATE BAR, *supra* note 11, at 10.

LegalZoom does business in all 50 states and has delivered online legal document preparation since 2001. Efforts by regulatory bars to enjoin or shut down LegalZoom have not met with success. In 2014 the Supreme Court of South Carolina approved a settlement agreement in which it was stipulated that LegalZoom's business model is not the unauthorized practice of law. On October 22, 2015, the North Carolina Bar and LegalZoom settled their case by a consent order, permitting LegalZoom to continue operating in North Carolina subject to some conditions[.] In June 2016, lawmakers ended the

and by lobbying state legislatures to pass bills protecting them from being charged with unauthorized practice of law (“UPL”).²⁰ Professional regulatory authorities, with limited resources, are not equipped to wage war with the growing number of competitive nonlawyer service providers. Moreover, an unsympathetic public, a large portion of which is finding their legal needs largely unmet by the legal profession, will only view the bar’s enforcement of the UPL rules as anti-competitive barriers to access to legal services.

Some organized bars in the United States, including the American Bar Association, and Law Societies in British Columbia and Ontario, Canada,²¹ have been studying developments in the United Kingdom and Australia which now allow professional service firms composed of lawyers and nonlawyers to serve the public. In the United Kingdom and New South Wales, Australia, lawyers are permitted to practice as part of an alternative business structure (“ABS”) in which nonlawyers hold an ownership interest and participate in the delivery of law-related services or are passive investors in firms that deliver legal services. In 2001, New South Wales enacted legislation permitting legal practices to incorporate, share receipts, and provide legal services either alone or alongside other legal services providers who may, or may not, be legal practitioners.²² In addition to nonlawyer ownership, an incorporated legal practice (“ILP”) may be listed on the public stock exchange in Australia and outside investors may provide capital.²³

long-running dispute between the North Carolina State Bar and LegalZoom by passing legislation that allows online services to provide legal documents in that state.

Id.

20. *See id.*

21. *See* CANADIAN BAR ASS’N, FUTURES: TRANSFORMING THE DELIVERY OF LEGAL SERVICES IN CANADA 34, 41 (Aug. 2014), http://www.cba.org/CBAMediaLibrary/cba_na/PDFs/CBA%20Legal%20Futures%20PDFS/Futures-Final-eng.pdf.

22. *See* SLATER & GORDON LTD., SUBMISSION TO THE AMERICAN BAR ASSOCIATION COMMISSION ON THE FUTURE OF LEGAL SERVICES (Dec. 29, 2014), http://www.americanbar.org/content/dam/aba/images/office_president/slater_and_gordon_submission.pdf. Australia commenced an expansive approach to ABS that began in 1994 with the development and growth of Incorporated Legal Practices (ILPs). ABA COMM’N ON ETHICS 20/20 WORKING GRP. ON ALT. BUS. STRUCTURES, ISSUES PAPER CONCERNING ALTERNATE BUSINESS STRUCTURES 7–8 (Apr. 5, 2011), http://www.americanbar.org/content/dam/aba/administrative/ethics_2020/abs_issues_paper.authcheckdam.pdf [hereinafter ABS ISSUES PAPER]. There were over 2000 ILPs reported in 2010 and their number is growing rapidly. *Id.* There are around seventy known multidisciplinary practice (“MDPs”) and, as of the Working Group’s report in 2011, at least 20 percent of the lawyers in New South Wales were working in non-traditional business practices, including thirty MDPs. *Id.*

23. SLATER & GORDON LTD., *supra* note 22.

In England and Wales, under the Legal Services Act of 2007,²⁴ alternative business structures that have lawyer and nonlawyer management and ownership are permitted and may either provide only legal services or legal services along with non-legal services.²⁵ In October 2010, Scotland's Parliament approved a Legal Services Act²⁶ that permits and regulates alternative business structures in which Scottish solicitors are permitted to partner with nonlawyers and to seek capital from outside investors, provided solicitors hold the controlling ownership of the firm.²⁷ Under this regime, privileged communications by and between solicitors or nonlawyers with clients of the firm are protected by law.²⁸ As in England and Wales, a nonlawyer participant in the ABS must meet a "good character" requirement.²⁹

