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The American Legal Profession in the Twenty-First Century

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TOPIC II. C

Lawyers in the United States work in public service, private counseling, and dispute resolution, but many also work outside of traditional legal practice. The million-member American bar, second largest in the world, grows more diverse by gender, and ethnicity—and older on average. All members of this learned profession must qualify by education or examination and by proof of good character and fitness before taking an oath to serve as an attorney. Thence, there are few limitations on the form of legal practice, though many law firms require an associateship before an attorney becomes an owner of the firm. Economic pressure and technological enhancement are changing the profession: some jobs once in firms are now in-house, and some basic tasks are outsourced. Persistent critics of law practice and law schools suggest the profession will shrink. But the evidence suggests that U.S. lawyers will continue to influence large global firms, as they will influence U.S. life, and likely in even greater numbers.

INTRODUCTION: THE LAWYERS' PROFESSION IN THE UNITED STATES

The role of law in America, and of lawyers in American civic and economic life, has been significant since the birth of the nation.[1] Law-

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1. The evolving role of the American lawyer has been recurrently documented by lawyers and scholars. *See* JOHN DOS PASSOS, THE AMERICAN LAWYER (1907), ROSCOE POUND, THE LAWYER FROM ANTIQUITY TO MODERN TIMES (1953), ALBERT BLAUSTEIN, et al., THE AMERICAN LAWYER (1954), QUINTIN JOHNSTONE & DAN HOPSON, JR., LAWYERS AND THEIR WORK (1967), RICHARD L. ABEL, THE SOCIOLOGY OF AMERICAN LAWYERS (1980), RICHARD L. ABEL & PHILIP S.C. LEWIS, LAWYERS IN SOCIETY: THE COMMON LAW WORLD (1988), RICHARD L. ABEL, AMERICAN LAWYERS (1989), and David Scott Clark, *Legal Professions and Law Firms*, *in* COMPARATIVE LAW AND SOCIETY (David Scott Clark, ed., 2012).

yers have played central roles in public service: twenty-five of the forty-four presidents of the United States have been attorneys.[2] Such prominence of lawyers in American public affairs is of long standing: of the fifty-six signers of the Declaration of Independence, twenty-five were lawyers.[3]

Lawyers are active at all levels of politics. For example, on average, one out of eight of all state legislators are attorneys.[4] Yet participation alone does not capture the centrality of law in a nation that sees its independence and constitution, indeed its individual liberties, in peculiarly legal terms. Writing of America in 1831, the French lawyer Alexis de Tocqueville famously observed, "In visiting the Americans and studying their laws, we perceive that the authority they have entrusted to members of the legal profession, and the influence that these individuals exercise in the government, are the most powerful existing security against the excesses of democracy."[5] As in other countries, the efforts of lawyers and judges have been essential to the constitutional recognition of individual liberties and rights, which are now fundamental national values.[6]

Lawyers in the United States are essential to many facets of American public and private life, but the role of any particular lawyer is remarkably self-defined.[7] The legal profession in the United States developed from the legal traditions of England, in which the study of law was both an entrée to a fee-generating practice in the royal courts and an acceptable prelude to the otherwise-funded life of a gentleman.[8] The English alloy of leisurely and professional lawyers evolved in an American frontier culture, which encouraged qualified lawyers to use their talents as they chose rather than to constrain lawyers to a few tasks. Armed with knowledge of the law, with a particular authority in what the law allows or forbids, a measure of rhetorical skill, lawyers in the U.S. have persistently engaged in a

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2. *See* NORMAN GROSS, ED., AMERICA'S LAWYER-PRESIDENTS (2004).

3. *See* NARA, The Declaration of Independence: Signers Factsheet, http://www.archives.gov/exhibits/charters/print_friendly.html?page=declaration_signers_fact-sheet_content.html&title=NARA%20—%20The%20Declaration%20of%20 Independence%3A%20Signers%20Factsheet (last visited Nov. 7, 2013).

4. *See* National Conference of State Legislatures, 2009 State Legislator Education Data, http://www.ncsl.org/research/about-state-legislatures/2009-state-legislator-education-data.aspx (last visited Nov. 23, 2013).

5. 1 ALEXIS DE TOCQUEVILLE, DEMOCRACY IN AMERICA 271 (1835) (Henry Reeve, trans.)(George Adlard, 1839). For the argument that the ideal of the noble lawyer failed to survive the nineteenth century without a pragmatic, capitalist challenge, *see* Michael P. Schutt, *Oliver Wendell Holmes And The Decline Of The American Lawyer: Social Engineering, Religion, And The Search For Professional Identity*, 30 RUTGERS L.J. 143 (1998).

6. *See* CHARLES R. EPP, THE RIGHTS REVOLUTION: LAWYERS, ACTIVISTS, AND SUPREME COURTS IN COMPARATIVE PERSPECTIVE (1998).

7. *See* JOHN R. DOS PASSOS, THE AMERICAN LAWYER: AS HE WAS-AS HE IS-AS HE CAN BE (1907) (2008).

8. *See* ROSCOE POUND, THE LAWYER FROM ANTIQUITY TO MODERN TIMES (1953).

range of tasks beyond the courtroom. U.S. lawyers are, for instance, often engaged in commerce.

Lawyers are active in corporate boardrooms, and not just to counsel decision-makers; in 2010, nine chief executives of Fortune 50 corporations were lawyers.[9] Indeed, though only one living American has become a billionaire by practicing of law, lawyers are among the extremely wealthy for other reasons.[10] On a smaller plane, lawyers often fulfill non-legal roles: young people entering a family business often study the law, and many people entering finance, realty, or corporate management study law as well.

