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## A Lawyer for John Doe: Alternative Models for Representing Maryland's Middle Class

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**A LAWYER FOR JOHN DOE:  
ALTERNATIVE MODELS FOR REPRESENTING MARYLAND'S  
MIDDLE CLASS**

Lucy B. Bansal\*

INTRODUCTION

Every fall, as second-year law students are recovering from the tough demands of their summer experiences as interns and law clerks, representatives of law firms from across the country descend on campuses to recruit promising students to their practices as summer associates. When all is said and done, each law school's top students will have either secured summer jobs in "Big Law," where the "big" means bigger firms, bigger pay days, and most pertinently, bigger clients, or they will be waiting in the wings to pounce on the limited opportunities outside of Big Law in government, non-profits, and smaller private law firms. While law students are weighing their options and holding out for dream jobs that may or may not materialize, many middle class Americans struggle to find quality affordable legal help when the need arises.<sup>1</sup>

The middle class is trapped—it can neither afford Big Law representation nor can it qualify for Legal Aid or similar legal assistance programs for the poor.<sup>2</sup> Additionally, very few aspiring or newly minted lawyers are aware of the need for middle class lawyers or are prepared to meet the demands of this sector. They therefore fail to consid-

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\* J.D. Candidate 2014, University of Maryland Francis King Carey School of Law. The author would like to thank the Editorial Board of the *Maryland Law Journal of Race, Religion, Gender and Class* for their feedback and support. She would also like to thank Lauren M. Elfiner, J.D. (Maryland Law '12) and Cameron B. Connah, J.D. (Maryland Law '13) for leading by example and setting the bar high.

<sup>1</sup> William Freivogel, *Take Five: ABA President Stephen Zack, Who Escaped From Cuba*, ST. LOUIS BEACON (June 15, 2011, 9:46 AM), [https://www.stlbeacon.org/#!/content/15929/take\\_five\\_aba\\_president\\_stephen\\_zack\\_2011](https://www.stlbeacon.org/#!/content/15929/take_five_aba_president_stephen_zack_2011) (quoting ABA President Stephen N. Zack).

<sup>2</sup> Debra C. Weiss, *Middle-Class Dilemma: Can't Afford Lawyers, Can't Qualify for Legal Aid*, ABA JOURNAL (July 22, 2010, 7:36 AM), [http://www.abajournal.com/news/article/middleclass\\_dilemma\\_cant\\_afford\\_lawyers\\_cant\\_qualify\\_for\\_legal\\_aid](http://www.abajournal.com/news/article/middleclass_dilemma_cant_afford_lawyers_cant_qualify_for_legal_aid).

er this demographic when choosing their career paths.<sup>3</sup> As a result, a 1996 report of the Maryland State Bar Association's Moderate Income Access to Justice Advisory Task Force found that "72 percent of Maryland's middle-class citizens . . . no longer contact a lawyer when faced with a legal problem."<sup>4</sup> Instead, they are increasingly showing up to court *pro se*, especially in standard matters of the middle class—such as foreclosures, domestic relations, consumer cases, and housing matters—which has resulted in less favorable outcomes for litigants.<sup>5</sup>

But what if the legal paradigm could shift to accommodate the unique needs of the middle class and pull them away from the perils of *pro se* litigation? Several alternative models for legal representation have been proposed or implemented in the United States and abroad to serve the underrepresented interests of the middle class.<sup>6</sup> Among these are four models that would drastically change the legal market in Maryland: 1) mentorship of new lawyers to encourage practicing middle class representation at a novice rate, 2) using legal services brokers to lower attorneys fees in exchange for guaranteed payments, 3) deregulating the legal industry to allow investment in law practices by non-lawyers and profit-sharing between lawyers and non-lawyers to drive down prices, and 4) expanding the availability of unbundled legal services through the creation of legal cafes.

This Comment explores the gap in the availability of legal services to those civil litigants who are neither wealthy nor poor, and describes several alternative models of legal representation that could substantially improve the legal landscape for Maryland's underrepresented middle class. Part I seeks to determine the boundaries of the

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<sup>3</sup> Kendall Coffey, *Underserved Middle Class Could Sustain Underemployed Law Graduates*, NAT'L L.J. (Aug. 22, 2012, 12:00 AM), <http://www.law.com/jsp/article.jsp?id=1202568370667>.

<sup>4</sup> Susan D. Carle, *Re-Valuing Lawyering for Middle-Income Clients*, 70 FORDHAM L. REV. 719, 724 (2001) (quoting Janet S. Eveleth, *Is Middle Class America Denied Access to Justice?*, 29 MD. B.J. 44, 45 (1996)).

<sup>5</sup> Terry Carter, *Judges Say Litigants Are Increasingly Going Pro Se—at Their Own Peril*, A.B.A. J. (July 12, 2010, 10:39 AM), [http://www.abajournal.com/news/article/judges\\_say\\_litigants\\_increasingly\\_going\\_pro\\_se--at\\_their\\_own](http://www.abajournal.com/news/article/judges_say_litigants_increasingly_going_pro_se--at_their_own). While case filings have increased in many cases, 60 percent of 1,200 judges polled said that fewer people are represented by counsel. *Id.* Additionally, 62 percent of judges polled said that litigants received worse results when represented *pro se*, primarily because of procedural errors and failure to present necessary evidence in their cases. *Id.*

<sup>6</sup> See *infra* Part III.

middle class representation gap by defining “middle class” nationally, and in Maryland. Part II describes the types of legal services most likely to be sought after by a middle class clientele and the costs associated with these services under a standard legal model. Part III describes alternative legal models that, if tailored to the specific needs of Maryland’s middle class, could make legal representation significantly more affordable and accessible to John Doe. Finally, this Comment concludes that the problems of middle class access to justice are not incurable, and that civic-minded innovation to better serve the legal needs of Maryland’s middle class could be both financially and morally profitable.

### I. WHAT IS “THE MIDDLE CLASS?”

To be successful in a new jurisdiction, each of these models must emphasize the unique financial position of its middle class and reflect a keen understanding of the particularized legal needs of the community. As such, it is important to define both the “middle class” and “middle class legal needs” with these models in mind.