Multidisciplinary practices are now permitted in Ontario, British Columbia and Quebec.³⁰ Lawyers must maintain control over the services the firm provides. Multidisciplinary Practices ("MDP") are now permitted in Germany, the Netherlands, and Brussels.³¹

New South Wales (NSW) was the first jurisdiction in Australia and indeed the rest of the (common law) world to permit external and non-lawyer ownership of law firms. This occurred on July 1, 2001 with the enactment of legislation permitting legal practices to incorporate, share receipts and provide legal services either alone or alongside other legal service providers who may, or may not be legal practitioners. Since the enactment of this legislation more than 3,000 law firms in Australia have altered their practice structures through incorporation (representing 30% of law firms). These law firms are known as "incorporated legal practices" (ILPs).

Id.

24. Legal Services Act 2007, c. 29 (Eng.), <http://www.legislation.gov.uk/ukpa/2007/29/contents>.

25. ABS ISSUES PAPER, *supra* note 22, at 13.

26. Legal Services Act 2010, c. 2, § 49 (Scot.), <http://www.legislation.gov.uk/asp/2010/16/section/49>.

27. *Id.*; ABS ISSUES PAPER, *supra* note 22, at 15.

28. ABS ISSUES PAPER, at 16. The rule states:

The legal professional privilege applies to communications made to or by licensed providers in the course of providing legal services for any of their clients, as well as to or by others employed by the licensed entity who are acting in connection with the provision of legal services or who are working at the direction or under the supervision of a solicitor.

Id. (citing Legal Services Act 2010, c. 2, § 75 (Scot.)).

29. ABS ISSUES PAPER, *supra* note 22, at 11.

30. *Id.* Some provinces have permitted nonlawyer ownership and/or MDP for some time. In Quebec, nonlawyers may own up to 50 percent of law practices, and law firms may engage in multidisciplinary practice. British Columbia permits MDPs. *Id.* at 6, 11.

31. *Id.* at 16.

The District of Columbia is the only United States jurisdiction that permits nonlawyers to hold an ownership interest in a law firm.³² The ABA rejected MDP in 2000³³ and the Virginia State Bar's Council rejected MDP in 2003. Since that time, no organized bar in the United States has reconsidered either MDP or ABS; however, the legal services market landscape has changed dramatically over the ensuing years making it desirable to reexamine what regulatory structures may need reform, and how to implement those changes without sacrificing the core values of the lawyer-client relationship and the profession's role of serving the public.

While the "Big-5" accounting firms' encroachment into legal services was the impetus for the MDP movement,³⁴ a paradigm shift has since occurred in both the domestic and foreign legal services market in which smaller, but far greater in number, nonlawyer providers are competing with lawyers and law firms. Unable to obtain regulatory reform in the United States, some United States firms are forming alternative business structures in the United Kingdom where up to 25 percent of the ownership of the firm may be held by nonlawyers.

A key component to regulating ABS in the United Kingdom and in Australia is called proactive management-based regulation ("PMBR"). This regulatory framework holds the firm or entity accountable for noncompliance with ethical requirements. Each firm must designate a practice manager that interacts with the regulator on an informal, collaborative, and proactive basis, including random audits by regulators and required self-assessments, to ensure that their systems and procedures meet ethical and regulatory requirements. While an individual lawyer may be subject to professional discipline, sanctions may also be imposed against the legal services firm for non-compliance. In contrast, attorney regulation in the United States is reactive, based upon lawyer misconduct having occurred. In most United States jurisdictions, a law firm cannot be sanctioned if one of its lawyers engages in professional misconduct. The system implemented in Australia, which the profession there has embraced, is

32. *See id.* at 2.

33. *See id.*

34. *Id.* at 5; *see also* James M. McCauley, *The Delivery of Legal Services Through Multidisciplinary Practices*, VA. STATE BAR, <http://www.vsb.org/site/regulation/legal-services-multidisciplinary-practices> (last visited Nov. 17, 2016).

credited with up to a 40 percent reduction in disciplinary complaints against regulated firms and lawyers.

