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## Educating Main Street Lawyers

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# Educating Main Street Lawyers

Luz E. Herrera

Discussion about the value of a law degree has focused on the financial success of lawyers. Both defenders and critics of the existing legal education model<sup>1</sup> largely ignore the implications that the cost of legal education and high lawyer fees have on access to justice.<sup>2</sup> While a lawyer's ability to make a decent living must be addressed when determining the value of a legal education, we fail to take into account the fact that there are millions of individuals in the U.S. who cannot find a lawyer to represent them when they need one. For advocates who believe that our legal system must provide alternatives other than pro bono and market-rate fee models, the current conversation about the future of legal education offers an opportunity to advance the case for an agenda that promotes affordable legal services to keep Main Street lawyers solvent and to expand access to justice for the masses.

This article argues that the value of a legal education for most law school graduates can be enhanced by their ability to earn a decent living and also help to address the unmet legal needs of individuals who cannot afford the prevailing cost of legal representation. To determine whether a legal education is worth it, prospective lawyers must be better informed about where the majority of lawyers work, whom they represent and how they make a living. This picture may be a different reality than contemporary media portrayals of "successful lawyers" which primarily portray courtroom snapshots or law as practiced in the downtown offices of corporate America. For many lawyers, this reality will mean planning for the economic challenges posed by high

**Luz E. Herrera** is an associate professor at Thomas Jefferson School of Law. The author is grateful to the following individuals for the assistance and feedback and preparing this article: Josh Desmond, Linda Lai, Jessica McCracken, Samantha Morales, Edith Polanco, Fred Rooney and Leticia Saucedo. Also, a special thank you to Deven Desai, Beth Kransberger, Lyls McCoy, and participants of the Clinical Law Review Workshop for comments on early drafts.

1. For an overview of historical and contemporary criticism of legal education generally see A. Benjamin Spencer, *The Law School Critique in Historical Perspective*, 69 *Wash. & Lee L. Rev.* 1949 (2012). *See also* Editorial, *The Case Against Law School*, *N.Y. Times*, July 21, 2011, available at <http://www.nytimes.com/roomfordebate/2011/07/21/the-case-against-law-school>.
2. Access to justice is defined as "[t]he ability within a society to use courts and other legal institutions effectively to protect one's rights and pursue claims." Access to Justice, *Black's Law Dictionary* (9th ed. 2009). *See generally* Deborah L. Rhode, *Access to Justice*, 69 *Fordham L. Rev.* 1785 (2001); and Deborah L. Rhode, *Access to Justice* (Oxford Univ. Press 2004).

educational debt and a market demand for affordable legal services on Main Street.<sup>3</sup>

Main Street lawyers primarily offer legal services to individuals or to community business interests versus corporate interests.<sup>4</sup> They constitute the largest sector of the private bar<sup>5</sup> and, as a result, are the lawyers most often responsible for ensuring access to justice for the majority of low and moderate-income individuals.<sup>6</sup> Main Street lawyers earn lower salaries than their counterparts in large firms and experience greater financial instability than their peers in the government and public interest sectors.<sup>7</sup> Main Street lawyers are primarily the products of less prestigious law schools.<sup>8</sup> The conversation about the cost and value of legal education must take into account not just the economic viability of Main Street lawyers but also the clients they serve. Law school regulators must consider how to restructure legal education to permit Main Street lawyers to establish viable law practices that promote access to justice by providing affordable legal services.

Part I offers a brief overview of legal services delivery to low- and moderate-income Americans.<sup>9</sup> It challenges the dogma that there are too many lawyers by focusing on the needs of individual consumers. Part II discusses the financial woes of the legal profession as a market failure prompted by the monopoly of elite lawyers and the inflationary impact that their policies have on the rest of the profession. By acknowledging the existing framework where Main Street

3. This article acknowledges but does not engage the existing problems with pricing and financing legal education. For critiques on the legal education model see generally Brian Z. Tamanaha, *Failing Law Schools* (Univ. Chicago Press 2012); Richard A. Matasar, *The Rise and Fall of America Legal Education*, 49 N.Y. L. Sch. L. Rev. 465 (2005); Richard A. Matasar, *Does the Current Economic Model of Legal Education Work for Law Schools, Law Firms (or Anyone Else)?*, 82 Oct. N.Y. St. B. J. 20, 21 (October 2010).
4. "Main Street lawyers" describe solo and small-firm lawyers for whom low- and moderate-income clients represent a sizeable part of their law practices. For more discussion, see Luz E. Herrera, *Rethinking Private Attorney Involvement*, 43 Loy. L.A. L. Rev. 1, fn. 24 (2009).
5. Lawyer statistical reports reveal that the largest segment of lawyers work as solo practitioners. The private bar comprises 75 percent of all lawyers in the United States. Solo practitioners constitute 49 percent of these lawyers. ABA Market Research Dept., *Lawyer Demographics (2012)*, available at [http://www.americanbar.org/content/dam/aba/migrated/marketresearch/PublicDocuments/lawyer\\_demographics\\_2013.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/migrated/marketresearch/PublicDocuments/lawyer_demographics_2013.authcheckdam.pdf).
6. The last national study on civil legal needs found that 75 percent of low-income individuals who had a lawyer used a private lawyer. The data demonstrated that 68 percent of low-income individuals who worked with a lawyer actually paid one to resolve their legal issue. When asked about the fee arrangement with those private lawyers, 39 percent of low-income households said they paid the usual fee, and 8 percent reported a reduced fee arrangement. The survey did not reveal whether these fee arrangements were on contingency, unbundled services, flat fees, low bono or regular hourly. Consortium on Legal Services and the Public, *Legal Needs and Civil Justice: A Survey of Americans 1*, 7-8 (Amer. Bar Assn. 1994).
7. See *infra* Part IIB.
8. *Id.*
9. "Americans" is used in this article to refer to individuals residing in the United States regardless of immigration status.

lawyers occupy the bottom rung, the legal profession can begin to identify more egalitarian approaches to legal education and legal service delivery. Part III encourages the American Bar Association (ABA) to depart from a “one-size fits-all” accreditation program to a model that encourages law schools to develop models that are more responsive to the needs of Main Street lawyers and non-elite client interests. The article concludes by affirming the importance of Main Street lawyers in delivering greater access to affordable legal services. Without such lawyers, the profession effectively concedes that only elite interests and the very poor are deserving of representation.

### I. Access to Legal Services.

Media outlets, blogs and even dissenting legal educators effectively convey the message that our country has too many lawyers. This assertion is perplexing, since there are millions of individuals who forego legal claims or who struggle through self-representation because they cannot find and access lawyers to help them. The Legal Services Corporation (LSC) reports that for every civil legal aid attorney, there are 6,415 prospective low-income clients.<sup>10</sup> Since 1991, less than one percent of all lawyers in the country have worked as public defenders or in legal aid offices.<sup>11</sup> Like government lawyers, public defenders and legal aid lawyers are restricted to representing clients who fit the parameters imposed by government or program regulations.<sup>12</sup> The number of lawyers who represent the poor is not sufficient to address the existing and growing need for free legal services. Answering the question about the value and relevancy of legal education, therefore, requires a better understanding about who has access to lawyers in this country.