Defining the middle class, however, is an incredibly difficult task and the subject of heated debate amongst politicians, sociologists, and historians.<sup>7</sup> While the social sciences may err more toward the qualitative in constructing a definition, this examination relies heavily on the financial circumstances of the middle class and will therefore emphasize census data to evaluate the availability of legal services for persons that are neither “rich” nor “poor.” These figures play an important role in decision-making on the lower end of the spectrum among those providing legal aid services for the poor and are, thus, useful tools for shaping the middle class target.<sup>8</sup>

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<sup>7</sup> Take, for example, former presidential candidate Mitt Romney’s preferred dividing line (\$200,000 per year) and 96% of Americans would be considered middle class! Dylan Matthews, *What is the Middle Class?*, WASH. POST WONKBLOG (Sept. 16, 2012, 9:00 AM), <http://www.washingtonpost.com/blogs/wonkblog/wp/2012/09/16/what-is-the-middle-class/>.

<sup>8</sup> See, e.g., *2012 Legal Services Corporation’s Income Guidelines by Family Size*, MD. LEGAL AID BUREAU, <http://www.mdlab.org/guidelines> (last visited May 24, 2013) (noting that individuals cannot make more than \$13,963 per year to qualify for the first tier services). Individuals with annual salaries between \$13,963 and \$26,519 must present additional qualifying factors before the Maryland Legal Aid Bureau will consider taking his or her case. *Id.*

One possible “middle class” construction comes from analysis of national census data, where the middle quintile (i.e., between the 40th and 60th percentiles) of the national income distribution would constitute the middle class.<sup>9</sup> According to the latest census, issued September 12, 2012, this middle quintile had a mean household<sup>10</sup> income of \$49,842.<sup>11</sup> In Maryland, this mean level of income could include a wide variety of professions, including librarians, mail carriers, judicial law clerks, and insurance salesmen.<sup>12</sup>

Another possible middle class income construction, particular to the state of Maryland, is the median household income for the state, which at \$70,004 is higher in Maryland than anywhere else in the country.<sup>13</sup> This figure represents the salary that could be earned by Maryland’s engineers, chiropractors, medical technicians, dental hygienists, and some lawyers.<sup>14</sup> This construction may be misleading, however, as it obscures the lower figures in areas like Baltimore, where the median income is twenty-three percent below the national median at \$38,731.<sup>15</sup> In Maryland, this median income reflects the salaries of printing press operators, welders, carpenters, court reporters, customer service representatives, and other similarly situated individuals.<sup>16</sup> If we look at these census figures as an appropriate range for de-

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<sup>9</sup> Matthews, *supra* note 7.

<sup>10</sup> As of the most recent census data, the average household consisted of 2.59 persons. *Households and Persons per Household by Type of Household: 1990 to 2010*, CENSUS.GOV, <http://www.census.gov/compendia/statab/2012/tables/12s0061.pdf> (last visited May 24, 2013). For comparison purposes in this paper, I will round that number up to three persons per household.

<sup>11</sup> CARMEN DENAVAS-WALT, BERNADETTE D. PROCTOR & JESSICA C. SMITH, U.S. CENSUS BUREAU, INCOME POVERTY, AND HEALTH INSURANCE COVERAGE IN THE UNITED STATES: 2011 38 (2012).

<sup>12</sup> *Compare Maryland Salary and Wages*, FINDTHEDATA, <http://salaries-by-city.findthedata.org/d/a/Maryland> (last visited May 24, 2013). This figure is a little bit more than the starting salary of a school teacher in Maryland, which is closer to \$43,000. *See Maryland Teacher Salary*, TEACHER PORTAL, <http://www.teacherportal.com/salary/Maryland-teacher-salary> (last visited May 24, 2013).

<sup>13</sup> Ryan Sharrow, *Maryland Median Household Income No. 1 in U.S.; Baltimore below Average*, BALT. BUS. J., (Sept. 20, 2012, 11:19 AM), <http://www.bizjournals.com/baltimore/news/2012/09/20/maryland-median-household-income-no-1.html>. (Compare with the national average median household income: \$50,502).

<sup>14</sup> *Compare Maryland Salary and Wages*, *supra* note 12.

<sup>15</sup> Sharrow, *supra* note 13.

<sup>16</sup> *Compare Maryland Salary and Wages*, *supra* note 12.

termining the middle class in Maryland, the middle class constitutes households that make between \$38,731 and \$70,004 annually.<sup>17</sup> That is anyone from a welder to a chiropractor!

Individuals who earn income in this range are not eligible for subsidized legal services but may not have the means to hire private attorneys either. The Maryland Legal Aid Bureau (MLAB), for example, prioritizes cases in which a person falls below 125 percent of the Federal Poverty Income Guidelines (i.e., \$13,963 yearly for an individual or \$23,863 for a family of three), followed by cases in which a person falls below 50 percent of the Maryland median income (i.e., \$26,519 yearly for an individual, \$42,839 for a family of three).<sup>18</sup> Based on these figures, the legal services void for the non-wealthy exists in Maryland anywhere between \$23,864 and \$70,004 in yearly income per household.<sup>19</sup> Anyone from bus drivers and motel clerks to engineers and chiropractors can fall into this bracket.<sup>20</sup> While this range may seem unmanageably large, it is at the very least convincing evidence that all persons in need of legal services are not created equal, and many may be unable to pay for the full range of legal services provided in standard legal models.

## II. UNDERSTANDING THE LEGAL NEEDS OF THE MIDDLE CLASS

The middle class primarily requires personal civil legal services, which can be defined as follows:

[L]egal services to families in areas such as consumer transactions, wills/estates/elder law, family law, residential real estate, landlord-tenant, immigration law, education law, health insurance/government benefits, employment law, bankruptcy, and credit and collections. It

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<sup>17</sup> See Sharrow, *supra* note 13.

<sup>18</sup> See 2012 *Legal Services Corporation's Income Guidelines by Family Size*, *supra* note 8.