This is not to say that lawyers are held in high public esteem. Lawyers remain one of the few categories of people in the United States who are considered the appropriate objects of derisive humor in polite society.[11] A 2012 survey of American attitudes found only half as many adults rated the honesty and ethical standards of lawyers to be high or very high, as those adults who rated them low or very low.[12] Judges are, however, more esteemed, and roughly half of respondents consider their honesty and ethics to be high or very high, with only an eighth considering them to be low or very low. By comparison, twice as many people esteem the ethics of college professors, four times as many esteem nurses, and even bankers are more trusted than lawyers (though stockbrokers and members of Congress are less trusted yet).

Even so, lawyers remain central to American culture, and lawyer stories are a staple of American cinema, television, and fiction. This preoccupation is in part owing to a fascination with the courtroom criminal trial, with its drama of competition between embattled champions. Yet public interest in American lawyers reaches beyond the lawyer in the police procedurals and criminal trials, and narratives of civil cases, corporate law, law schools, and other lawyerly roles recurrently find an audience.[13]

Demographics

The United States has a great many lawyers. As of 2012, there were 1,268,011 people then licensed to practice law in the United

9. CEO, Esq., http://www.abajournal.com/magazine/article/ceo_esq/ (last visited Nov. 21, 2013).

10. Brian Baxter, *Revisiting the Forbes 400 and Its Deep-Pocketed Attorneys*, http://www.americanlawyer.com/PubArticleALD.jsp?id=1202620869101&thepage=1 (last visited Nov. 22, 2013).

11. *See* MARC GALANTER, LOWERING THE BAR: LAWYER JOKES AND LEGAL CULTURE (2005).

12. The poll, by the Gallup organization, found 42% of respondents thought lawyers' ethics were "average." *See* http://www.gallup.com/poll/1654/honesty-ethics-professions.aspx#3.

13. *See* MICHAEL ASIMOW, ED., LAWYERS IN YOUR LIVING ROOM: LAW ON TELEVISION (2009).

States.[14] If one includes those once eligible to practice but not currently licensed, the actual number of U.S. lawyers is higher still. A conservative estimate, using the actuarial indices for the demographics of law graduates since 1950, suggests that there are 1.6 million law graduates living in the United States.[15]

Given a U.S. population in 2012 of roughly 313.9 million people, the ratio of licensed attorneys to the American population was roughly one lawyer for every 250 people. This may not be world's largest bar, either in raw numbers or in proportion of lawyers to population, but it is second on both scales. India is likely to have slightly greater numbers of licensed lawyers overall,[16] and Israel has a higher proportion of lawyers to population.[17] In all events, the very size of the U.S. lawyer population, as well as arguments over the availability of suitable employment for qualified lawyers, has been routinely controversial in the United States.[18]

Even so, the number of lawyers who are in fact engaged in the practice of law is just over half of those who are licensed to do so, and about two-fifths of those qualified to do so. The U.S. Bureau of Labor Statistics estimated the number of lawyers in 2012 who were engaged in employment or self-employment providing legal services was 741,920,[19] with an additional 27,220 judges and magistrates,[20]

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14. "Lawyer Demographics: Number Of Licensed Lawyers - 2012: 1,268,011" *at* http://www.americanbar.org/content/dam/aba/administrative/market_research/lawyer_demographics_2013.authcheckdam.pdf (last visited Nov. 6, 2013).

15. *See* Stephen M. Sheppard, *The American Law School: What it Was, What it Is, and What it Ought to Be* (Cambridge Press, forthcoming 2014).

16. In 2011, the Indian bar reported having "nearly 1.3 million lawyers" actively practicing in India in 2011, increasing by 4% yearly. Lawyers in India by state - Legallypedia, http://www.legallyindia.com/wiki/Lawyers_in_India_by_state (last visited Nov. 25, 2013). In contrast, the local bar in China has grown significantly in recent years, but still is only about a quarter of a million. *See China has 220,000 Lawyers* —Politics—chinadaily.com.cn, http://www.chinadaily.com.cn/china/2012-11/13/content_15924473.htm (last visited Nov. 25, 2013).

17. Israel appears to have the highest national proportion of attorneys, with 52,142 lawyers in a population of 7.908 million, for a ratio of nearly one lawyer for every 150 people. *See Over 1,200 Lawyers Join Bar Association*, Israel Business, Ynetnews, http://www.ynetnews.com/articles/0,7340,L-4325709,00.html (last visited Nov. 6, 2013). The American and Israeli ratios are only slightly higher than some European states. The ratios in Europe range from 1 to 289 in Italy, to 1 to 341 in England, to 1 to 478 in Germany to 1 to 980 in France, to 1 to 1724 in Finland. *See* Jean-Paul Jean, Council of Europe, Study on 16 comparable countries http://www.coe.int/t/dghl/cooperation/cepej/evaluation/2010/2010_pays_comparables_en.pdf. The ratios in India and China are 1 to 886 and 1 to 6100, respectively.

18. *Compare* STEVEN J. HARPER, THE LAWYER BUBBLE: A PROFESSION IN CRISIS (2013) (The U.S. has too many lawyers) *to* CLIFFORD WINSTON, ET AL., FIRST THING WE DO, LET'S DEREGULATE ALL THE LAWYERS (Brookings Institution 2011) (The U.S. has too few lawyers owing to regulation). These arguments were old hat a century ago. *See Current Topics,* 28 ALBANY LAW JOURNAL 442 (1883) ("This cry of 'too many lawyers' has become too familiar to be alarming.").