#### A. The Unmet Legal Services Need.

There may be too many lawyers competing for a few choice jobs but there are too few attorneys helping low- and moderate-income clients with their personal legal matters. Based on its review of 16 state legal-needs studies, LSC claims that less than one-fifth of the poor who need civil legal services get these

10. See Legal Services Corp., Documenting The Justice Gap in America: The Current Unmet Civil Legal Needs of Low-Income Americans 1-2 (2009) [hereinafter Documenting the Justice Gap], available at [http://www.lsc.gov/pdfs/documenting\\_the\\_justice\\_gap\\_in\\_america\\_2009.pdf](http://www.lsc.gov/pdfs/documenting_the_justice_gap_in_america_2009.pdf).
11. See Lawyer Demographics, *supra* note 5.
12. For a detailed discussion of restrictions on federally funded programs, see Alan W. Houseman, Restrictions by Funders and the Ethical Practice of Law, 67 Fordham L. Rev. 2187, 2189-90 (1999). Sources that fund the provision of legal aid are so scarce that lawyers are finding it more difficult to find or stay in jobs that facilitate free or affordable legal services. See Legal Aid Assn. of California, Shaping the Future of Justice: Effective Recruitment and Retention of Civil Legal Aid Attorneys in California (April 2010), available at <http://legalaidresearch.org/2013/02/22/shaping-the-future-of-justice-effective-recruitment-and-retention-of-civil-legal-aid-attorneys-in-california/> (discussing the retention problem for legal aid organizations in California).

lawyers.<sup>13</sup> A report from the National Legal Aid and Defender Association explains that across the country, defendants in lower criminal courts continue to be convicted and imprisoned without assistance of counsel.<sup>14</sup> Government appointed lawyers either are overwhelmed by the number of clients or lack the resources to properly investigate their cases.<sup>15</sup> There is free civil legal assistance available for households with incomes at 125 percent of the federal poverty threshold.<sup>16</sup> In 2010, this translated to a family of four with income of less than \$27,641—approximately 57 million eligible individuals.<sup>17</sup> Many individuals are eligible for free legal services but federally funded legal aid offices reported turning away 50 percent of the eligible population who sought their services.<sup>18</sup> Similarly, public defender offices work with client eligibility guidelines to provide basic representation but the resources for free services are insufficient.<sup>19</sup>

Unfortunately, the unmet legal services need is not just an issue for the poor. Millions of individuals in our country experience legal problems annually but do not earn enough to hire lawyers. Many middle-income individuals, living from paycheck to paycheck, do not qualify for free legal services and are priced out of the lawyer marketplace. The housing market crises and the economic downturn increased the number of Americans living below the poverty line or those who, despite their stable income, now are classified as near poor.<sup>20</sup> Many

13. Documenting the Justice Gap, *supra* note 10, at 18.
14. National Right to Counsel Committee, The Constitution Project and National Legal Aid & Defender Association, Justice Denied: American's Continuing Neglect of Our Constitutional Right to Counsel ix, (April 2009) [hereinafter NLADA Report], available at [http://www.nlada.org/DMS/Documents/1239831988.5/Justice%20Denied\\_%20Right%20to%20Counsel%20Report.pdf](http://www.nlada.org/DMS/Documents/1239831988.5/Justice%20Denied_%20Right%20to%20Counsel%20Report.pdf).
15. *Id.* at 59-69 (describing funding shortages, resource inequities and excessive caseloads).
16. In addition to low-income individuals, approximately 55 million elderly, 22 million veterans, over 36 million individuals with disabilities, 2.5 million American Indians, 1 million individuals living with HIV/AIDS, and 600,000 homeless people are eligible for free legal services. Courts also provide free self-help services to the general public through state court websites and court-based self-help centers. See Rebecca L. Sandefur, Access Across America: First Report of the Civil Justice Infrastructure Mapping Project, 10-11, ABA Civil Infrastructure Mapping Project (October 2011) [hereinafter Access Across America], available at [http://www.americanbarfoundation.org/uploads/cms/documents/access\\_across\\_america\\_first\\_report\\_of\\_the\\_civil\\_justice\\_infrastructure\\_mapping\\_project.pdf](http://www.americanbarfoundation.org/uploads/cms/documents/access_across_america_first_report_of_the_civil_justice_infrastructure_mapping_project.pdf).
17. *Id.* at 10. *But see* the 2010 U.S. Census figures reported that one-third of the country earned 100-200 percent of the poverty threshold, which was equivalent to \$24,343 for a family of four. Sabrina Tavernise & Robert Gebeloff, New Way to Tally Poor Recasts View of Poverty, N.Y. Times, Nov. 7, 2011, available at <http://www.nytimes.com/2011/11/08/us/poverty-gets-new-measure-at-census-bureau.html>.
18. Documenting the Justice Gap, *supra* note 10, at 1.
19. NLADA Report, *supra* note 14, at 51.
20. Associated Press, Poverty in United States Soars to Levels Not Seen Since 1960s, Fox News Latino, July 22, 2012, available at <http://latino.foxnews.com/latino/news/2012/07/22/poverty-in-united-states-soars-to-levels-not-since-since-160s/>; Editor, How America's Losing the War on Poverty, Tri States Public Radio, Aug. 4, 2012, available at <http://www>.

facing evictions or foreclosures are, for the first-time, confronted with an issue that requires involvement with the legal system.<sup>21</sup> In California, it was estimated that in 2000 more than 7.5 million individuals were not poor enough to qualify for free legal services but earned at or below the state median income.<sup>22</sup> This group struggles to find affordable legal advice for common matters such as housing, government benefits, consumer rights, employment law and other domestic concerns.<sup>23</sup> Further, some individuals who are faced with long periods of unemployment begin their own businesses. These business owners also require legal counsel when determining how to comply with government regulations, state laws and tax matters.

A 2011 study by the World Justice Project provided a sobering figure: the U.S. ranked among the lowest developed nations in providing access to justice to its citizens.<sup>24</sup> When compared with other countries, the U.S. ranked as 50th out of 66 nations in the ability of individuals to obtain legal counsel.<sup>25</sup> These domestic and global evaluations of our legal system highlight a significant problem that has been a subject of national debate for decades.<sup>26</sup> The discrepancy is in part explained by the high cost of lawyers, the underfunding of U.S. legal aid programs and also by a lack of coordination at the state and national levels.<sup>27</sup> When services are priced so high that they become cost-prohibitive, legal services consumers opt out of attorney representation on matters that would benefit from professional advice.

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tristatesradio.com/post/how-americas-losing-war-poverty.

21. Legal Services Corp., Report of the Pro Bono Task Force 1, 32, Oct. 2012 (citing Melanca Clark & Maggie Barron, *Foreclosures: A Crisis in Legal Representation* (Brennan Ctr. for Justice 2009), available at [http://www.lsc.gov/sites/default/files/LSC/lscgov4/PBTF\\_%20Report\\_FINAL.pdf](http://www.lsc.gov/sites/default/files/LSC/lscgov4/PBTF_%20Report_FINAL.pdf)).
22. Cal. Comm'n on Access to Justice, *Action Plan for Justice 2* (April 2007), available at <http://www.calbar.ca.gov/calbar/pdfs/reports/2007-Summary-Action-Plan-Justice.pdf>.
23. Jason DeParle et al., *Older Suburban and Struggling, "Near Poor" Startle the Census*, N.Y. Times, Nov. 18, 2011, available at <http://www.nytimes.com/2011/11/19/us/census-measures-those-not-quite-in-poverty-but-struggling.html?pagewanted=all> (reporting 2010 Census figures that state that one-third of all Americans are poor or near poor).
24. See Mark David Agrast et al., *Rule of Law Index, The World Justice Project 103* (2011) [hereinafter *Rule of Law Index*], available at [http://worldjusticeproject.org/sites/default/files/wjproli2011\\_o.pdf](http://worldjusticeproject.org/sites/default/files/wjproli2011_o.pdf). See also Steven Seidenberg, *Unequal Justice: U.S. Trails High-Income Nations in Serving Civil Legal Needs*, A.B.A. J., June 1, 2012 [hereinafter *Unequal Justice*], available at [www.abajournal.com/magazine/article/unequal\\_justice\\_u.s.\\_trails\\_high-income\\_nations](http://www.abajournal.com/magazine/article/unequal_justice_u.s._trails_high-income_nations).
25. *Rule of Law Index*, *supra* note 24, at 21.
26. For an early discussion of unmet legal needs, see Reginald Heber Smith, *Justice and the Poor* (The Carnegie Foundation for the Advancement of Teaching 1919).
27. *Unequal Justice*, *supra* note 24. See also Laura Arenschiold, *Funds for Free Legal Aid Sink as Need Rises*, Columbus Dispatch, Aug. 5, 2012, available at <http://www.dispatch.com/content/stories/local/2012/08/05/funds-for-free-legal-aid-sink-asneed-rises.html>.