<sup>19</sup> Recall, the higher end of this range is Maryland's high median income, whereas the lower figure is \$1 above MLAB's first priority cutoff for a family of three. *Id.*

<sup>20</sup> Compare *Maryland Salary and Wages*, *supra* note 12.

would not include criminal, personal injury or business matters.<sup>21</sup>

Among these civil matters, personal finance and consumer issues are the most common areas of legal need among the middle class, followed closely by housing and property matters and estate-related issues.<sup>22</sup> The middle class is also likely to regularly require some aid in criminal matters such as driving under the influence (DUI) charges<sup>23</sup> and with personal injury suits,<sup>24</sup> although these matters are outside the scope of this Comment.

In Maryland, middle class households report having about one legal problem per year, most frequently related to consumer protection, housing issues, family and domestic situations, and problems related to small businesses.<sup>25</sup> Still, according to a 1994 national ABA Comprehensive Legal Needs Survey, 61 percent of middle class households with legal dilemmas had no interaction with the legal sys-

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<sup>21</sup> David Narkiewicz, *A 21st Century Blueprint for Providing Legal Access to the Middle Class*, 26 PA. LAW. 20, 20 (2004).

<sup>22</sup> See AM. BAR ASS'N, LEGAL NEEDS AND CIVIL JUSTICE: A SURVEY OF AMERICANS app. B (1994), available at <http://www.americanbar.org/content/dam/aba/migrated/legalservices/downloads/sclaid/legalneedstudy.authcheckdam.pdf>.

<sup>23</sup> In 2011, the average “cost” of a DUI conviction was around \$10,000, which includes legal fees (e.g., \$250 for a quick entrance of a guilty plea, \$2,000-\$25,000 for a contested DUI) as well as a myriad of other charges including bail, towing expenses, and fines that quickly add up to a worrisome figure for the average middle class offender. Christopher Solomon, *DUI: The \$10,000 Ride Home*, MSN MONEY (Mar. 22, 2011, 12:32 PM), <http://money.msn.com/auto-insurance/dui-the-10000-dollar-ride-home.aspx?page=0>. Some of these costs could be reduced by budget-friendly lawyers, but much of the expense is beyond an attorney’s control.

<sup>24</sup> In Maryland, the Rules of Professional Conduct do not dictate what an attorney must charge for a given service, only that the fee charged must be “reasonable.” MD. RULES OF PROF’S CONDUCT R. 1.5 (2012). As such, personal injury attorneys in Maryland, as in many other states, are free to take personal injury cases on a “contingency fee” basis. This means that rather than determining the exact amount of the client’s legal fees up front, the lawyer will gamble on the outcome of the case and charge the client a portion of his or her award upon winning or settling the case. A client represented under this fee structure may still have to pay some fees or court costs up front. However, this type of fee arrangement, although it can be abused, does not inherently present a substantial financial obstacle for the middle class.

<sup>25</sup> ACCESS TO JUSTICE ADVISORY TASKFORCE, EDITED EXCERPTS FROM THE PRELIMINARY REPORT AND PRELIMINARY RECOMMENDATIONS ON THE UNMET LEGAL NEEDS OF MODERATE-INCOME PERSONS IN MARYLAND 1 (1996), available at <http://www.digital-lawyer.com/report~1.html#quantaba>.

tem in spite of their problems.<sup>26</sup> Often, Marylanders were unaware of their legal options, or unsure of how to pursue legal action.<sup>27</sup> Given the complexity of the law and the vast expense often associated with pursuing justice in a typical legal model, it is unsurprising that many Marylanders would rather do without.

Still, because of the far reach of personal civil legal services, it is difficult to argue with the premise that most middle class Marylanders, given their average once-per-year need for legal services, may benefit from some type of legal assistance if its cost could be brought within manageable levels. Such assistance may include the early stages of legal advice and analysis where a client learns about his or her legal options, the provision of help to prepare legal documents, or the review of pre-prepared documents.<sup>28</sup> Additionally, clients may need assistance with negotiations, settlements, hearings, discovery, or out-of-court dispute resolution alternatives like mediation or collaborative law.<sup>29</sup> The independent costs of taking all of these steps can easily add up when they are exercised together, as they would be in a typical legal model. For example, a study by the Boston Law Collaborative reported that in the United States, a litigated divorce cost an average of \$77,746, and divorce cases resolved before trial had an average cost of \$26,830.<sup>30</sup> These figures are certainly not pocket change for the average American or Marylander.

In addition to family law services, many middle class Americans seek to protect their property and interests in death or marriage through the drawing of contracts and other legal documents. For example, setting up a living trust may cost \$1,200 to \$2,500, whereas drawing up a simple will can cost several hundred dollars.<sup>31</sup> The price

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<sup>26</sup> *Id.* at 11.

<sup>27</sup> *See id.* at 1.

<sup>28</sup> *See, e.g.,* ALTENEDER L., <http://www.akfamilylawservices.com> (last visited May 24, 2013) (highlighting a family law firm offering unbundled services in three different categories: (1) legal advice and analysis, (2) limited representation, and (3) mediation & collaborative law services).

<sup>29</sup> *See id.*

<sup>30</sup> Karin P. Mueller, *Pain-Free Divorce Is Possible*, NJ.COM (Jan. 2012), [http://www.nj.com/inside-jersey/index.ssf/business/pain-free\\_divorce\\_is\\_possible.html](http://www.nj.com/inside-jersey/index.ssf/business/pain-free_divorce_is_possible.html).

<sup>31</sup> *Straight Talk about Living Trusts*, CONSUMER REP. (Oct. 2011), <http://www.consumerreports.org/cro/money/retirement-planning/straight-talk-about-living-trusts/overview/index.htm>. Maryland is a state with complicated probate laws. A living trust can help to keep property from becoming entangled in these laws. *See*



of any contract, however, will increase with the complexity of the transaction or estate.<sup>32</sup> Prenuptial agreements, meanwhile, could cost anywhere from \$250 to \$50,000 depending on the circumstances of the agreeing parties.<sup>33</sup> What is most striking about these figures is that they span great ranges, making these types of legal services unpredictably, or at the very least, inconsistently expensive. This unknown cost is one that the budgets of many in the middle class cannot support.

To put these numbers in perspective, the average middle class American family has only \$3,800 in savings,<sup>34</sup> and after spending on essentials (e.g., housing, transportation, food, and clothes) each month, may have less than \$1,200 in expendable income.<sup>35</sup> Therefore, the cost of hiring a lawyer for common middle class representation or transactions may be both unpredictable and prohibitively expensive.