19. Occupational Employment and Wages, May 2012, 23-1011 Lawyers, http://www.bls.gov/oes/current/oes231011.htm#ind (last visited Nov. 7, 2013).

14,150 administrative law judges and hearing officers,[21] 11,200 judicial law clerks,[22] 6,520 arbitrators and mediators,[23] for a total of 788,310 lawyers engaged in legal work.[24]

The other half of the qualified attorneys, or three-fifths of the attorneys who are actively licensed, in the United States, are engaged in pursuits other than practicing or adjudicating the law. Some of these lawyers are retired, though still retaining an active license. A significant number of these lawyers are in positions in the public or private sector that are not considered positions of legal practice. Barack Obama and Joseph Biden, for instance, are public officials who qualified as attorneys but who were not, in 2012, providing legal services.[25] So are many corporate officers, journalists, investors, bankers, farmers, teachers, and practitioners in many other fields.[26]

Professional Structure

Lawyers in the United States have a single, essential professional qualification—to be licensed (or have been licensed) to practice as an attorney at law. There is no distinction in the U.S. between the qualifications to serve in the role of counselor or solicitor and in the role of advocate or barrister. As a practical matter, many lawyers specialize in civil litigation or in criminal practice, and other lawyers tend not to practice in those fields. Yet, there is no technical licensure or other limitation that limits attorneys in the U.S. either to engage in courtroom practice or to refrain from it.

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20. The number 741,920 is an aggregate of employed lawyers from the occupational employment statistics and self-employed lawyers from the occupational outlook statistics. *See* Occupational Employment and Wages, May 2012 23-1023 Judges, Magistrate Judges, and Magistrates, http://www.bls.gov/oes/current/oes231023.htm (last visited Nov. 7, 2013); XLS data from Employment projections data for lawyers, 2010-20, Lawyers: Occupational Outlook Handbook: U.S. Bureau of Labor Statistics, http://www.bls.gov/ooh/Legal/Lawyers.htm#tab-6 (last visited Dec. 2, 2013).

21. Occupational Employment and Wages, May 2012, 23-1021 Administrative Law Judges, Adjudicators, and Hearing Officers, Administrative Law Judges, Adjudicators, and Hearing Officers, http://www.bls.gov/oes/current/oes231021.htm (last visited Nov. 7, 2013).

22. Occupational Employment and Wages, May 2012 23-1012 Judicial Law Clerks, http://www.bls.gov/oes/current/oes231012.htm (last visited Nov. 7, 2013).

23. Occupational Employment and Wages, May 2012, 23-1022 Arbitrators, Mediators, and Conciliators, http://www.bls.gov/oes/current/oes231022.htm (last visited Nov. 7, 2013).

24. Legal services employ even more non-lawyers, including an additional 276,030 paralegals and legal assistants, 18,590 court reporters, 49390 title examiners, and 47,000 other staff. *See* Occupational Employment and Wages, May 2012, 23-0000 Legal Occupations, http://www.bls.gov/oes/current/oes230000.htm (last visited Nov. 7, 2013).

25. Of course, the lawyer who leaves the active practice of law to engage in other endeavors is a global staple of the profession. Examples are as divergent as Nelson Mandela, Mohandis Ghandi, and Vladamir Putin.

26. *See* GARY A. MUNNEKE, WILLIAM D. HENSLEE & ELLEN WAYNE, NONLEGAL CAREERS FOR LAWYERS (5th ed., 2006).

Different forms of employment may stratify lawyers, such as partners employing associates, but once a person is licensed within a jurisdiction, that person is technically allowed to engage in nearly any form of legal representation or counseling within that jurisdiction. Instead, lawyers are limited in their representation by two considerations: the general, ethical requirement of competence in any given representation, and the power of courts and agencies to determine qualifications to be admitted to practice before that court. Certain arenas of practice, such as the members of the bar before the U.S. Patent and Trademark Office,[27] require proof of technical expertise in their fields prior to qualification, but this is a rare exception to the general rule.

Law students may provide legal representation in certain, limited capacities under the supervision of a law professor or attorney, usually in a law school legal clinic.[28] In different contexts, law students may work for attorneys as paid employees, usually as "law clerks." Or they may act as unpaid assistants for academic credit, usually as "externs" or "interns." Yet once a law student has passed the bar examination and taken an oath as attorney, often in the year following the student's graduation, there are no further required distinctions. U.S. lawyers do not have a period of formal or bar-managed apprenticeship, such as service as a trainee, clerk, or devil (as the Scots trainee is titled).

Lawyers in the United States populate most but not all professions and offices related to the law. Licensed members of the bar enjoy a monopoly over certain legal services, owing to state prohibitions on the unauthorized practice of law. Definitions of unauthorized practice vary among jurisdictions, but every state creates criminal or civil liability for any person who, without a valid license as an attorney at law, represents another person before a court or agency, prepares legal documents for another, or advises another person of rights or duties under law in return for payment.[29]

As a practical matter, unauthorized practice laws are now rarely enforced. Non-lawyers increasingly represent others, for a fee, before administrative agencies.[30] Considerable work that was once per-

27. A person seeking to register as a member of the patent bar must meet requirements specified in 37 C.F.R. §11.7 (2013), including the possession of legal, scientific and technical qualifications, which are generally proved by proof of the study of science or engineering and passing an examination.

28. Such representation is regulated by the rules of the bar governing the law school's jurisdiction. *See* Clinic Bar Rules by State Clinic Bar Rules by State—Georgetown Law, http://www.law.georgetown.edu/academics/academic-programs/clinical-programs/our-clinics/clinic_state_bar_rules/clinic_state_bar_rules.cfm (last visited Nov. 24, 2013).