*B. The Self-Represented*

In the last four decades, courts have seen a rise in the number of individuals who represent themselves.<sup>28</sup> The reasons why individuals represent themselves range from increasing literacy and confidence in one's abilities to the belief that lawyers are too expensive or that problems can be solved without the justice system's involvement.<sup>29</sup> The right to represent oneself before a tribunal is deeply rooted in our country's founding belief that "financial status should not have a substantial impact on the outcome of litigation."<sup>30</sup> However, the last national survey released by the ABA, in 1994, found that financial status is a factor that impacts whether or not individuals seek civil legal assistance.<sup>31</sup> Sixty-one percent of moderate-income households reported they did not seek assistance because the situation they were experiencing did not warrant intervention by a lawyer.<sup>32</sup> Seventy-one percent of low-income households reported they did not access the civil justice system to address their legal problems as a result of cost or a belief that the justice system would not help.<sup>33</sup> Subsequent court surveys reveal that cost of legal services is not the only factor contributing to the rise of self-represented litigants but most report a high number of poor or near poor individuals accessing those services.<sup>34</sup>

28. Drew A. Swank, *The Pro Se Phenomenon*, 19 *BYU J. Pub. L.* 373, 376-77 (2005) (examining the recent rise in pro se litigation). *See also* Administrative Office of the Courts, Judicial Council of California, Elkins Family Law Task Force: Final Report and Recommendations 10 (2010), available at <http://www.courts.ca.gov/documents/elkins-finalreport.pdf> (stating that in many communities across California, approximately 75 percent of family law cases include at least one party who represents himself).
29. *Id.* at 378-84. A national opinion survey found that 68 percent of the American public disagree with the statement that it is affordable to bring a case to court, and 58 percent opined it would be possible to represent oneself in court. *See* National Center for State Courts, *How the Public Views the State Courts: A 1999 National Study* (1999) [hereinafter NCSC], available at <http://www.ncsc.org/~media/Files/PDF/Topics/Gender%20and%20Racial%20Fairness/PublicViewCrtsPub.ashx>.
30. Tiffany Buxton, *Foreign Solutions to the U.S. Pro Se Phenomenon*, 34 *Case W. Res. J. Int'l L.* 103, 109 (2002).
31. Amer. Bar Assn. Consortium on Legal Services and the Public, *Legal Needs and Civil Justice: A Survey of Americans, Major Findings from the Comprehensive Legal Needs Study* (1994) [hereinafter *Legal Needs*], available at <http://www.americanbar.org/content/dam/aba/migrated/legalservices/downloads/sclaid/legalneedstudy.authcheckdam.pdf>.
32. NCSC, *supra* note 29 (survey respondents said they did not respond to the civil justice system because "the situation was not really a problem, that they could handle it on their own, and that a lawyer's involvement would not help"). *See also* Margaret Martin Barry, *Accessing Justice: Are Pro Se Clinics A Reasonable Response to the Lack of Pro Bono Legal Services and Should Law School Clinics Conduct Them?*, 67 *Fordham L. Rev.* 1879, 1883-84 (1999).
33. *Legal Needs*, *supra* note 31.
34. John M. Greacen, *Self Represented Litigants and Court and Legal Services Responses to Their Needs: What We Know* 3-5, July 20, 2002, available at <http://www.courts.ca.gov/partners/documents/SRLwhatweknow.pdf> (citing studies where majority of users earn incomes that classify them as poor or near poor). *But see* Swank, *supra* note 28, at 378-79.

Courts have responded to this preference for self-representation.<sup>35</sup> The Civil Justice Infrastructure Mapping Project of the American Bar Foundation found that every state in the U.S. has information online to help self-represented litigants and 98 percent of states have a selection of legal forms on those websites.<sup>36</sup> Further, more than 70 percent of states have at least one court-based self-help center that offers information and assistance to help individuals represent themselves.<sup>37</sup> The growing resources for legal services consumers provide options that are less costly than lawyers to sophisticated legal services consumers. Yet, these self-help resources are not always sufficient for individuals who face language barriers, suffer emotional trauma or quite simply are not sophisticated enough to understand confusing procedural issues.<sup>38</sup> When they hit these obstacles, many seek affordable non-lawyer options for assistance.

### C. Non-Lawyer Assistance

Prompted by legislative and executive responses to consumer needs, the bar has endorsed a limited class of paraprofessionals such as paralegals, legal document preparers and lay advocates in administrative proceedings, to provide limited assistance to litigants.<sup>39</sup> These non-lawyers assist the self-represented by translating legalese, demystifying the process and offering more affordable solutions. The legal profession has generally accepted these paraprofessionals if they facilitate the work of lawyers or handle routine matters. Still, bar associations, legislatures and courts limit non-lawyers through vague unauthorized practice of law statutes and standards that levy civil and criminal penalties on those exceeding their authority.<sup>40</sup> These

35. See Swank, *supra* note 28, at 376–78. See also Bonnie Rose Hough, Description of California Court’s Programs for Self-Represented Litigants (2003), available at [www.unbundledlaw.org/Program%20Profiles/California%20SRL%20Projects.pdf](http://www.unbundledlaw.org/Program%20Profiles/California%20SRL%20Projects.pdf) (summarizing data on the rise of pro se litigants in California’s family law courts).

36. Access Across America, *supra* note 16, at 12.

37. *Id.* Additionally, 59 percent of states have courthouses with computer terminals to assist self-represented litigants. These computers use software that explains how to respond to a claim. *Id.*

38. See Drew A. Swank, In Defense of Rules and Roles: The Need to Curb Extreme Forms of Per Se Assistance and Accommodation in Litigation, 54 Am. U. L. Rev. 1537, 1554–58 (2005) (discussing the limitations of the resources for self-represented litigants). See also Rebecca Sandefur, The Impact of Counsel, An Analysis of Empirical Evidence, 9 Seattle J. for Soc. Just. 51, 62–71 (2010) (summarizing studies showing that individuals represented by lawyers are more likely to win than those who represent themselves). See also D. James Greiner and Cassandra Wolos Pattanayak, Randomized Evaluation in Legal Assistance: What Difference Does Representation (Offer and Actual Use) Make?, 121 Yale L.J. 2118 (2012).

39. See Sande L. Buhai, Act Like a Lawyer, Be Judged Like a Lawyer: The Standard of Care for the Unlicensed Practice of Law, 2007 Utah L. Rev. 87, 101–28 (2007) (describing the ways in which non-lawyers perform routine legal tasks).

40. Deborah Rhode, Policing the Professional Monopoly: A Constitutional and Empirical Analysis of Unauthorized Practice Prohibitions, 34 Stan. L. Rev. 1 (1981). See also John S. Dzienkowski & Robert J. Peroni, Multidisciplinary Practice and the American Legal



restrictions have supported lawyers' monopoly over the pricing of legal services.<sup>41</sup> High hourly rates for legal fees are the norm and such price tags hinder affordable legal assistance by lawyers.<sup>42</sup>

The concern for the lack of affordable legal services is prompting some states to consider offering a limited license to non-lawyers to provide limited legal advice. The Washington Supreme Court approved a court rule to that effect.<sup>43</sup> The regulations for the program are in development but these new Limited License Legal Technicians promise to provide more affordable options that help address needs of legal services consumers that cannot pay lawyers market rates.<sup>44</sup> They will be highly regulated by the bar and therefore will not pose a great threat to lawyer hourly rate.

The legal profession has had less luck in curtailing the efforts of non-lawyer for-profit entities that leverage technology to respond to unaddressed legal needs in the general population. A new group of non-lawyer businesses not subject to regulation by the bar have begun to erode the lawyer marketplace.<sup>45</sup> These technology-dependent entities ease consumers' access to legal information and legal documents at a fraction of the price that lawyers charge.<sup>46</sup> In a difficult economy, these new players offer consumers a welcome cost-effective alternative. Legal Zoom, the best-known of these entities providing legal document generation, reported 2 million customers and \$100 million in revenue in 2011. That same year, LegalZoom sold its minority shares for \$41 million.<sup>47</sup> Main Street lawyers who have traditionally performed routine legal

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Profession: A Market Approach to Regulating the Delivery of Legal Services in the Twenty-First Century, 69 *Fordham L. Rev.* 83 (2000).