### III. INNOVATIONS FOR JOHN DOE: MEETING THE NEEDS OF THE MIDDLE CLASS BY STEPPING OUTSIDE OF THE BOX

Demographic-specific problems require demographic-specific solutions. The ideas described below open new doors for middle class access to justice by focusing on the services that middle class litigants are most likely to need and the extent to which those services can be provided affordably.

#### A. *New Attorney Mentor Program*

Legal experts, including Former United States Attorney Kendall Coffey, have proposed facilitating mentor/mentee relationships between experienced attorneys and newly minted attorneys to make

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Jay Romano, *The Pros and Cons of a Living Trust*, N.Y. TIMES (Nov. 20, 2005), [http://www.nytimes.com/2005/11/20/realestate/20home.html?\\_r=0](http://www.nytimes.com/2005/11/20/realestate/20home.html?_r=0).

<sup>32</sup> *Straight Talk about Living Trusts*, *supra* note 31.

<sup>33</sup> *Prenuptial Agreement Cost*, COSTHELPER (Oct. 2008), <http://personalfinance.costhelper.com/prenuptial-agreement.html>.

<sup>34</sup> *American Family Financial Statistics*, STATISTIC BRAIN (July 26, 2012), <http://www.statisticbrain.com/american-family-financial-statistics/>.

<sup>35</sup> This figure is based on a comparatively high yearly salary of \$50,000 to \$70,000. *See* Derek Thompson, *Very Sad Graph: How Much Americans Have Left to Spend after Essentials, Today*, ATLANTIC (Aug. 1, 2012, 4:10 PM), <http://www.theatlantic.com/business/archive/2012/08/very-sad-graph-how-much-americans-have-left-to-spend-after-essentials-today/260606/>. Note that Maryland's middle class may have even less expendable income, especially in lower-income areas like Baltimore. *See* Sharrow, *supra* note 13.

middle-class representation by legal novices both economically and ethically feasible.<sup>36</sup>

Roughly 45,000 people graduate from law school every year.<sup>37</sup> Of those, 34.6 percent are either unemployed nine months after graduation or have jobs that do not require bar passage.<sup>38</sup> While most states are producing more lawyers than they seem to need,<sup>39</sup> the gap in legal representation still exists socioeconomically—that is, the middle class lacks adequate legal representation despite a national surplus of attorneys.<sup>40</sup> Maryland, for example, had 1,277 bar passers in 2009, but only an estimated 560 annual openings for lawyers were anticipated to be available between 2010 and 2015.<sup>41</sup> Bar passers who did receive legal jobs, moreover, were making a median income of only \$41.46 per hour.<sup>42</sup> Redirecting this surplus of lawyers towards a demographic that is currently underrepresented would simultaneously cut post-graduate unemployment and increase access to justice for the middle class. Given that consumers expect to pay less for the work of less experienced professionals,<sup>43</sup> fresh out of law school attorneys could take cases at a

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<sup>36</sup> See Coffey, *supra* note 3.

<sup>37</sup> Daniel Luzer, *Too Many Law Schools?*, WASH. MONTHLY (Jan. 8, 2010, 2:07 PM), [http://www.washingtonmonthly.com/college\\_guide/blog/too\\_many\\_law\\_schools.php](http://www.washingtonmonthly.com/college_guide/blog/too_many_law_schools.php).

<sup>38</sup> Katherine Mangan, *Unemployment among Recent Law Graduates is as Bad as it's Ever Been*, CHRONICLE (June 7, 2012), <http://chronicle.com/article/Unemployment-Among-Recent-Law/132189/>.

<sup>39</sup> Economic Modeling Specialists, Inc. crunched the numbers in 2009, revealing that every state except for Wisconsin, Nebraska, and Washington D.C. is producing more lawyers than it needs. Catherine Rampell, *The Lawyer Surplus, State by State*, N.Y. TIMES (June 27, 2011, 11:35 AM), <http://economix.blogs.nytimes.com/2011/06/27/the-lawyer-surplus-state-by-state/>. Indeed, twice as many people passed the bar in 2009 than there were job openings (that required bar passage) for lawyers. *Id.*

<sup>40</sup> Coffey, *supra* note 3.

<sup>41</sup> Rampell, *supra* note 39.

<sup>42</sup> *Id.*

<sup>43</sup> For an interesting discussion of this issue, see *In re Fordham*, 668 N.E.2d 816 (Mass. 1996). There, the court found that an inexperienced attorney could not charge at an experienced attorney rate when doing so would result in the client's overpayment for a legal service. *Id.* at 825. See also *In re Larson*, 694 P.2d 1051, 1059 (Wash. 1985) (*en banc*) (ruling that clients "should not be expected to pay for the education of a lawyer when he spends excessive amounts of time on tasks which, with reasonable experience, become matters of routine"). The ABA Model Code of Professional Responsibility notes,

comparatively low hourly rate (i.e., \$50-\$125 an hour as opposed to the \$250 or more that most attorneys charge)<sup>44</sup> without lowering recent graduates' reasonable income expectations for the Maryland market.<sup>45</sup>

Any business model involving minimally trained lawyers and high volumes of available work, however, is likely to require cautious and continuous oversight. For example, because law school graduates are inexperienced and likely ill-informed about the wide variety of legal issues faced by middle-class clientele experienced attorneys would have to volunteer their services as mentors.<sup>46</sup> This arrangement would have the somewhat undesirable effect of diminishing new lawyers' independence while effectively requiring older attorneys to subsidize the cost of middle-class legal representation by offering their advice, albeit not directly to the client, free of charge. As a result, experienced attorneys may be hesitant to accept this responsibility because of the great time and possible financial burdens,<sup>47</sup> or because of the potential liability they may be exposed to as "supervisors."<sup>48</sup> Additionally, the

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While the licensing of a lawyer is evidence that he has met the standards then prevailing for admission to the bar, a lawyer generally should not accept employment in any area of the law in which he is not qualified. However, he may accept such employment if in good faith he expects to become qualified through study and investigation, as long as such preparation would not result in unreasonable delay or expense to his client.