29. *See* Derek A. Denckla, *Nonlawers and the Unauthorized Practice of Law*, 67 FORDHAM L. REV. 2581 (1999).

30. AMERICAN BAR ASSOCIATION COMMITTEE ON NONLAWYER PRACTICE, NONLAWYER ACTIVITY IN LAW-RELATED SITUATIONS (ABA, 1995).

formed by lawyers is now performed by members of other professions: work related to the sale, contracts, and deeds in the transfer of land is performed by licensed realtors, and title assurance is often performed by title examiners working in specialized corporations, known colloquially as title plants or abstract plants.[31] Work related to the computation of taxes and tax document filing is usually performed by certified public accountants.[32] Work related to the issuance of corporate bonds and to corporate equity is performed by banks and financial institutions, many of whom employ lawyers in supervising these functions. Some tasks performed typically by lawyers in other countries are not exclusive to the legal profession in the United States, particularly the role of the notary public, which is not limited to the bar in most U.S. jurisdictions.[33] Some routine functions of legal practice are performed not by lawyers but by staff members. Some are junior staff performing legal work or support, under varying levels of attorney supervision, particularly by paralegals and legal secretaries. Some are quite senior in their authority in the firm, including professional firm administrators, office managers, human resources managers, strategic development planners, senior secretaries, and marketers.[34]

Judges and magistrates in the U.S. are drawn overwhelmingly from the profession of lawyers, though there are exceptions. Lay judges, or judges with no legal qualification, were once widely accepted in the United States and are still found in thirty states in the trial courts of limited jurisdiction, such as the courts of the justice of the peace, justice courts, municipal courts, and county courts.[35] These courts usually hear traffic offenses, small civil claims, enforcement of orders from other courts, and similar petty matters. If such courts determine a case in which the defendant is liable to jail or imprisonment, however, the defendant must have an appeal to a court in which the judge presiding is required to be a lawyer.[36] Though there is no constitutional requirement that federal judges be lawyers, the strong customary expectation is that presidential nominees are to be members of the bar.

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31. *See* the American Land Title Association web site: http://www.alta.org/about/index.cfm (last visited Nov. 24, 2013).

32. As of 2012, the Bureau of Labor Statistics estimated 1,129,340 people were employed in accountancy, over 300,000 in accounting, tax preparation, and bookkeeping. http://www.bls.gov/oes/current/oes132011.htm

33. *See* National Notary Association, http://www.nationalnotary.org/ (last visited Nov. 24, 2013). Louisiana's civilian tradition does not bar non-lawyers from serving as notaries, but many notaries are lawyers there.

34. *See* CAROLYN THORLOW, ED., THE ABA GUIDE TO PROFESSIONAL MANAGERS IN THE LAW OFFICE (1996).

35. *See* DORIS MARIE PROVINE, NONLAWYER JUDGES AND THE POLITICS OF PROFESSIONALISM (1986).

36. North v. Russell, 427 U.S. 328 (1976).

I. The Legal Framework

The Constitution of the United States does not expressly provide for the recognition or status of the lawyer in the United States. It does, though, imply a necessity for lawyers, by creating significant obligations upon the federal and state governments that can only be satisfied by the work of lawyers. Indeed, a fair criminal trial in the United States requires the right to counsel by an attorney, if need be, at the expense of the prosecuting government.[37]

Though not expressly recognizing the profession, the federal constitution does imply certain federal rights on lawyers. States are, as noted above, the governments in the United States that regulate the legal profession and recognize individuals as lawyers. From that state role arises a federal constitutional interest in the profession of law, in that a state cannot deny to an out-of-state citizen a privilege or immunity accorded to its own citizens. Thus, a state cannot forbid citizens from other states from becoming licensed in its own state, or create unreasonable barriers to licensure.[38] Further, a state's regulations cannot unreasonably burden the constitutional rights of lawyers as citizens, including the right to engage in commercial speech through advertisement.[39]

Federal limits notwithstanding, the process of licensure and regulation in each state remains the source of recognition for the legal profession in the United States. Though the requirements for admission are sometimes determined in part by state legislatures, the requirements for licensure are in whole or part set by the state's highest court in every U.S. jurisdiction.[40] Further, the inherent power of the courts to regulate their officers provide each judge with a degree of authority of lawyers licensed to appear in the court of that judge; the lawyer's oath (discussed below in Part IV) is the formal basis for that authority.

The legal profession is a "learned profession" as a matter of state and federal law, though that concept provides no exemption from anti-trust laws or some other regulations of trades or professions.[41] It does, however, exempt lawyers from regulation under the federal

37. Gideon v. Wainwright, 372 U.S. 335 (1963). Still, many people remain without adequate legal representation. *See Attorney General Eric Holder Speaks at the Justice Department's 50th Anniversary Celebration of the U.S. Supreme Court Decision in Gideon v. Wainwright*, Welcome to the United States Department of Justice, http://www.justice.gov/iso/opa/ag/speeches/2013/ag-speech-1303151.html (last visited Nov. 24, 2013).

38. Barnard v. Thorstenn, 489 U.S. 546 (1989).

39. Bates v. State Bar of Arizona, 433 U.S. 350 (1977).

40. *See* Comprehensive Guide to Bar Admission Requirements 2013 - CompGuide.pdf, http://www.ncbex.org/assets/media_files/Comp-Guide/CompGuide.pdf#page=13&zoom=auto,0,747 (last visited Nov. 25, 2013).