41. George B. Shepherd & William G. Shepherd, *Scholarly Restraints? ABA Accreditation and Legal Education*, 19 *Cardozo L. Rev.* 2091, 2100-09 (1998) (arguing that the ABA exerts monopoly power over legal training, law faculty hiring, the legal services market and universities' internal funding).
42. See Gillian K. Hadfield, *The Price of Law: How the Market for Lawyers Distorts the Justice System*, 98 *Mich. L. Rev.* 953, 957 (2000) (discussing lawyer hourly rates).
43. *Washington Courts, Supreme Court Adopts Rule Authorizing Non-Lawyers to Assist in Certain Civil Legal Matters*, June 15, 2012, available at <http://www.courts.wa.gov/newsinfo/?fa=newsinfo.internetdetail&newsid=2136>.
44. Limited License Legal Technicians are expected to have educational and exam requirements, ethical obligations, and disciplinary procedures. See *Washington State Bar Assn., Limited License Legal Technician Board* (2013), available at <http://www.wsba.org/Legal-Community/Committees-Boards-and-Other-Groups/Limited-License-Legal-Technician-Board>.
45. Marty Rauli, *Law Practice Management Section: eLawyering Task Force*, A.B.A., Nov. 21, 2011, available at <http://apps.americanbar.org/dch/committee.cfm?com=EP024500>.
46. See Isaac Figueras, *The LegalZoom Identity Crisis: Legal Form Provider or Lawyer in Sheep's Clothing?*, 63 *Case W. Res. L. Rev.* 1419 (2013).
47. Nolo was purchased for \$21 million, RocketLawyer was purchased for \$18.5 million. See Daniel Fisher, *Entrepreneurs Versus Lawyers*, *Forbes*, Oct. 24, 2011, available at <http://www.forbes.com/forbes/2011/1024/entrepreneurs-lawyers-suh-legalzoom-automate-daniel-fisher.html>.

services at market rates are losing market share to corporate entities such as LegalZoom. In response, some attorneys and state bar associations allege that these new providers are engaging in unauthorized law practice.<sup>48</sup> To date, the claims that these new corporate operations are overstepping their authority have proven ineffective against the widespread practice of legal document preparation.<sup>49</sup>

Like the paraprofessionals who preceded them, these new providers offer the American public information and resources more affordable and accessible than lawyers. These various consumer-responsive efforts help bridge access to justice but they often fail to provide solutions for complex legal issues. Completing form documents facilitates the legal process but there are cases and clients that require the specialized training of attorneys.

## II. The Legal Market Failure.

Recent law graduates who struggle in a changing legal marketplace with high educational debt question the value of their law degree. Alumni of a handful of law schools have even sued their alma mater alleging fraudulent representation of employment statistics.<sup>50</sup> The outcry by unemployed and underemployed lawyers has caused some commentators and scholars to denounce non-elite law schools as the problem with legal education.<sup>51</sup> Critics classify law schools with low employment placement rates and high student debt as failing law schools.<sup>52</sup> While most legal education programs could use restructuring, to blame a market failure on a specific subset of law schools diverts attention from the macro-economic problems facing legal education. The unmet legal needs of millions of individuals and the underemployment of lawyers signal problems that stem from a market failure that is primarily based on the monopoly that elite lawyers have on the legal profession.

48. Laurel A. Rigertas, *Stratification of the Legal Profession: A Debate in Need of a Public Forum*, 2012 Prof. Law 79, 123-26 (2012) (describing the regulation of law practice and its impact on consumers). *See also* Los Angeles Office of the District Attorney, *Unauthorized Practice of Law—Manual for Prosecutors* (2004), available at <http://da.co.la.ca.us/pdf/UPLpublic.pdf>.

49. Figueras, *supra* note 46, at 1431-37.

50. Lawsuits against DePaul University College of Law, New York Law School, and Thomas M. Cooley Law School have already been dismissed but as of July 1, 2013, the following 12 law schools remain in litigation: Albany Law School, Brooklyn Law School, California Western School of Law, Chicago-Kent College of Law, Florida Coastal School of Law, Golden Gate University School of Law, John Marshall Law School, Maurice A. Deane School of Law at Hofstra University, Southwestern Law School, Thomas Jefferson School of Law, University of San Francisco Law School, and Widener University School of Law. For more on lawsuits against law schools see, Luz E. Herrera, *Training Lawyer-Entrepreneurs*, 89 Den. U. L. Rev. 887, 890, fn. 19 (2012) [hereinafter *Lawyer-Entrepreneurs*].

51. Paul Campos to *Inside the Law School Scam*, <http://www.insidethelawschoolscam.blogspot.com> (Feb. 24, 2013).

52. Tamanaha, *supra* note 3. *See also* Paul Campos, *Don't Go to Law School (Unless)* (CreateSpace Independent Pub. Platform 2012).

*A. Elite Lawyers' Monopoly.*

The legal profession has the exclusive right to regulate how legal services are delivered.<sup>53</sup> This monopoly is maintained by instituting barriers for entry into the profession through mechanisms such as law school accreditation standards and bar exams, in addition to unauthorized practice of law statutes.<sup>54</sup> These controls, which guarantee a minimal level of competency and consumer protection, also limit access to who provides and receives legal services.<sup>55</sup>

Regardless of the barriers to entry, the number of lawyers grew approximately 424 percent in the 50 years between 1961 and 2011.<sup>56</sup> The growth of the legal profession has been attributed to a reduction of barriers for law school. In the last 30 years, the population of women lawyers grew from 8 percent in 1980 to 30 percent in 2005.<sup>57</sup> The Law School Admissions Council (LSAC) reported that the number of women enrolled in law school in the 2011-2012 academic year constituted 46.7 percent of all law students.<sup>58</sup> The same source states 24.5 percent of J.D. students identified as minority students in that academic year.<sup>59</sup> These changes in the law student population promise to diversify the legal profession, which the 2010 U.S. Census found was still 88 percent non-Hispanic white.<sup>60</sup>

Lawyers constitute less than half of one percent of the U.S. population.<sup>61</sup> Considering the increasingly complex and litigious society in which we live, the number of lawyers does not seem excessive. The problem is that recent employment projections reveal there are approximately 25,000 job openings

53. The monopoly over legal services is embedded in the judicial branch as part of our democratic system of checks and balances. See Art. I, §8, cl. 18 of the U.S. Constitution. Laurel A. Rigertas, *Lobbying and Litigating Against "Legal Bootleggers"—The Role of the Organized Bar in the Expansion of the Courts' Inherent Powers in the Early Twentieth Century*, 46 Cal. W. L. Rev. 65 (2009).
54. Shepherd, *supra* note 41.
55. Rigertas, *supra* note 48, at 112-126 (2012) (describing the regulation of law practice and its impact on consumers).
56. Amer. Bar Assn., *Total National Lawyer Counts, 1878-2011*, available at [http://www.americanbar.org/resources\\_for\\_lawyers/profession\\_statistics.html](http://www.americanbar.org/resources_for_lawyers/profession_statistics.html). The ABA Market Research Department's National Lawyer Population Survey states that in 1961 there were 288,746 lawyers. In 2011 the total number of licensed lawyers grew to 1,225,452, an increase of about 424 percent in 50 years. The US population in 1960 stood at 179,323,175 and grew to 308,745,538 in 2010 making it a 172 percent increase according to the United States Census 2010, available at <http://www.census.gov/2010census/data/apportionment-pop-tex.php>.
57. Lawyer Demographics, *supra* note 5.
58. *Id.*
59. Amer. Bar Assn., *First Year J.D. and Total J.D. Minority Enrollment, 1971-2011*, available at [http://www.americanbar.org/content/dam/aba/administrative/legal\\_education\\_and\\_admissions\\_to\\_the\\_bar/statistics/jd\\_enrollment\\_1yr\\_total\\_minority.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/jd_enrollment_1yr_total_minority.authcheckdam.pdf).
60. Lawyer Demographics, *supra* note 5.
61. The ABA Market Research Department reported that there were 1,268,011 lawyers as of April 2013. *Id.*

for lawyers but law schools graduate up to 45,000 prospective lawyers each year.<sup>62</sup> Being transparent when articulating the value of legal education requires that we clearly define the problem that results from a limited number of jobs that compensate lawyers with the type of salaries they need to live comfortably and pay off their educational debt. Having more lawyers than legal jobs is not a new phenomenon. A large percentage of lawyers have always created their own jobs, principally as solo practitioners.<sup>63</sup>

Failure to disclose the full spectrum of outcomes creates an unequal bargaining position. Monopolies are maintained by asymmetric information. Providing prospective law students with information about where lawyers work and how they make a living can better prepare future lawyers to tailor their expectations and plan for the future. Only one percent of all lawyers are employed as public defenders or legal aid lawyers, 4 percent are employed in education and the judiciary and another 8 percent work as government lawyers.<sup>64</sup> Approximately 8 percent of lawyers are employed in business while another 4 percent are inactive or retired.<sup>65</sup> The remaining 75 percent of all attorneys work in private practice.<sup>66</sup> Of those private practitioners, 20 percent work in law firms of more than 50 lawyers, 18 percent work in firms of six to 50, and 14 percent work in small law offices of two to five lawyers.<sup>67</sup> The largest group of lawyers is made up of solo practitioners.<sup>68</sup> They accounted for 49 percent of the private bar in 2005 and that figure was similar in 1980.<sup>69</sup> Understanding the legal profession requires that we come to terms with the fact that many lawyers create their own employment opportunities. Although the number of self-employed lawyers might be higher in coming years, given layoffs and the unemployment of new law school graduates, attorney self-employment is not a new phenomenon.