MODEL CODE OF PROF'L RESPONSIBILITY EC 6-3 (2012).

<sup>44</sup> Coffey, *supra* note 3.

<sup>45</sup> Recall that the median hourly income for Maryland bar passers is just \$41.46. Rampell, *supra* note 39.

<sup>46</sup> Coffey, *supra* note 3. If the experienced lawyers were to insert their own fee, we would be right back where we started—too many lawyers, too much expense, and a continually underserved middle-class.

<sup>47</sup> Legal research, for example, could become very expensive.

<sup>48</sup> Coffey, *supra* note 3. The Maryland Rules of Professional Conduct states,

A lawyer shall be responsible for another lawyer's violation of the Maryland Lawyers' Rules of Professional Conduct if: (1) the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; or (2) the lawyer is a partner or has comparable managerial authority in the law firm in which the other lawyer practices, or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or miti-

money saved in reduced hourly fees could easily be overshadowed by the additional time that it takes a new attorney to complete tasks that experienced attorneys would finish more quickly.

The middle class legal representation niche also requires training that should ideally be undertaken in law school classes, externships, and summer jobs.<sup>49</sup> For example, to keep overhead expenses low and to encourage new graduates to consider going out on their own, law schools would need to ramp up their “practical skills” courses to teach practice management tips and foster frugal research and work habits.<sup>50</sup> Several universities have already responded to the downturn in the legal economy by better equipping law graduates to practice law immediately upon passing the bar with courses like “problem-solving” (Harvard Law School), “fact investigation” (New York University School of Law), and clinical law courses either as a requirement (University of Maryland Francis King Carey School of Law) or optional practicum.<sup>51</sup>

Mentorship programs for middle class representation would allow a new generation of Maryland bar passers, many of whom are faced with joblessness, to bring an underrepresented demographic into the justice system with the support and advice of more experienced lawyers. Upon learning the trade, these new lawyers could step into their mentors’ shoes to teach successive classes of Maryland lawyers how to better serve the middle class.

### *B. Legal Services Brokerage: The Winnipeg Model*

Access to justice for the middle class is not a uniquely American problem. In the foreword to *Middle Income Access to Justice*,<sup>52</sup>

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gated but fails to take reasonable remedial action.

MD. RULES OF PROF’S CONDUCT R. 5.1(C) (2012).

<sup>49</sup> Coffey, *supra* note 3.

<sup>50</sup> Patrick G. Lee, *Law School Gets Practical*, WALL ST. J. (July 10, 2011, 7:02 PM), <http://online.wsj.com/article/SB10001424052702304793504576434074172649718.html>.

<sup>51</sup> *Id.*

<sup>52</sup> Beverly McLachlin, *Foreword* to MIDDLE INCOME ACCESS TO JUSTICE, at ix (Michael Trebilcock et al. eds., 2012).

Beverly McLachlin, Chief Justice of the Supreme Court of Canada, wrote:

If the task of the generations that preceded us was to build an excellent justice system, then the task that falls to our generation is to ensure that every man, woman and child has access to that system; not merely access on paper, but actual, meaningful and substantive access to justice. Regrettably, we do not have adequate access to justice in Canada. We have better access than in many countries, but it is still not what it should be. Among the hardest hit are the middle class.<sup>53</sup>

She also added “There is no ‘silver bullet’ that will solve the problem of access to justice,”<sup>54</sup> indicating that a “sustained, multi-pronged attack and a co-ordinated, collaborative approach among governments, lawyers, judges and academia” would be required to make any headway in solving the problem.<sup>55</sup>

At least one such effort already exists in the Province of Manitoba, located in the Western region of Canada. Citizens of Manitoba have lower rates of disposable income than citizens of any other Canadian province.<sup>56</sup> Increasing costs of housing, ballooning mortgage debt, and elevated high school attrition rates have all contributed to financial hardships among Manitobans,<sup>57</sup> who are correspondingly less able to afford legal assistance when the need arises.<sup>58</sup>

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<sup>53</sup> *Id.*

<sup>54</sup> *Id.* at x.

<sup>55</sup> Ellen Roseman, *Canada's Legal System Leaves Middle Class Out*, WORLD JUST. PROJECT (Oct. 9, 2012), <http://worldjusticeproject.org/blog/canada's-legal-system-leaves-middle-class-out>.

<sup>56</sup> Press Release, Inst. of Chartered Accountants, *Manitoba's Cost of Living and Disposable Income Remain Low*, (Oct. 16, 2013).

<sup>57</sup> *Id.*

<sup>58</sup> Geoff Kirbyson, *New Legal Aid for Middle Class*, WINNIPEG FREE PRESS (Oct. 31, 2009, 1:00 AM), <http://www.winnipegfreepress.com/breakingnews/new-legal-aid-for-middle-class-67901927.html>.

As in the United States, Canadian Legal Aid programs exist to provide legal services and representation to members of the community considered to be “poor.”<sup>59</sup> Similarly, more affluent Canadians can relatively easily secure private counsel out of pocket, as lawyers are paid at comparatively lower rates in Canada than in the United States.<sup>60</sup> Still, there is a noticeable gap in representation for middle income Manitobans, and The Law Society of Manitoba (LSM), acting through a pilot program called the Family Law Access Centre (FLAC), is among the first of the public interest organizations in Canada to offer a novel solution to the problem.<sup>61</sup>

Executive Director Allan Fineblit, of LSM describes his organization as a middle man between the FLAC client and members of the bar.<sup>62</sup> Through this program, LSM is able to reduce the cost of family law services to about two-thirds of what the same attorneys would charge walk-in clients.<sup>63</sup> LSM approaches members of the private bar as a legal services broker, buying their services at a discount and then making them available to middle income clients (through FLAC) who are otherwise unable to afford counsel, or are ineligible for free legal services because they are not quite “poor enough.”<sup>64</sup>

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<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> *Id.* According to LSM’s FLAC website, “A lawyer with less than five years at the Bar is paid \$100.00 an hour.” *Family Law Access Centre, L. SOC’Y OF MANITOBA*, <http://www.lawsociety.mb.ca/for-the-public/family-law-access-centre> (last visited May. 24, 2013). “A lawyer with five to 10 years at the Bar is paid \$130.00 an hour, [and a] lawyer with more than 10 years at the Bar is paid \$160.00 an hour.” *Id.*