41. Goldfarb v. Va. State Bar, 421 U.S. 773 (1975).

Fair Labor Standards Act[42] and some state wage and hour laws. Though the legal profession is also a "liberal profession," that designation in the United States is effectively the same as a learned profession,[43] and liberal profession has little independent significance in contemporary U.S. law.[44]

In all states, attorneys are bound to follow the rules of professional conduct adopted by the state's bar or the state's highest court. Violations of these rules may lead to sanctions including disbarment. Attorney discipline is usually a process by a specialized committee or board of overseers, who report either to the state bar (in in twenty jurisdictions) or to the state courts (in thirty-one).[45]

The American Bar Association, or ABA, is not a regulatory body in the sense of most national law societies; the state bar associations or state courts serve that role, as noted above. The ABA does, however, exercise significant influence as the originator of a national code of attorney regulation, versions of which have been adopted in every state.[46] This code has evolved through several iterations,[47] the current version being the *Model Rules of Professional Conduct*.

There are fifty-eight rules of the *Model Rules*, varying considerably in detail, which are organized into eight categories. These categories regulate the lawyer-client relationship, the attorney as counselor, the attorney as advocate, attorney transaction with persons other than clients, the attorney's responsibilities in a law firm or association, the attorney's obligation of public service, the regulation of attorney provision of information about legal services, and the attorney's duty to maintain the integrity of the profession. The essential rule is 1.1, which requires a lawyer to "provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation."[48]

The rules reflect cultural differences between lawyers in the United States and other nations, though the cultural differences are

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42. 29 C.F.R. § 541.300(a) (2012).

43. BRUCE A. KIMBALL, THE "TRUE PROFESSIONAL IDEAL" IN AMERICA: A HISTORY 102 (1995).

44. Legal work might once not have been patentable as a product of a liberal profession, though this is probably no longer true. *See* John L. Thomas, *The Patenting of the Liberal Professions*, 40 B.C. L.Rev. 1139 (1999).

45. *See* http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/current_disciplinary_agency_directory_online.authcheckdam.pdf

46. *See State Adoption of the ABA Model Rules of Professional Conduct* http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/alpha_list_state_adopting_model_rules.html (last visited Nov. 29, 2013).

47. The first ABA ethical standards were the 1908 Canons of Professional Ethics, succeeded in 1969 by the Model Code of Professional Responsibility. The current rules were enacted in 1983, and frequently amended.

48. Model R. Prof. Resp. 1.1.

usually greater than the text of the rules might indicate. Particular rules for the obligations of a lawyer in the U.S. that differ from those in some other jurisdictions include the freedom of acceptance and continuation of representation of a client, limitations on conflict of interest, fees, and advertising.

Perhaps the most significant of these is that U.S. attorneys are impliedly allowed, under the rules, to refuse to take any case or client. (Some attorneys practicing in some courts may be required to take some criminal cases to represent an indigent without counsel, but this is now rare). Further, lawyers may withdraw from representation of a client for a host of reasons, as long as the lawyer gives sufficient notice to the client and receives leave of the court if the withdrawal is in the course of litigation.[49]

II. Developments of the Past Ten Years

The practice of law in the United States has undergone considerable change in the last ten years. Some of this change is, unsurprisingly, a continuation of long-standing trends, such as demographics and the increasing reliance on technology. Some respond to the particular events of the past decade, such as changes in hiring patterns in large law firms following the economic downturn of 2009. Some changes are certainly the result of long-term trends accelerated by recent changes, such as new working relationships in the workplace, including the subcontracting of legal work and the potential for sharing legal fees with non-lawyers, as well as changes in legal education and entrance to the profession.

The demographics of the U.S. lawyer have been steadily changing since the 1960s, becoming more racially diverse, more female, and older. The average age of the U.S. lawyer is increasing, with the median age now being forty-nine, a ten-year increase in age since 1980. The bar is now one-third female and two-thirds male. The portion of women licensed as U.S. attorneys has grown 300% since 1980.[50] The trend toward a more female bar will continue, as the percentage of law students who are women is over 45% and has been since 1997.[51] The portion of the U.S. bar who are mainly of Northern European ancestry continues to decline. In 2000, 88.8% of the bar was "white

49. *See* ABA Model Rule 1.16: Declining or Terminating Representation, *online at* http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_16_declining_or_terminating_representation.html (last visited Dec. 7, 2013).

50. American Bar Association, *Lawyer Demographics*, at http://www.americanbar.org/content/dam/aba/migrated/marketresearch/PublicDocuments/lawyer_demographics_2011.authcheckdam.pdf (last visited Nov. 23, 2013).

51. *See* ABA First Year and Total J.D. Enrollment by Gender, 1057-2011, http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/jd_enrollment_1yr_total_gender.authcheckdam.pdf

not Hispanic," a proportion that had fallen by 2010 to 81%; the percentage of African ancestry had risen from 4.2% to 4.8%, of Hispanic or Latino ancestry had risen from 3.4% to 3.7%, and of Asian or Pacific ancestry from 2.2% to 3.4%.[52] These trends are likely to continue, as minority enrollment in legal education has nearly tripled over the last twenty-five years.[53]

Changing Relationships in the Workplace

The practice of law for major corporations has been undergoing change for some years. Many companies that outsourced the bulk of their legal work have been enlarging their in-house counsel staff, both as a means to manage better their legal affairs and as a means of cutting costs. Corporations have also been increasingly cost-conscious in placing work and accepting bills from outside counsel, relying increasingly on alternative fee arrangements, or AFAs, rather than hourly billing.[54] These changes are likely to diminish some revenue growth for law firms but increase employment and compensation for corporate counsel. Yet these changes will also reach an equilibrium in which certain work will again routinely be performed in-house and other work will be competitively placed in firms.