The notion that lawyers will find jobs that pay six figure salaries has been primarily a reality for graduates of elite law schools and those with strong professional networks or extraordinary credentials.<sup>70</sup> Until employment prospects began to wane for elite law school graduates, most ABA leaders and law professors were largely unaffected by the prospect of self-employment.

62. Tamanaha, *supra* note 3, at 139. Deborah Jones Merritt, The Job Gap, The Money Gap, and the Responsibility of Legal Educators, 41 Wash. U. J.L. & Pol'y 1, 3-6 (2013) (discussing employment projections for lawyers).

63. *See infra* Part IIB.

64. Lawyer Demographics, *supra* note 5.

65. *Id.*

66. *Id.*

67. *Id.*

68. *Id.*

69. *Id.*

70. William D. Henderson & Rachel M. Zahorsky, The Pedigree Problem: Are Law School Ties Choking the Profession?, A.B.A. J. 36 (July 2012).

Many traditional law school faculties and national bar leaders are graduates of elite or highly ranked law schools.<sup>71</sup> Although they comprise a small sector of the bar, they command a significant leadership role in the legal profession. As a result, they have been and continue to be chiefly responsible for the establishment of the current paradigm of legal education.

Valuations of law schools based on post-graduate employment opportunities tend to favor elite and regional law schools with greater prestige.<sup>72</sup> Some graduates of low-ranked law schools secure employment in business, government and the public interest sector but the majority of lawyers eventually work to generate their own income in solo and small law firms.<sup>73</sup> Even lawyers who work in larger firms ultimately are required to bring in their own clients to advance to partner or equity owner of the law firm. New consumer watch groups have emerged to ensure that law schools provide accurate information about employment prospects.<sup>74</sup> Still, the knowledge that upon graduation, one may be self-employed or need to generate one's own income can be daunting to individuals contemplating taking on high educational debt.

In 2011, the ABA reported that the annual cost of the average law school tuition and fees was \$39,496 for private schools and \$19,788 for resident students at public law schools.<sup>75</sup> These figures represent an increase in tuition of 173 percent for private schools and 256 percent for public schools since 2001.<sup>76</sup> Educational debt increased by at least twice the rate of inflation in the last two decades.<sup>77</sup> The average debt for law students graduating in 2011 was \$75,728 for public schools and \$124,950 for private schools.<sup>78</sup> In states like California,

71. 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, 902-03 (2007) (stating that most law school faculty are products of elite law schools).
72. *Id.*
73. Lawyer-Entrepreneurs, *supra* note 50, at 902-910.
74. Lawyers disgruntled with their law schools have effectively used the Internet and social media to express their anger and disappointment. For a full discussion of their concerns about the information deficit with respect to employment see Kyle P. McEntee & Patrick J. Lynch, *A Way Forward: Transparency at American Law Schools*, 32 *Pace L. Rev.* 1, 13-48 (2012).
75. Amer. Bar Assn., *Law School Tuition 1985-2011*, available at [http://www.americanbar.org/content/dam/aba/administrative/legal\\_education\\_and\\_admissions\\_to\\_the\\_bar/statistics/ls\\_tuition.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/ls_tuition.authcheckdam.pdf).
76. *See id.* Median tuition in 2001 for private schools was \$22,879 and \$7,738 for public schools. *Id.* For a discussion about the rise in tuition and factors contributing to cost, see Paul Campos, *The Crisis of the American Law School*, 46 *U. Mich. J. L. Reform* 177, 179-212 (2012).
77. Karen Sloan, *Tuition is Still Growing*, *Nat'l L. J.*, Aug. 20, 2012, at 4 (reporting that tuition in 2012 increased at more than double the rate of inflation).
78. Amer. Bar Assn., *Average Amount Borrowed for Law School 2001-2010*, available at [http://www.americanbar.org/content/dam/aba/administrative/legal\\_education\\_and\\_admissions\\_](http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_)

where almost 20 percent of all U.S. lawyers are licensed,<sup>79</sup> the annual price tag to attend the least expensive public law school is about \$47,000.<sup>80</sup> In addition, these law schools estimate living expenses add at least another \$23,000 each year.<sup>81</sup> A public law school education with a price tag of over \$200,000 is a reality for many new lawyers. While different income-based and public loan repayment programs help new lawyers and law students manage the cost of their education,<sup>82</sup> critics insist these programs only mask the problem.<sup>83</sup> They cite large tax penalties, low credit ratings and inconsistent eligibility for these programs as difficulties that these programs have not yet addressed.<sup>84</sup>

To ignore that education debt burdens the provision of affordable legal services is to show disregard for the average legal services consumer. The price tag of a law degree offers lawyers justification to charge high rates for their services. The lack of oversight over how much attorneys charge clients provides few incentives for lawyers to reduce the cost of legal services. The current legal education structure endorses a market where most lawyers charge fees above what an average consumer can pay.<sup>85</sup> As a result, many consumers are forced to either pay high hourly rates or opt out of hiring a lawyer. The information imbalance created by a lawyer monopoly over legal services permits the most elite law schools and lawyers to set the standard and charge more than is necessary.<sup>86</sup> The most prestigious law schools have justified their tuition

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to\_the\_bar/statistics/avg\_amnt\_brwd.authcheckdam.pdf. See also Debra Cassens Weiss, Average Debt of Private Law School Grads Is \$125K; It's Highest at These Five Schools, A.B.A. J. (Mar. 28, 2012), available at <http://www.abajournal.com/news/article/average-debt-load-of-private-law-grads-is-125k-these-five-schools-lead-to-m>.

79. Lawyer Demographics, *supra* note 5.
80. California has five public law schools with tuition and mandatory fees that range from \$46,805.50 at UC Irvine to \$49,564 at UC Davis. See UC Irvine School of Law, School of Law Fees, available at <http://reg.uci.edu/fees/2012-2013/law.html>; UC Davis School of Law, Financial Aid, Cost of Attendance, available at <http://www.law.ucdavis.edu/current/financial-aid/cost-of-attendance.html>. The fees include a \$2,000-\$3400 health insurance fee which may be waived. *Id.*
81. UC Hastings College of Law and Berkeley Law estimate student living expenses over a nine-month period at \$23,613 and \$23,176, respectively. See 2013-14 Estimates, available at <http://www.uchastings.edu/about/admin-offices/financial-aid/cost/2013-14/index.php>; Fees & Costs of Attendance, available at <http://www.law.berkeley.edu/6943.htm>.
82. Philip G. Schrag & Charles W. Pruet, Coordinating Loan Repayment Assistance Programs with New Federal Legislation, 60 J. Legal Educ. 583 (2011).
83. Tamanaha, *supra* note 3, at 119-25. But see Phillip G. Schrag, Failing Law Schools—Brian Tamanaha's Misguided Missile (November 2012), available at <http://ssrn.com/abstract=2179625>.
84. Tamanaha *supra* note 3, at 119-25.
85. See George C. Harris & Derek F. Foran, The Ethics of Middle-Class Access to Legal Services and What We Can Learn from the Medical Profession's Shift to a Corporate Paradigm, 70 Fordham L. Rev. 775, 796-803 (2001) (explaining how fees are driven by commercial interests and supported by lawyers' ethics rules).
86. Maulik Shah, The Legal Education Bubble: How Law Schools Should Respond to Changes

increases by placing their graduates in jobs with lucrative salaries. Most law schools have a difficult time delivering the same result but feel compelled to price their product similarly in order to stay competitive.<sup>87</sup> Information deficits are reflected not just in the high cost of legal education and the pricing of legal services but in the resulting stratification of lawyers.