<sup>64</sup> *Id.* The income guidelines for the FLAC program are as follows:

Family Size	Gross Income (CAD)
1	\$35,000
2	\$45,000
3	\$50,000
4	\$54,000
5	\$57,000
6	\$60,000

*Id.*

LSM also plays a role in billing,<sup>65</sup> which benefits both the clients and the attorneys involved in the arrangement.<sup>66</sup> Clients must participate in an extensive financial assessment (including evaluation of their income, debts, assets, tax returns, family size, and number of dependents), prior to being accepted into the FLAC program.<sup>67</sup> However, upon doing so, they are afforded the luxury of picking from a selection of quality attorneys willing to work below their usual rates.<sup>68</sup> As a result of this screening process, the participating attorneys are given a heightened guarantee of payment of their fees because LSM takes responsibility for collecting fees regularly throughout the course of the clients matter.<sup>69</sup>

The LSM/FLAC business model is unique but also quite narrow in scope. By teaming up exclusively with family law lawyers, LSM has limited its reach to middle income persons with family law issues, ignoring the other areas of civil litigation that members of the middle class are often involved in without adequate representation. A similar model in Maryland would need to reach further than family law, emphasizing the consumer and housing matters that are most likely to plague the middle class.<sup>70</sup>

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<sup>65</sup> While clients are responsible for paying for their FLAC attorney (and they correspondingly have the right to contest any fee or disbursement), it is LSM that takes on the role of bill collector. *Id.* Rather than paying the attorneys directly, the client pays a monthly fee to LSM reflective of the attorney's hours worked and any disbursements related to the client's family law matter. *Id.* LSM's policy on non-payment indicates:

If you don't pay as agreed then we will cancel your coverage immediately. The lawyer may then withdraw from your case. We will also take steps to collect the money you owe us, including attaching property, and garnishing wages and bank accounts. Once you have breached your obligation you will not be eligible for help in the future if you need it.

*Family Law Access Centre, supra* note 63.

<sup>66</sup> Kirbyson, *supra* note 58.

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> See AM. BAR ASS'N, *supra* note 22, at app. B.

*C. Corporate Legal Services Providers:  
Deregulating the Legal Industry*

Deregulation of the legal profession, including permitting profit-sharing between lawyers and non-lawyers (currently prohibited by Maryland Rules of Professional Conduct [“MRPC”] Rule 5.4), could force the legal market to bend to the needs of middle income Americans under the theory of supply and demand.<sup>71</sup>

MRPC Rule 5.4, governing the “Professional Independence of a Lawyer” reads:

(a) A lawyer or law firm shall not share legal fees with a nonlawyer, . . . . (b) A lawyer shall not form a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law. . . . (d) A lawyer shall not practice with or in the form of a professional corporation or association authorized to practice law for a profit, if: (1) a nonlawyer owns any interest therein, except that a fiduciary representative of the estate of a lawyer may hold the stock or interest of the lawyer for a reasonable time during administration; (2) a nonlawyer is a corporate director or officer thereof or occupies the position of similar responsibility in any form of association other than a corporation; or (3) a nonlawyer has the right to direct or control the professional judgment of a lawyer.<sup>72</sup>

The rationale behind this rule is that lawyers, as members of a uniquely self-regulated profession, should enjoy independent professional judgment to preserve the integrity of the profession and more generally, to ensure the best administration of justice.<sup>73</sup> Maryland’s

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<sup>71</sup> 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, 800 (2001).

<sup>72</sup> MD. RULES OF PROF’S CONDUCT R. 5.4 (2012).

<sup>73</sup> The Preamble to the Maryland Rules of Professional Conduct accordingly states,

[10] The legal profession is largely self-governing. Although other professions also have



Rule 5.4 is substantially the same as the ABA's Model Rule 5.4, which has been adopted in some form or another in every jurisdiction except Washington, D.C. Indeed, even in the District, investor-only partners are not permitted.<sup>74</sup> Rather, the D.C. Rules only allow other professionals, such as lobbyists or scientists, whose services may go hand-in-hand with services provided in a typical legal services firm to share in the profits of lawyers or law firms.<sup>75</sup>

With the limitations of Rule 5.4, and the plight of the underrepresented middle class framing their analysis, George C. Harris and Derek F. Foran ask, "If the traditional business structure of legal practice has not met the legal service needs of most Americans, why not give corporate America an opportunity to do so?"<sup>76</sup> Harris and Foran suggest that instead of asking lawyers to work at a cheaper rate for some clients, or to limit the scope of their representation so that it fits within a tighter budget, a business model that includes massive deregulation of the legal profession could significantly reduce the costs associated with obtaining legal counsel.<sup>77</sup>

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been granted powers of self-government, the legal profession is unique in this respect because of the close relationship between the profession and the processes of government and law enforcement. This connection is manifested in the fact that ultimate authority over the legal profession is vested largely in the courts.

[11] To the extent that lawyers meet the obligations of their professional calling, the occasion for government regulation is obviated. Self-regulation also helps maintain the legal profession's independence from government domination. An independent legal profession is an important force in preserving government under law, for abuse of legal authority is more readily challenged by a profession whose members are not dependent on government for the right to practice.

*Id.* pmb1.

<sup>74</sup> Catherine Ho, *Can Someone Who is Not a Lawyer Own Part of a Law Firm? Only in D.C.*, WASH. POST, (Apr. 8, 2012), [http://articles.washingtonpost.com/2012-04-08/business/35452887\\_1\\_law-firms-lawyers-wilmerhale](http://articles.washingtonpost.com/2012-04-08/business/35452887_1_law-firms-lawyers-wilmerhale).

<sup>75</sup> *Id.*

<sup>76</sup> Harris & Foran, *supra* note 71, at 776.

<sup>77</sup> *Id.* at 776–77.