However, the legal profession in the United States remains steadfastly opposed to any regulatory reform that would permit either ABS or MDP.³⁵ The ABA Commission on Ethics 20/20 was tasked with looking at the effects of globalization on the practice of law in the United States. The Commission considered a proposal to permit a limited form of nonlawyer ownership. That proposal was put out for comment, but ultimately the Commission did not make any recommendation, concluding that there did not appear to be a sufficient basis for recommending a change to ABA policy on lawyer ownership of law firms.³⁶

The New York State Bar Task Force on Nonlawyer Ownership was charged with evaluating the nonlawyer ownership proposal of the Ethics 20/20 Commission. The Task Force found in a survey of its membership that over 78 percent of the members were opposed to the change, with the largest majority representing solo and small firms.³⁷ In the end, the 2012 Task Force Report found that there was a “lack of meaningful empirical data about nonlawyer ownership of law firms and what its potential implications are for the future of the legal profession.”³⁸ Similarly, a study conducted by the Ontario Trial Lawyers Association concluded that there is “no empirical data to support the argument that [nonlawyer ownership] has improved access to justice” in England or Australia.³⁹

In 2014, the ABA Commission on the Future of Legal Services (“ABA Commission”) was created and charged with examining how legal services are delivered in the United States and recommending innovations to improve the delivery of, and the public’s

35. Except for the District of Columbia, all U.S. jurisdictions have adopted versions of ABA Model Rule 5.4, which prohibits lawyers from sharing legal fees with nonlawyers and working in a firm in which nonlawyers have an ownership interest or hold positions of authority or control. See McCauley, *supra* note 34; MODEL RULES OF PROF'L CONDUCT 5.4 (AM. BAR ASS'N 2016).

36. See ABA COMM'N ON ETHICS 20/20, INTRODUCTION AND OVERVIEW 8 (Feb. 2013), http://www.americanbar.org/content/dam/aba/administrative/ethics_2020/20121112_ethics_20_20_overarching_report_final_with_disclaimer.authcheckdam.pdf.

37. N.Y. STATE BAR ASS'N, REPORT OF NEW YORK STATE BAR TASK FORCE ON NONLAWYER OWNERSHIP 43 (Nov. 12, 2012), <https://www.nysba.org/WorkArea/DownloadAsset.aspx?id=26682>.

38. *Id.* at 72.

39. Memorandum from Jasminka Kalajdzic to Linda Langston, Ontario Trial Law Ass'n, ABS Research (Dec. 1, 2014), http://www.canadianlawyermag.com/legalfeeds/index.php?option=com_k2&Itemid=101&id=47&lang=en&task=download&view=item.

access to, those services.⁴⁰ The ABA Commission held open forums across the country and looked at different types of legal service providers authorized to perform clearly defined roles at the state and federal level. The closest they came to addressing ABS was a resolution, passed by the ABA House of Delegates in February 2016, that urged “each state’s highest court, and those of each territory and tribe, be guided by the ABA Model Regulatory Objectives for the Provision of Legal Services when they assess the court’s existing regulatory framework and any other regulations they may choose to develop concerning non-traditional legal service providers.”⁴¹ That resolution, however, reaffirmed support for the long-standing ABA policy against nonlawyer ownership of law firms.⁴²

In April 2016, the ABA Commission stoked the debate again by issuing a sixteen-page issues paper for public comment on whether it should ask the ABA House of Delegates to pass a resolution encouraging state courts to liberalize ethics rules forbidding nonlawyer ownership in law firms and multidisciplinary partnerships between lawyers and other professionals.⁴³ Ultimately, since no proposal was submitted before the deadline for consideration by the House of Delegates, no action will be taken this year.