### *B. Lawyer Stratification*

Bar admissions requirements correlate with socio-economic factors that in turn produce a stratified legal profession.<sup>88</sup> Requirements such as standardized tests and attendance at expensive ABA-accredited law schools exclude many individuals from highly disadvantaged backgrounds.<sup>89</sup> These requirements, shown to correlate with social and economic status of law school applicants, determine where a prospective law student is admitted.<sup>90</sup> In turn, the law school from which lawyers graduate largely defines their work setting.<sup>91</sup>

Who lawyers represent determines their status in the profession. The first empirical study of a cross-section of all Chicago lawyers in 1975 found the profession was divided into two distinct hemispheres: lawyers who represented corporate interests and lawyers who represented the interests of individuals and small businesses.<sup>92</sup> The prestige, income, networks, and relationships of lawyers correlated to an attorney's client-base.<sup>93</sup> Attorneys who served corporate clients enjoyed greater prestige and income than attorneys who provided legal services to individuals and small businesses.<sup>94</sup> The Chicago lawyers study found that demographic characteristics reflected the type of law

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in the Legal Market, 23 *Geo. J. Legal Ethics* 843, 851-855 (2010) (discussing the lack of information provided to prospective law students and suggestions for changes).

87. Tamanaha, *supra* note 3, at 71-84.
88. Joyce Sterling, et al, The Changing Social Role of Urban Law Schools, 36 *Sw. U. L. Rev.* 389, 394-398 (2007) (providing context of professional stratification and summarizing findings from the After the J.D. (AJD) Study, an ongoing national longitudinal survey of law graduates admitted to the bar in 2000 and who graduated from law school between July 1998 and 2000).
89. *Id.* at 405. See also Phoebe A. Haddon & Deborah W. Post, Misuse and Abuse of the LSAT: Making the Case for Alternative Evaluative Effort and a Redefinition of Merit, 42 *St. John's L. Rev.* 41 (2006).
90. Sterling, *supra* note 88, at 404-05.
91. *Id.* at 409-11.
92. John P. Heinz & Edward O. Laumann, *Chicago Lawyers: The Social Structure of the Bar* 319-20 (Northwestern Univ. Press, 2d ed. 1994). The Chicago lawyers study did not focus on solo and small firm lawyers but instead randomly selected 777 lawyers from the full spectrum of lawyers in Chicago.
93. *Id.* at 127-28.
94. *Id.* at 134.

schools lawyers attended.<sup>95</sup> Lawyers who attended elite law schools were less likely to practice in solo or small firms.<sup>96</sup>

Twenty years later, the 1995 Urban lawyers study described an even more specialized and fragmented bar.<sup>97</sup> Large law firms with large corporate clients in Chicago continued to attract a disproportionate number of graduates from prestigious law schools.<sup>98</sup> Yet, these firms employed only 5 percent of local law school graduates.<sup>99</sup> Solo and small firms primarily represented individuals with personal legal services<sup>100</sup> but found increased competition for a fixed amount of work.<sup>101</sup> Lawyers in solo and small firm practice earned less than their counterparts had in 1975.<sup>102</sup>

The After the J.D. Project (AJD) found that local law school graduates continue to dominate the small firm and solo practitioner sectors.<sup>103</sup> This national longitudinal study confirmed that law schools that produce lawyers who work in the personal services sphere are deemed less prestigious than those whose graduates work with corporate clients.<sup>104</sup> While graduates of independent law schools<sup>105</sup> were found to spend approximately two-thirds of

95. *Id.* at 183, tbl.6.1 (“Percentage Distribution of Practitioners from Given Ethnoreligious Backgrounds by Type of Law School Attended (Whites Only)”).

96. Sterling, *supra* note 88, at 398 (explaining that 63 percent of graduates from the top 10 elite law schools and 45 percent of the top graduates from schools ranked 11–32 are working in firms of more than 100 lawyers).

97. John P. Heinz, et al., *Urban Lawyers: The New Social Structure of the Bar 6–7* (Univ. of Chicago Press 2005); Carroll Scron, *The Status of Legal Professionalism at the Close of the Twentieth Century: Chicago Lawyers and Urban Lawyers*, 32 *Law & Soc. Inquiry* 581, 582 (2007).

98. Heinz, *supra* note 97, at 175.

99. *Id.* at 58, tbl. 3.1; see Jonakait, *supra* note 71, at 875–76.

100. Heinz, *supra* note 97, at 69–70 and tbl.3.2.

101. *Id.* at 162–65.

102. *Id.* at 317 (“Solo practitioners declined from 21 percent to 15 percent of practicing lawyers, but from 19 percent to 10 percent in income share . . . . In 1995, the 25 percent of lawyers with the highest incomes received 61 percent of total practice incomes, while the bottom 25 percent received only 6 percent.”).

103. *After the J.D.: First Results of a National Study of Legal Careers 25* (Amer. Bar Found. 2004), available at <http://www.americanbarfoundation.org/uploads/cms/documents/ajd.pdf>. See also Jonakait, *supra* note 71, at 864 (stating that solo and small firm attorneys continue to principally render personal legal services and serve small businesses).

104. Jonakait, *supra* note 71, at 864.

105. Independent law schools refer to schools that are not part of a university. These law schools in addition to non-elite urban law schools were formed to increase access to the profession by establishing less restrictive admission requirements. Sterling, *supra* note 88, at 390–95. See also Dorothy E. Finnegan, *Raising and Leveling the Bar: Standards, Access and the YMCA Evening Law Schools, 1890–1940*, 55 *J. Legal Educ.* 208 (2005) (describing the development and contributions of part-time law schools).



their time serving individuals,<sup>106</sup> graduates of elite law schools predominate in large corporate law practice.<sup>107</sup> Lawyers representing Main Street, and not corporate interests, graduate from lower ranked law schools and make less than their elite law school counterparts despite working as hard.<sup>108</sup>

Perhaps surprisingly to some, interviews with AJD survey participants found that solo and small firm lawyers are satisfied with their decision to become a lawyer.<sup>109</sup> In fact, graduates of fourth-tier law schools expressed greater career satisfaction than graduates of elite law schools.<sup>110</sup> Conclusions from this latest empirical data explain that perhaps graduates of lower tiered schools justify their lower wages and less career mobility by “accepting their place in the profession’s hierarchy.”<sup>111</sup> Graduates of lower ranked schools tend to acknowledge their law degrees as a boost to their professional development,<sup>112</sup> value service to clients and are least likely to cite prestige and mobility as important considerations in their job choice.<sup>113</sup> These findings reveal that the value of a legal education will differ for individuals based on their socioeconomic background and their ability to make a living.<sup>114</sup> A law degree that does not produce full-time employment or place a lawyer in the top percentile of earners in this country may not be valuable to some, particularly to graduates of elite law schools. The same degree, but perhaps from a less prestigious law school, may be deemed valuable because it promises to open opportunities to advocate, to be part of an esteemed profession or to command a higher salary than would otherwise be available.<sup>115</sup> To determine whether law school is worth it, a prospective student must be honest about his or her motivations to become a lawyer. A law degree opens doors to courtrooms, boardrooms and other places of power that are not accessible to lay advocates but it does not guarantee wealth.

106. Sterling, *supra* note 88, at 406–407. Also, graduates of independent law schools are more likely to work in business and be older, probably reflecting law school as a choice for career advancement in an established field. *Id.*

107. *Id.* at 405–06. The article reports that graduates of the elite 31 law schools represent individual clients only 40 percent of the time and that all other law school graduates spend at least 50 percent of their time representing individuals. *Id.* at 414.

108. Bryant Garth & Ronit Dinovitzer, Lawyer Satisfaction in the Process of Structuring Legal Careers, 41 *Law & Soc. Rev.* 1, 40 (2007).

109. *Id.* at 21–23.

110. *Id.*

111. *Id.* at 43.

112. *Id.* at 40.

113. *Id.*

114. These findings require a deeper probe into the characteristics of who expresses such high dissatisfaction with law school on blogs and who is condemning the existence of lower tier schools.