They describe two sides of the debate: proponents of deregulation, who argue that fee-sharing with non-lawyers “would allow for more efficient and affordable packaging of services typically needed by middle-class consumers in areas such as real estate transactions, matrimonial and child custody disputes, financial and estate planning, employment contracts and disputes, and small business contracts and disputes;”<sup>78</sup> and opponents of deregulation, who worry that any outside investment in the practice of law could compromise a lawyer’s independent professional judgment and loyalty to his or her clients.<sup>79</sup> The ABA falls squarely within the second category, in part, some say, because “competition from non-lawyer providers of legal services [would] erode [lawyers’] monopoly profits.”<sup>80</sup>

Harris and Foran compare the legal profession to the medical profession, suggesting that the medical profession’s corporate paradigm, if applied to the legal profession, would “allow for better integration of legal and non-legal services and better use of technology to streamline and, therefore, reduce the cost of those services”<sup>81</sup> They note a parallel history in the ethical standards regulating the medical and legal professions, marked by protectionism that encouraged the development of increasingly expensive fee-for-service models.<sup>82</sup> However, this shared history diverged in the 1970s, as federal law, including the Health Maintenance Organization Act of 1973, began to encourage corporatizing medicine as a way to combat rising costs of healthcare.<sup>83</sup> As legal services become increasingly out of reach for the middle class, similar adaptations to the ethics guidelines for the legal profession could offer an effective solution.

Unfortunately, given that even Washington D.C. substantially limits its tolerance of non-lawyer profit-sharing, there is no jurisdiction in the United States that currently supports Harris and Foran’s business model. Its effectiveness and impact on the legal profession, then, are largely unknowable. Additionally, Co-Chairs of the ABA’s Ethics 20/20 Commission, Jamie S. Gorelick and Michael Traynor, issued a statement after the commission’s meeting in April 2012 reaffirming

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<sup>78</sup> *Id.* at 776.

<sup>79</sup> *Id.*

<sup>80</sup> *Id.* at 777.

<sup>81</sup> *Id.* at 776.

<sup>82</sup> Harris & Foran, *supra* note 71, at 811–12. In a fee-for-service payment arrangement, a professional bills his or her client directly based on services performed.

<sup>83</sup> *Id.* at 813–14.

the ABA's position on non-lawyer profit sharing saying, "Based on the commission's extensive outreach, research, consultation and the response of the profession, there does not appear to be a sufficient basis for recommending a change to ABA policy on nonlawyer ownership of law firms."<sup>84</sup> As such, it does not appear that the Rules climate is likely to shift in the direction Harris and Foran advocate for any time soon.

*D. Unbundling Legal Services for the Everyone,  
Especially the Middle Class*

While there are many ways to make legal representation more affordable for the middle class without changing its traditional structure, limiting the scope of an attorney's representation in a client's matter represents a novel way to lower legal costs for the middle class. Rather than paying an hourly rate to an attorney to proceed with all aspects of a legal dispute, middle class clients could instead purchase individual services at a fixed rate. This model is called "unbundling" because the lawyer allows his clients to purchase each "piece" of legal representation separately, rather than forcing clients to buy the whole bundle.

Legal services can be unbundled in two ways: vertically and horizontally. Provision of either of these forms of unbundled services will establish an attorney-client relationship. However, the relationship can, depending upon the rules of the jurisdiction, be contractually limited to specific portions of a legal matter, rather than the whole dispute. Forrest S. Mosten, a family law practitioner, offers the following clear examples of vertical unbundling:

Advice: If a client wants advice only, advice can be purchased at an initial consultation or throughout the case as determined by the client with input from the lawyer. The lawyer and client collaborate in helping the client decide if and when further consultations may be needed in the case.

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<sup>84</sup> James Podgers, *Clear Track: Ethics 20/20 Commission Can Now Address Issues of Fee-Splitting with Nonlawyers*, A.B.A. J. (Oct. 1, 2012), [http://www.abajournal.com/magazine/article/clear\\_track\\_ethics\\_20\\_20\\_commission\\_can\\_now\\_address\\_issues\\_of\\_fee-splitting/](http://www.abajournal.com/magazine/article/clear_track_ethics_20_20_commission_can_now_address_issues_of_fee-splitting/).

Research: Based on the lawyer's advice if the client wants legal research, a personal or telephonic/Web unbundled service provides this legal information. Research may take as little as fifteen minutes or as much as ten hours. The client is in charge of determining the scope of the job and who will do the work: the lawyer, the client, or a negotiated collaborative effort between the two.

Drafting: Lawyers can ghostwrite letters or court pleadings for the client to transmit or review and comment on documents the client has prepared, or be engaged only to send a letter on behalf of the client on law-firm letterhead.

Negotiation: The lawyer can teach the client how to negotiate with his or her spouse or the spouse's lawyer directly in preparation for mediation or a settlement meeting. Or the lawyer can be engaged to conduct negotiations on behalf of the client.<sup>85</sup>

With vertical unbundling, the client hires an attorney to perform a specific law-related task rather than to dig into the problem and run the gamut of legal operations (e.g., researching the problem, sending demand letters, filing forms, appearing in court, etc.) to reach some ultimate resolution.

Horizontal unbundling, on the other hand, looks somewhat more traditional in the sense that the attorney brings at least one aspect of a client's legal matter through the entire process of legal problem solving, that is, from identification of the problem to its eventual solution or settlement. In this model, a lawyer may participate in all of the legal representation associated with a *single issue* within a greater matter.<sup>86</sup> That is, the lawyer will help a client with part of a legal matter, but will not be contractually on the hook for the entire matter despite

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<sup>85</sup> Forrest S. Mosten, *Unbundled Legal Services Today – and Predictions for the Future*, 35 FAM. ADVOC. 14, 14 (2012).

<sup>86</sup> *Id.*

the fact that it may continue following his termination.<sup>87</sup> For example, a lawyer providing horizontally unbundled services to a client seeking a divorce might agree to provide representation on the question of child custody but may contractually abstain from handling associated matters like marital property distribution or awards of spousal support.<sup>88</sup>

The availability of unbundled services may prove especially helpful to clients representing themselves *pro se*, as has become increasingly popular among the middle class in civil litigation (unfortunately to the detriment of litigants).<sup>89</sup> As the services provided by vertical unbundling are likely to include those sought by *pro se* litigants, (e.g. document preparation and simple transactions) legal cafes have garnered more attention.