Thus, after two years of studying the delivery of legal services in the United States, the ABA Commission issued its final report, finding that 80 percent of the poor and middle income populations do not get the legal help they need and recommending broad changes for improving the delivery and access to legal services. Paralleling much of what has been recommended in the Virginia State Bar’s report, the ABA Commission did not suggest how the profession might address the issues of nonlawyer ownership of law firms, nonlawyers giving legal advice, and the regulation of nonlawyer legal service companies such as LegalZoom, Rocket Lawyer and Avvo Legal Services. The ABA Commission acknowledged that the traditional law firm model inhibits innovations

40. See ABA COMM’N ON FUTURE OF LEGAL SERVICES, ISSUE PAPER ON THE FUTURE OF LEGAL SERVICES (Nov. 3, 2014), http://www.americanbar.org/content/dam/aba/images/office_president/issues_paper.pdf.

41. ABA COMM’N ON FUTURE OF LEGAL SERVICES, REPORT ON THE FUTURE OF LEGAL SERVICES IN THE UNITED STATES 69 (Feb. 8, 2016), http://www.americanbar.org/content/dam/aba/images/abanews/2016FLSReport_FNL_WEB.pdf.

42. See *id.*

43. See ABA COMM’N ON FUTURE OF LEGAL SERVICES, ISSUES PAPER REGARDING ALTERNATIVE BUSINESS STRUCTURES 1–5 (Apr. 8, 2016), http://www.americanbar.org/content/dam/aba/images/office_president/alternative_business_issues_paper.pdf.

that could enhance, and make more cost-effective, the delivery of legal services but did not recommend any changes in regulation that would remove the ethical constraints on nonlawyer ownership and fee sharing with nonlawyers.

The practicing bar's resistance to nonlawyer ownership in law firms has been soundly criticized by scholars who view such resistance as "lawyer exceptionalism" or "lawyer-centric" thinking, based on an overwrought fear that nonlawyer ownership and investment will erode the core values of the profession and lawyer independence.⁴⁴ Academics are challenging the practicing bar's insistence that only lawyers can perform and deliver all aspects of legal services:

There is an insidious consequence of believing that lawyers are the best, or only, resource for all tasks: it is that it downplays and devalues the "non-lawyer" input, whether that is another person, technology, a process or management. It is not surprising that there is an "us and them" divide between lawyers and others, that inefficiencies persist, or that potential remains unrealized, when such an unhelpful and insulting attitude is prevalent.⁴⁵

There are legitimate concerns about ABS. Lawyers worry that concerns over profits and nonlawyer influence will override the lawyer's professional obligations to the client and to the public, i.e., rendering pro bono legal services to the indigent.⁴⁶ But a cat-

44. See Judith A. McMorrow, *UK Alternative Business Structures for Legal Practice: Emerging Models and Lessons for the US*, 47 GEO. J. INT'L LAW 665, 673 (2016) (citing Sung Hui Kim, *Lawyer Exceptionalism in the Gatekeeping Wars*, 63 SMU L. REV. 73, 74–76 (2010)); see also Leslie C. Levin, *The Monopoly Myth and Other Tales About the Superiority of Lawyers*, 82 FORDHAM L. REV. 2611, 2612–14 (2014); Bridgette Dunlap, *Anyone Can "Think Like a Lawyer": How the Lawyers' Monopoly on Legal Understanding Undermines Democracy and the Rule of Law in the United States*, 82 FORDHAM L. REV. 2817, 2818–19 (2014).

45. McMorrow, *supra* note 44, at 673 (citing STEPHEN MAYSON, RESTORING A FUTURE FOR LAW 5 (Oct. 2013), <http://stephenmayson.files.wordpress.com/2013/10/mayson-2013-restoring-a-future-for-law.pdf>).