The largest law firms in the United States, known commonly as "Big Law," have grown larger, more profitable, and more international, in the last decade. This has had a significant influence on the profession a whole. The greater change, however, may be the recognition of the vulnerability of Big Law to the market for legal services among financial and corporate clients.

Big Law was hurt by diminished revenue following the 2007 downturn in the U.S. economy. Some firms, particularly New York firms with a large portion of their work from banks and other financial institutions, and firms nationwide dependent on corporate work, have less work and accordingly have hired fewer new employees and paid them slightly less than in earlier years.[55] Some firms have reduced staff, including attorneys.[56] Several large law firms have dissolved into bankruptcy, most spectacularly the thousand-lawyer

52. American Bar Association, *Lawyer Demographics*, at http://www.americanbar.org/content/dam/aba/migrated/marketresearch/PublicDocuments/lawyer_demographics_2011.authcheckdam.pdf (last visited Nov. 23, 2013).

53. *See Total Minority J.D. Enrollment, 1987-2011*, at http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/jd_enrollment_minority.authcheckdam.pdf (last visited Nov. 23, 2013).

54. *See* Rebekah Mintzer, *2013 Law Department Metrics Benchmarking Survey*, Corporate Counsel, http://www.law.com/corporatecounsel/PubArticleCC.jsp?id=1202628882558 (last visited Dec. 1, 2013).

55. NALP, *Median First-Year Big-Law Associate Salary Slumps to $145,000 in 2012, a Median Last Seen in 2007*, http://www.nalp.org/2012_associate_salaries?s=big%20law (last visited Nov. 10, 2013).

56. Layoff Tracker, http://lawshucks.com/layoff-tracker/ (last visited Nov. 11, 2013).

New York firm of Dewey & LeBoeuf.[57] The bankruptcy of that firm, and some other law firm setbacks, however, are likely to be attributable more to idiosyncratic difficulties, such as the over-promised recruitment of high-billing partners, than to long-term changes in the legal marketplace.

Though there has been considerable discussion about the future of Big Law, economies of scale for certain forms of corporate and international client are likely to remain sufficient for such firms to continue to prosper. Even so, the growth of such firms in size and revenue per partner may be cyclic in echoes of the corporate economy.[58] Other influences on Big Law growth will follow from the failure of some firms to adapt to some changes in their clients' markets, allowing smaller firms to capitalize on these opportunities,[59] though the smaller firms will in turn remain targets for merger and consolidation. In 2013, the pace of mergers among law firms increased after several years of decline, with over fifty-eight mergers among large firms planned or executed.[60]

One consequence of the effect on Big Law of the 2007 downturn has been a period of intense debate over the mission and size of U.S. legal education, which is discussed in greater detail in Section IV. A loud movement of disgruntled law professors and former law students sparked debate over law school cost and utility. These critics presented long-standing criticisms of the rising costs of many U.S. law schools and the seeming differences between the demands of legal education and the needs of some practitioners—charges fueled by stalled recruitment following the Big Law retrenchment from 2008 to 2013. The charges have gained some credence because of their coordination with the widely disseminated and inflated media discussion of the law hiring downturn. Cumulatively, these factors led to a drop of about a third in law school applications for admission from 2010 to 2014 and will affect many law school budgets. Demands for change in legal curricula and law school accreditation standards have been met with a degree of favor by the ABA, though the long-term effects remain unknown. Some of these claims for reform are merited, but

57. James B. Stewart, *The Collapse: How A Top Legal Firm Destroyed Itself*, THE NEW YORKER, Oct. 14, 2013; Jordan Weissmann, *The Death Spiral of America's Big Law Firms*, THE ATLANTIC, Apr. 19, 2012.

58. *See* Marc Galanter & William Henderson, *The Elastic Tournament: A Second Transformation of the Big Law Firm*, 60 STAN. L. REV. 1867 (2008); Larry E. Ribstein, *The Death of Big Law*, 2010 WIS. L. REV. 749, 751 (2010); Bernard A. Burk and David McGowan, *Big but Brittle: Economic Perspectives on the Future of the Law Firm in the New Economy*, 2011 COLUM. BUS. L. REV. 1, 3 (2011).

59. *See* Jennifer Smith, *Smaller Law Firms Grab Big Slice of Corporate Legal Work,* WALL ST. J., Oct. 22, 2013.

60. *See* Catherine Ho, *Law Firms Experience Big Jump In Mergers*, THE WASHINGTON POST, Oct. 29, 2013, at http://www.washingtonpost.com/business/capitalbusiness/law-firms-experience-big-jump-in-mergers/2013/10/29/5422a4b2-40da-11e3-8b74-d89d714ca4dd_story.html (last visited Dec. 1, 2013).

more are and based less on the needs of students or clients than on exaggerated claims and poor scholarship.[61]

Technology and the Law

Dramatic changes in information technology have affected every profession, including the practice of law.[62] In general, the result has been to increase the productivity of law firms and institutions, as well as to increase availability of legal information to the public. Yet it has also made possible the outsourcing of legal work from firms in high-cost markets and nations to other markets and other nations.