115. Rebecca Sandefur, Staying Power: The Persistence of Social Inequality in Shaping Lawyer Stratification and Lawyers’ Persistence in the Profession, 36 *Sw. U. L. Rev.* 539, 545 (2007).

The Bureau of Economic Analysis revealed that the legal services industry grossed the highest revenues on record in 2012.<sup>116</sup> The U.S. Department of Labor reported the annual median salary for lawyers in May 2012 was \$113,530.<sup>117</sup> Lawyers' median salaries are two and a half times that of the average worker in the U.S.<sup>118</sup> However, the pie is not equally divided among all lawyers. Half of all lawyers make less than the median. The median for experienced legal services attorneys is \$65,000 and \$78,600 for public defenders with 11 to 15 years of experience.<sup>119</sup> New lawyers, particularly those who do not graduate from elite law schools, account for the lower than average median. A 2013 industry survey projecting starting salaries reports that experience and practice setting help determine salary.<sup>120</sup> The more experience and the larger the law firm, the larger the salary. Also, lawyers with "strong business development skills and extensive client contacts" are paid a premium.<sup>121</sup> The survey also states that the job market for new graduates is highly competitive as "firms focus their hiring on experienced lawyers rather than new graduates."<sup>122</sup>

The National Association of Law Placement (NALP) reported the national median salary for the class of 2012 as \$61,245 with an unemployment rate of 12.8 percent.<sup>123</sup> NALP affirms that the job market has been generally difficult for many law graduates but that the current market downturn has disproportionately effected employment at large law firms.<sup>124</sup> Since graduates of the highest ranked law schools are given priority for employment above all other law school graduates, the opportunities for employment as lawyers have

116. With the exception of a peak in 2008, \$269.9 billion in 2011. \$272.8 billion in 2008. U.S. Bureau of Economic Analysis, Gross Output by Industry—Legal Services, November 13, 2012.
117. U.S. Dept. of Labor, Bureau of Labor Statistics, Occupational Wages and Employment, May 2012, *available at* <http://www.bls.gov/oes/current/oes231011.htm>. This figure does not include the salary of self-employed lawyers. *Id.* at n.1.
118. The median household income was \$50,054 in 2011 as reported by the U.S. Census Bureau, Income, Poverty, and Health Insurance Coverage in the United States: 2011, *available at* <http://www.census.gov/hhes/www/income/index.html>.
119. Nat'l Assn. of Law Placement, New Public Interest and Public Sector Salary Figures from NALP Show Little Growth Since 2004 (October 18, 2012) [hereinafter Public Interest], *available at* [www.nalp.org/2012\\_pubint\\_salaries](http://www.nalp.org/2012_pubint_salaries).
120. Robert Half Legal, 2013 Salary Guide 8, *available at* <http://www.roberthalflegal.com/EmployerFreeResources>.
121. *Id.* at 4.
122. *Id.*
123. Nat'l Assn. of Law Placement, Law School Class of 2012 Finds More Jobs, Starting Salaries Rise—But Large Class Size Hurts Overall Employment Rate, June 20, 2013, *available at* [http://www.nalp.org/classof2012\\_selected\\_pr](http://www.nalp.org/classof2012_selected_pr). *See also* Karen Sloan, NALP: Law Grads' Jobs Rate Falls for Fifth Straight Year, Nat'l L. J., June 20, 2013, at 2.
124. James G. Leipold, The New Entry-Level Legal Employment Market, Bar Examiner, June 6, 2013, *available at* [http://www.ncbex.org/assets/media\\_files/Bar-Examiner/articles/2013/820213Leipold.pdf](http://www.ncbex.org/assets/media_files/Bar-Examiner/articles/2013/820213Leipold.pdf).

declined.<sup>125</sup> As a result, 6.7 percent of 2012 graduates were employed in jobs where neither a law degree was required nor served as an advantage.<sup>126</sup> NALP explains that employment patterns in the legal profession are influenced by the national recession in which the legal sector lost approximately 60,000 jobs as a result of technological advances that reduce the cost of labor and the outsourcing of work to countries with a less expensive labor force.<sup>127</sup> These same forces have affected the income streams of Main Street lawyers.

We know little about the overall salaries of Main Street lawyers other than they tend to be lower than that of corporate lawyers.<sup>128</sup> A recent study of 29 Minnesota Main Street lawyers found that their median net income was \$75,320.<sup>129</sup> The lowest earners were lawyers with less experience and the attorneys with six figure salaries were specialists.<sup>130</sup> To earn their income, these attorneys reported working a median of 48.7 hours per week.<sup>131</sup> Some worked year round and did not take a vacation while others took up to six weeks per year.<sup>132</sup> The financial success of Main Street lawyers is largely dependent on their client's ability to pay, the area of law they practice and their ability to maximize their market niche. There are Main Street lawyers who have developed lucrative careers representing plaintiffs against corporate interests and those who struggle to make a living by charging clients moderate hourly rates. Many Main Street lawyers often begin their careers working part-time for solo and small law firms. Lawyers who reluctantly become Main Street lawyers learn the business of law haphazardly. Most do not think of themselves as entrepreneurs or as small business owners and many report learning the business of law on their own. Some learn how to run their law firms by working for others as independent contractors at rates of \$30 to \$50 per hour.

Legal fees exceeding \$300 an hour are commonplace on Main Streets in large metropolitan areas. Lawyers who represent large corporate entities and economically privileged individuals charge even higher rates. The idea that an attorney should lower their fee to be more accessible to the client population is something that the legal profession has not embraced. Experienced lawyers

125. *Id.*

126. See Public Interest, *supra* note 119.

127. Leipold, *supra* note 124, at 7.

128. See Gillian K. Hadfield, Higher Demand, Lower Supply? A Comparative Assessment of the Legal Resource Landscape for Ordinary Americans, 37 *Fordham Urb. L.J.* 129, 129-34 (2010) (discussing the lack of information on the cost of and need for legal services among middle-income Americans). For a discussion about the need for more research on the cost of legal services, see Deborah L. Rhode, Access to Justice: An Agenda for Legal Education and Research, 62 *J. Legal Ed.* 531, 535-542 (2013).

129. See Ann Juergens, Valuing Small Firm and Solo Practice: Models for Expanding Services to Middle Income Clients, 39 *Wm. Mitchell L. Rev.* 80, 99-103 (2012).

130. *Id.* at 103-04.

131. *Id.* at 104

132. *Id.*

often advise novice lawyers against charging lower rates and building a reputation as the “cheap lawyer.” The implication is that a less expensive lawyer delivers a substandard service.<sup>133</sup> While it is true that a more thorough job will require more time and often increase a legal bill, affordable does not have to be substandard. Charging a rate lower than market to a client-base who earn an hourly median income of \$16.71 is simply better economics for Main Street lawyers.<sup>134</sup> New Main Street lawyers who struggle to secure a client who can pay them \$300 per hour may end up with more clients by charging \$150. If a Main Street lawyer develops a model in which she collects 20 hours at \$150 each week, her gross income will average about \$12,000 per month or up to \$150,000 per year.<sup>135</sup> The financial viability of Main Street lawyers is largely dependent on their clients’ ability to pay, the area of law they practice and their business skills.

A Main Street lawyer’s low-bono fee structure must consider the overhead of running a business, living expenses and paying down educational debt. Main Street lawyers can significantly reduce their business overhead by integrating technology into their practices. As they are building or re-tooling their practices, new Main Street lawyers can reduce their cost of living by opting out of luxury housing and transportation options. Despite the discipline, educational debt that exceeds \$120,000, and perhaps even \$200,000, can become a major obstacle when determining how much to charge clients for legal services.<sup>136</sup>

The journey to financial success for Main Street lawyers is not always easy or speedy. However, those who have the courage, creativity and diligence to identify a market need and incorporate technology in their practices can still do well and also do good.