The legal cafe business model has been fleshed out in several cities in the United States, though the first, California's Legal Grind ("justice served daily"), offers the greatest insight into the concept. The Legal Grind business model can be broken into three key parts: (1) initial consultations that are inexpensive (for \$45—\$35 for students and seniors—"coffee & counsel" offers customers the opportunity to discuss their legal questions over a cup of coffee with a licensed attorney for about twenty minutes), (2) extensive document preparation by freelance paralegals, and (3) focusing on generating significant referral fees by registering as a lawyer referral service (for \$25, a patron can use Legal Grind's Certified Lawyer Referral Service).<sup>90</sup> All of these services lumped together mirror the services provided in a standard legal model, but when broken apart and priced affordably, the model more effectively suits the middle class.

Even though California's Legal Grind is one of only a very small number of legal cafes in the United States with effective models like the one outlined above, unbundled services are increasingly en

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<sup>87</sup> *Id.* at 15.

<sup>88</sup> *See id.*

<sup>89</sup> Terry Carter, *Judges Say Litigants Are Increasingly Going Pro Se—at Their Own Peril*, A.B.A. J. (July 12, 2010), [http://www.abajournal.com/news/article/judges\\_say\\_litigants\\_increasingly\\_going\\_pro\\_se--at\\_their\\_own\\_/](http://www.abajournal.com/news/article/judges_say_litigants_increasingly_going_pro_se--at_their_own_/).

<sup>90</sup> *Coffee & Counsel Overview*, LEGAL GRIND, <http://legalgrind.com/index.php/coffee-a-counsel/coffee-a-counsel-overview> (last visited May 24, 2013).

vogue. This attitude is reflected in a recent resolution by the ABA, which: (1) encourages practitioners to consider limiting the scope of their representation, (2) encourages the support of bar associations and the judiciary in taking measures to assure that limited-scope practitioners understand and honor their professional obligations, and (3) encourages increasing public awareness about the availability of limited scope representation as an option to help meet the legal needs of the public.<sup>91</sup>

Indeed, the mandate of this resolution has already begun to come to fruition in Maryland, through a program administered by the University of Maryland Francis King Carey School of Law called JustAdvice.<sup>92</sup> This program does exactly what its name suggests—provides legal advice to residents at a minimal fee without offering continued legal representation or other legal services.<sup>93</sup> The Maryland Rules permit this type of program through Rule 1.2(c), which reads, “A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.”<sup>94</sup> The JustAdvice intake form for consultation participants informs clients that the scope of JustAdvice’s involvement in any legal matter is limited in length to the time of the consultation and in breadth to legal advice related to the specific matters presented at that time. By using such an effective disclaimer, the program administrators ensure that clients are wholly aware of the nature of the program and its inherent limitations.

Of course, these limitations are much more extensive than in the California equivalent because JustAdvice does not offer the additional services of a legal cafe. As such, programs like JustAdvice must

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<sup>91</sup> AM. BAR ASS’N, REPORT TO THE HOUSE OF DELEGATES: RESOLUTION 1 (2013), available at [http://www.americanbar.org/content/dam/aba/administrative/delivery\\_legal\\_services/ls\\_house\\_res\\_and\\_report\\_limited\\_scope\\_representation\\_2\\_13.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/delivery_legal_services/ls_house_res_and_report_limited_scope_representation_2_13.authcheckdam.pdf).

<sup>92</sup> JUSTADVICE, <http://justadvice.wordpress.com/about/> (last visited May 24, 2013).

<sup>93</sup> *Id.*

<sup>94</sup> MD. RULES OF PROF’*S* CONDUCT R. 1.2(C) (2012). Indeed, California is the only state in the United States that has not substantially adopted the format or content of the ABA’s Model Rules. See *State Adoption of the APA Model Rules of Professional Conduct*, A.B.A. CTR. FOR PROF’L RESPONSIBILITY, [http://www.americanbar.org/groups/professional\\_responsibility/publications/model\\_rules\\_of\\_professional\\_conduct/alpha\\_list\\_state\\_adopting\\_model\\_rules.html](http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/alpha_list_state_adopting_model_rules.html) (last visited May 24, 2013).

go much further to keep up with the many legal demands of the middle class. The underlying objective of Rule 1.2 is to ensure that each client's purposes are served by legal representation.<sup>95</sup> Without making every effort to increase the breadth of legal services available in an unbundled services model, the middle class will continue to struggle to attain the level of representation enjoyed by both the rich and the poor, and will ultimately lack meaningful access justice in Maryland.

#### CONCLUSION

Insufficient access to justice is a problem that middle income Marylanders face silently and with little public recognition. While it is impossible to draw bright lines around the group of people who struggle most to find adequate affordable legal representation, the absence of sufficient support services for *the majority* of people is an issue that invites innovation and creativity from legal practitioners around the world.

New attorney mentorship programs that help law school graduates find their footing in areas of law that primarily serve the middle class could both increase access to justice and decrease unemployment among graduates in a tough legal economy. With the right supervision or more targeted training during law school, the need for radical change to the administration of legal services could largely be avoided.

Under a legal services brokerage model, like Manitoba's LSM/FLAC program, a public legal services organization can successfully lower the cost of middle class legal representation by brokering the sale of legal services to clients at a reduced rate. This model could be successful in any market large enough to provide a pool of attorneys in relevant practice areas willing to work at a reduced rate in exchange for guaranteed payments and almost certainly increased goodwill.

While massive deregulation of the legal field seems unlikely because of the ABA's recent reaffirmation of its opposition, an increase in profit-sharing between lawyers and non-lawyers could help to align the supply and demand of legal services more fairly with the price average Americans are able to pay for representation.

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Finally, unbundling legal services so that middle class clients pay for and receive only the services they absolutely need, could provide a new avenue for exploration of business models like the legal cafe, which would build on the infrastructure already in place in Maryland for limited scope representation.

No matter the business model ultimately employed by the lawyer seeking to increase access to justice for Maryland's middle class, the payoff is likely to be great both as a practical financial matter and as a matter of the civically-concerned soul. There is no right answer to the problem of middle class representation, but there are countless avenues available for exploration by new and old lawyers alike who seek to better the legal opportunities of Maryland's silently ailing would-be civil litigants.