A great range of new computer platforms now increase the productivity of nearly every aspect of research in practice, from the ability to search global patent databases[63] to local tax and land records. A key example is PACER, the federal Public Access to Court Electronic Records program, which was created in 1988 for access in court libraries but which has been publicly accessible since 2001.[64] The PACER system is a powerful research tool, but it is more directly used by every litigator in every federal court in the country to file pleadings, motions, and briefs, as well as to serve them on their opponents. Even so, PACER is hardly the point of sole public access to such documents, and an array of private providers has increased its efficiency or utility. Utilities such as Recap allow access to documents from behind the government's pay wall.[65] Many PACER documents are republished by sites such as Findlaw.com, Bloomberg.com, public.resource.org, FreeCourtDockets.com and Justia.com. LexisNexis.com and westlaw.com provide access through their proprietary databases. The sum is a vastly greater access to court opinions and case documents, found through variously priced services.

Similar services affect may arenas of practice. Corporate filings are now searchable through on-line databases, such as the federal EDGAR system[66] and the many state databases. Environmental monitoring is visible in real-time.[67] Gas transport tariffs may be examined on-line.[68] The conduct of corporations and financial traders is detectable through on-line services.[69] Computer models provide graphic depictions of events subject to litigation as well as expert sys-

61. *See* Steve Sheppard, *The Self-Fulfilling Prophecy of Law School Crisis*, H-Law http://h-net.msu.edu/cgi-bin/logbrowse.pl?trx=vx&list=H-Law&month=1312&week=a&msg=12TlEOJzEC/Gv7XpbxoC5g&user=&pw= (last visited Dec. 11, 2013).

62. *See* Law Technology News, *at* http://www.law.com/jsp/lawtechnologynews/index.jsp (last visited Dec. 1, 2013).

63. *See* http://patentscope.wipo.int/search/en/search.jsf (last visited Dec. 1, 2013).

64. *See* http://www.pacer.gov/ (last visited Dec. 1, 2013).

65. *See* https://www.recapthelaw.org/ (last visited Dec. 1, 2013).

66. *See* http://www.sec.gov/edgar.shtml (last visited Dec. 1, 2013).

67. *See* http://www.dec.ny.gov/chemical/8406.html (last visited Dec. 1, 2013).

68. *See* http://etariff.ferc.gov/TariffSearch.aspx (last visited Dec. 1, 2013).

69. *See* http://www.nanex.net/ (last visited Dec. 1, 2013).

tems to test theories of causation and other disputed elements in litigation and administrative controversies.[70]

Each of these services, and countless others, creates not only an additional obligation for lawyers to oversee client conduct and filings and to research client risk by seeing data that might attract enforcement agency interest, but also opportunities to monitor the conduct of potential competitors or other opponents. Lawyers increasingly engage in electronic discovery (or, e-discovery) probing the communications and records of clients and opponents generated in increasingly arcane and ephemeral databases, logs, and communications sites.[71]

The broad changes in communication and the rise of social networking have altered the tools of client recruitment and communication.[72] They have also changed client's perceptions and assessments of law firms. Though in many ways these novel forms of communications are merely advances on the older practice of law firm newsletters and seminars, the speed, ubiquity, and flexibility of these systems require considerable investments of lawyers' time and attention.[73]

There is considerable pressure in the marketplace to create technologies that directly benefit the lay consumer, and technology has increasingly provided a sort of legal do-it-yourself lawyering facility that will be much more significant than books that promise their readers that they can be their own lawyers.[74] Forms for basic legal documents are now commonly available to the public on the web, offered by corporations or firms that will tailor a form to fit a particular situation, effectively providing a legal service at a discount. One illustration among many is LegalZoom, which began offering its legal services products to the public in 2001 and now has a partner entity in England. LegalZoom will create the documents essential to partnerships, corporations in various forms, leases, and even immigration applications, wills, and divorce papers, each tailored somewhat to the client's limited specifications. Still LegalZoom claims not to represent the client, only to offer certain limited products. That limitation may

70. *See* Stanley B. Andrews, et al., *A Comparison Of Computer Modeling To Actual Data And Video Of A Staged Rollover Collision*, ESV 09-0346 Rollover Paper.doc - 09-0346.pdf, http://www-nrd.nhtsa.dot.gov/pdf/esv/esv21/09-0346.pdf (last visited Dec. 1, 2013).

71. *See* AIIM, *What is e-Discovery?* http://www.aiim.org/What-is-eDiscovery (last visited Dec. 1, 2013).

72. *See* Robert Ambrogi, *10 Ways Technology is Rewiring Law Practice*, at http://www.slideshare.net/ ambrogi/ambrogi-firm-future2012 (last visited Dec. 1, 2013).

73. *See* Simon Chester and Daniel Del Gobbo, *How Should Law Firms Approach Social Media,* 38 LAW PRACTICE MAGAZINE, on line at http://www.americanbar.org/publications/law_practice_magazine/2012/january_february/how-should-law-firms-approach-social-media.html (last visited Dec. 1, 2013).

74. *See* PAUL BERGMAN AND SARA J. BERMAN, REPRESENT YOURSELF IN COURT: HOW TO PREPARE & TRY A WINNING CASE (2010).

not persist for much longer. There are, and have been for some years, expert systems that emulate legal analysis and rule application, which may eventually provide some legal services.