133. See George A. Akerlof, *The Market for “Lemons”: Quality Uncertainty and the Market Mechanism*, Q. J. Econ. (1970) (describing the problem of used cars, which consumers assumed to be lower quality, and which ultimately excludes a market for good used cars from developing).
134. U.S. Dept. of Labor, Bureau of Labor Statistics, May 2012 National Occupational Employment and Wage Estimates, available at [http://www.bls.gov/oes/current/oes\\_nat.htm#00-0000](http://www.bls.gov/oes/current/oes_nat.htm#00-0000). The national annual mean wage was \$45,790 in 2012. *Id.*
135. The monthly gross salary figure is calculated based on collecting fees for 20 billable hours at \$150 per hour x 4 weeks. The annual gross salary estimate is reached by assuming the collection of 20 billable hours per week at \$150 x 50 weeks. Gross salary estimates do not account for payment of taxes and costs associated with self-employment.
136. The ABA’s most recent data find that, on average, 2010–2011 graduates of private law schools borrowed \$124,950 and graduates of public law schools borrowed \$75,728, available at [http://www.americanbar.org/content/dam/aba/administrative/legal\\_education\\_and\\_admissions\\_to\\_the\\_bar/statistics/avg\\_amnt\\_brwd.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/avg_amnt_brwd.authcheckdam.pdf). See also Debra Cassens Weiss, *Average Debt of Private Law School Grads Is \$125K; It’s Highest at These Five Schools*, A.B.A. J. Mar. 28, 2012, available at [http://www.abajournal.com/news/article/average\\_debt\\_load\\_of\\_private\\_law\\_grads\\_is\\_125k\\_these\\_five\\_schools\\_lead\\_to\\_m\\_loan\\_repayment\\_programs\\_consider\\_gross\\_income](http://www.abajournal.com/news/article/average_debt_load_of_private_law_grads_is_125k_these_five_schools_lead_to_m_loan_repayment_programs_consider_gross_income).

### III. Legal Education for Main Street Lawyers

As the ABA considers how law schools in the 21st century should deliver a quality legal education, it must keep in mind how the cost of a legal education affects a lawyer's ability to offer affordable legal services. The conversation about the cost and value of legal education must take into account not just the viability of Main Street lawyers, but also the clients they serve. To overlook this correlation is to disregard the ABA's model mandate for lawyers to "be mindful of deficiencies in the administration of justice and of the fact that the poor, and sometimes persons who are not poor, cannot afford adequate legal assistance."<sup>137</sup>

Law school regulators must consider how to restructure legal education to support future Main Street lawyers who need to establish economically viable law practices for middle-income Americans. Law schools play a critical role in lawyers' professional development and the decision-makers at these institutions must recognize that the cost of their product ultimately affects incentives and opportunities for practitioners to offer affordable legal services. Since tuition dollars are misplaced when put toward prestige-driven rankings, legal education leaders must decide whether they want to keep ignoring the profession's existing stratification or whether it is time to embrace a more flexible legal education model that reflects the profession's diversity. For too long, law schools have lost their focus as institutions chiefly responsible for forming lawyers, not just to be judges, law professors or to counsel the wealthy but to educate Main Street lawyers on how to address the legal needs of the average American.

Employment data, amount spent per student and other criteria never will help lower-ranked law schools compete because their reality is and should be different than those of the elite institutions. Non-elite law schools must keep in mind that they emerged as "access schools" for those traditionally unwelcomed into the profession. The false notion that finding employment nine months after graduation determines the value of these schools demonstrates a grave misunderstanding of the importance of professional development of self-employed lawyers. Law school advocates say that although a law degree may not produce a six-figure salary within nine months of graduation, it continues to offer greater opportunities than many other professional credentials.<sup>138</sup> That view may be correct, but lower ranked law schools may find it more difficult to justify high tuition if they cannot facilitate a model that helps their graduates pay for their legal education. Since these law schools are already at the bottom of the prestige totem pole, they have the best incentive to develop a new model of legal education that better responds to Main Street lawyers and their clients.

137. Amer. Bar Assn., Model Rules of Prof'l Conduct, pmb'l. cmt. 6 (2011).

138. Katherine Mangan, America's Longest-Serving Law Dean Defends the Value of a Law Degree, *Chron. High. Educ.*, Nov. 5, 2012, available at <http://chronicle.com/article/Americas-Longest-Serving-Law/135512/>. See also Lawrence E. Mitchell, Law School Is Worth the Money, *N.Y. Times*, Nov. 28, 2012, at A31.

Declining law school enrollments<sup>139</sup> create an opportunity for law schools to evaluate their practices and cost structures to develop a more consumer-responsive legal education program.<sup>140</sup> For law school graduates who are able to land employment that allows them to cover the cost of their legal education, law school continues to be a good investment. The value of a law degree is more tentative for those who lack wealth and strong professional networks. Still, there are individuals willing to pay a premium to become lawyers—not only for greater opportunity and access to a profession of a privileged few in our society, but also because attorneys are advocates who hold great sway over the rules and workings of our democracy. Non-elite law schools play a critical role in the profession by producing lawyers who serve and represent an important constituency in our society. These law schools produce diverse practitioners who can reach people who need and deserve counsel from their community, who speak their languages, understand their culture and can help them address their legal problems.

A continued focus on replicating the existing legal education model gives the impression that lawyers are only worth producing if they represent elite interests. Law schools that produce a large number of Main Street lawyers must recalibrate their students' and staffs' expectations so they understand that their curriculum and tuition must reflect the types of lawyers they produce. Law schools must continue to graduate individuals who think like lawyers but they may have to redistribute resources to support initiatives that prepare students to provide accessible legal services. A switch to this new paradigm requires every sector of the institution—admissions, financial aid, career services and faculty—to advise students about the opportunities and challenges of law practice.<sup>141</sup> Law schools must change or be changed.<sup>142</sup>

However, law schools cannot innovate and create consumer-responsive programs without support from its accrediting body. If the profession wants to retain control of its power to educate and regulate itself, it must be sufficiently critical of imperfect practices that primarily benefit a small group of elite lawyers. It is imperative that the ABA scrutinize the logic and relevancy of many of its archaic guidelines for accrediting law schools so that sorely

139. Law school applications decreased by 38 percent in the last three years. Ethan Bronner, *Law Schools' Applications Fall as Costs Rise and Jobs are Cut*, N.Y. Times, Jan. 30, 2013, available at [http://www.nytimes.com/2013/01/31/education/law-schools-applications-fall-as-costs-rise-and-jobs-are-cut.html?\\_r=1&](http://www.nytimes.com/2013/01/31/education/law-schools-applications-fall-as-costs-rise-and-jobs-are-cut.html?_r=1&).
140. Cathryn Miller-Wilson, *Harmonizing Current Threats: Using the Outcry for Legal Education Reforms to Take Another Look at Civil Gideon and What it Means to be an American Lawyer*, March 2013 (advocating the creation of teaching law firms as a way to address the legal education and access to justice crises), available at <http://ssrn.com/abstract=2230569>.
141. There is a crucial role that non-academic staff must play in educating prospective lawyers about financial planning and preparing business plans to start Main Street law practices.
142. For ideas on how to change see William Henderson, *A Blueprint for Change*, 40 Pepp. L. Rev. 461 (2013); and Lauren Carasik, *Renaissance or Retrenchment: Legal Education at a Crossroads*, 44 Ind. L. Rev. 735 (2011).

needed economic resources can be used to create innovative legal education programs that produce viable Main Street lawyers who offer affordable legal services. This article does not purport to offer a holistic solution to improve legal education but it encourages a revision of accreditation standards to allow non-elite law schools to devise legal education programs that are responsive to the needs of their student population and the communities of legal services consumers they will serve. In order to do this, bar leaders must acknowledge the roles and challenges of all lawyers, including those who provide personal legal services on Main Street. Messages sent by bar leaders about what the profession values are critical to defining the expectations of prospective lawyers. This information may not be well received by those who have idealized views of what it means to be a lawyer, but it may encourage the development of a thoughtful legal education agenda that advances the interests of Main Street lawyers and their clients.

#### **IV. Conclusion**

As the legal profession considers how it will recreate itself in the face of shrinking employment opportunities, a declining law school applicant pool and the rise of corporate entities that serve as lawyer substitutes, we must keep in mind the needs of non-elite clients and the lawyers that address their unmet legal needs. Law degrees today must include instruction on the development of sustainability models that work for both lawyers and the consumers they serve. The profession has an obligation to educate, train and encourage lawyers to meet the needs of all legal services consumers. Law schools that produce Main Street lawyers have an important role to play in addressing the large gaps in the provision of justice in the United States.