46. See, e.g., Lawrence J. Fox, *Accountants, The Hawks of the Professional World: They Foul Our Nest and Theirs Too, Plus Other Ruminations on the Issue of MDPs*, 84 MINN. L. REV. 1097 (2000); Cindy Alberts Carson, *Under New Management: The Problem of Non-lawyer Equity Partnership in Law Firms*, 7 GEO. J. LEGAL ETHICS 593 (1994). A lawyer is supposed to render at least two percent of his or her professional time to pro bono legal services. VA. RULES OF PROF'L CONDUCT 6.1(a) (VA. STATE BAR 2016). It is estimated that actual hours of pro bono service rendered is far below this aspirational goal. VA. ACCESS TO JUSTICE COMM'N, FINAL PROPOSAL TO ADOPT PRO BONO REPORTING FOR VIRGINIA LAWYERS 2 (July 1, 2016), <http://www.vsb.org/docs/access-reporting-2016/VATJ-VSB-prop-probono-report-070116.pdf>. However, since there is no required reporting or recordkeeping it is difficult to determine how the bar is measuring up to its aspirational goal. Moreover, the organized bar is resistant to any regulatory measures that would require recordkeeping and reporting of pro bono hours an attorney has worked. Peter Vieth, *Bar Won't Back Pro Bono Reporting*, VA. LAW. WKLY. (Oct. 17, 2016).

egorical ban on any nonlawyer ownership and investment in the delivery of legal services assumes that professional and entity regulation are incapable of addressing these problems. Professor Judith McMorrow aptly describes the debate which I have witnessed as a liaison to the Virginia State Bar's Study Committee on the Future of Law Practice:

U.S. bar opposition remains in part due to an empirical standoff. In policy discussions and informal conversations, proponents of change point to the benefits of non-lawyer ownership and investment and ask for proof that new models will erode professional judgment; opponents question whether there are meaningful benefits and demand proof that the changes will not impair professional judgment.⁴⁷

While there is a concern that ABS and nonlawyer ownership will impair the lawyer's independent professional judgment, the ABS firm, like any law firm, must attract, satisfy, and keep its clients. This factor alone should motivate professionals in the firm to perform their work competently and diligently, protect clients' confidential information, and avoid conflicts of interest. Moreover, the regulatory systems in the United Kingdom and Australia offer additional checks and client protection. What remains to be seen, however, is whether ABS will materially increase pro bono legal services and move the profession closer to meeting the unmet legal needs of low and middle income populations in the United States.

A primary factor cited for these changes in the United Kingdom and Australia was public dissatisfaction with the traditional law practice model and the professional regulation of lawyers.⁴⁸ The regimes in the United Kingdom and Australia have been in place now for eight years or longer, so there soon should be some experiential and empirical data to analyze regarding their impact on the legal profession, service to the public, lawyer regulation and public protection. In fact, the ABA Commission has cited to eight empirical studies that were published in 2014–2015, that support at least these conclusions.

1. There is no evidence that ABS has caused any harm or any erosion of the "core values" of the legal profession.
2. ABS has increased the availability of capital and funding for law firms to innovate.

47. McMorrow, *supra* note 44 at 675.

48. *Id.* at 707.

3. Those jurisdictions that have adopted ABS have not abandoned it.⁴⁹

With globalization of legal services, rapidly advancing technology and growing acceptance of new business structures in other foreign countries, traditional United States firms may face stiff competition from their overseas competitors or be economically pressured to form new business alliances with those firms. United Kingdom-regulated ABS firms have the potential to open the legal services market worldwide.⁵⁰ Consequently, the legal profession in the United States may not have the luxury to sit back and wait too long to seriously consider ABS. Some commentators believe that ABS will become a reality in the United States whether the organized bar accepts or opposes it.⁵¹

49. ABA COMM'N ON FUTURE OF LEGAL SERVICES, *supra* note 43, at 11–15. New South Wales, Australia has now had ABS for fifteen years, and after witnessing the positive experience in New South Wales, all other jurisdictions in Australia decided to permit ABS. *Id.* at 5.

50. For example, LegalZoom and Jacoby & Meyers are registered as ABS firms in the United Kingdom. Both firms have a long-term strategy to export their work product worldwide. Laura Snyder, *Flexing ABS*, 101 ABA J. 62, 68–70 (2015).

51. RICHARD SUSSKIND, TOMORROW'S LAWYERS: AN INTRODUCTION TO YOUR FUTURE 122–31 (2013) (predicting new business structures to employ lawyers, such as global accounting firms, major legal publishers, legal know how providers, legal process out-sourcers, high street retail businesses, legal leasing agencies, new-look law firms, online legal service providers, and legal management consultancies).