The sheer ability to move great quantities of information and to process it at low cost have also encouraged the development of the Legal Process Outsourcing Company, or LPO, which is an entity that processes some legal work for a law firm or legal department at a lower cost than the originating law firm or law department would incur.[75] Although the LPOs that have attracted the greatest interest are off-shoring work to foreign countries, LPOs may also be in different markets in the same country. It is difficult to assess the scale of LPO employment by U.S. law firms and corporate legal departments, but it appears to be a growing practice, with firms sending work both to U.S. LPOs[76] and to LPOs in India,[77] the Philippines,[78] and other English-speaking states, as well, as China,[79] and South America.[80] The work done by LPOs is also difficult reliably to determine, but it seems as of 2013 to be predominately back-office work such as data entry, transcription, and litigation documentation management, as well as some forms of sophisticated legal work including legal research, due diligence investigation, contract management, and intellectual property services.[81] Such contracting raises significant ethics concerns for the sending firm, which may be one limitation on the sophistication of the work performed.[82]

III. Access to the Lawyers' Profession

The most common route to enter the U.S. legal profession is through attendance at one of the law schools that are nationally accredited by the Section of Legal Education and Admissions to the Bar

75. Courtney I. Schultz, *Legal Offshoring: A Cost-Benefit Analysis*, 35 J. Corp. L. 639, 640 (2010).

76. *See* Infosys, *Legal Process Outsourcing*, http://www.infosysbpo.com/offerings/functions/legal-process-outsourcing/offerings/Pages/index.aspx (last visited Dec. 1, 2013).

77. *See* Daisy Khanna, *Growth in the Indian LPO Industry*, http://www.connectoal.com/resources/thoughtwares/53-growth-in-the-indian-lpo-industry.html (last visited Dec. 1, 2013).

78. *See* http://www.lpomanila.com/ (last visited Dec. 1, 2013).

79. Yun Kriegler, *LPO Provider CPA Global Expands Into Mainland China And The US,* The Lawyer, Feb. 28, 2013, *at* http://www.thelawyer.com/lpo-provider-cpa-global-expands-into-mainland-china-and-the-us/3001837.article (last visited Dec. 1, 2013).

80. *See* The 2013 Legal Process Outsourcing Survey, http://www.law.com/corporatecounsel/PubArticleCC.jsp?id=1202623111585&thepage=3 (last visited Dec. 1, 2013).

81. *See* Legal Process Outsourcing, at http://professional.getlegal.com/management/litigation-support/legal-process-outsourcing (last visited Dec. 1, 2013).

82. Aaron R. Harmon, *The Ethics of Legal Process Outsourcing-Is the Practice of Law A "Noble Profession," or Is It Just Another Business?* 13 J. Tech. L. & Pol'y 41, 42 (2008).

of the American Bar Association. To enter such a school, a student has usually completed at least a university bachelor's degree and to have scored well on the Law School Aptitude Test, a national entrance examination administered by the Law School Admissions Council, a consortium of U.S. and Canadian law schools who use its products.[83]

Most students receive the degree Juris Doctor, or J.D., upon successful completion of three years of law school study (though this is sometimes completed more quickly or slowly depending on the number of courses completed per year). The J.D., and its predecessor, the LL.B., are the most common professional law degrees in the U.S.

The functions of U.S. legal education are both to instill a comprehensive understanding of the techniques of legal analysis and criticism and to expose students to a basic understanding of legal rules across a variety of fields of law.[84] The first year is usually spent in the study of common-law reasoning and basic skills in research and legal argument, explored through basic courses, such as property, torts, criminal law, and civil procedure. The second and third years usually incorporate an assortment of introductory courses in constitutional law, administrative law, and professional legal ethics; of particular legal subjects for specialized practice, such as family law, evidence, trial practice, appellate practice, state law, oil and gas law, water law, employment law, environmental law, corporations, taxation, wills and trusts, intellectual property, and international law; advanced skills courses in research, drafting, negotiation, dispute resolution; foundations such as legal history, legal philosophy, and interdisciplinary criticisms of law; and practical applications through journal editing, moot courts, client counseling and negotiation competitions, clinics, and supervised externship placements.[85]

In most U.S. states, entry to the bar is open to holders of a J.D. from an ABA-accredited school. There are a few variations: some states also allow a person to sit for the bar upon completion of a J.D. from a school accredited only in that state; some allow a person to sit for the bar on completion of an degree by correspondence or distance education; and two still allow students to become members of the bar without taking a bar exam, owing to the privilege accorded to graduates of designated law schools in that jurisdiction.[86]

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83. *See* About the LSAT, http://www.lsac.org/jd/lsat/about-the-lsat/ (last visited Dec. 1, 2013).

84. See ROBIN WEST, TEACHING LAW: JUSTICE, POLITICS, AND THE DEMANDS OF PROFESSIONALISM (2013).

85. *See*, STEVE SHEPPARD, THE AMERICAN LAW SCHOOL: ITS PAST, PRESENT, AND HOPEFUL FUTURE (forthcoming Cambridge University Press, 2014).

86. This diplomate privilege, or diploma privilege, was once widely used among states, but it now is offered in only Wisconsin and New Hampshire. *See*, in general, James Peden, The History of Law School Administration, 2 THE HISTORY OF LEGAL EDUCATION IN THE UNITED STATES: COMMENTARIES AND PRIMARY SOURCES 1108 (Steve

A number of U.S. states allow a person with a professional or academic law degree from another country to qualify to sit for the bar examination, sometimes following the completion of a Master of Laws in that jurisdiction (or, in some states, at any ABA-accredited law school). In 2013, New York initiated a new requirement that such students demonstrate completion of several courses related to U.S. and New York practice as part of this requirement.[87]

Some states also allow the admission of attorneys to their bar "on motion," which does not require the passage of a bar examination in that state. This option is only available to attorneys who are licensed and in good standing in another U.S. jurisdiction. Indeed, in many states it is restricted only to lawyers who have been actively practicing for a given time in a jurisdiction that accords reciprocity to that state, allowing either jurisdiction to admit on motion lawyers from the other. Between 2008 and 2012, an average of 7,500 lawyers were admitted on motion nationwide.[88] Except in very rare cases, admission on motion is not a route of entry to the profession for non-lawyers or foreign lawyers.

A candidate for admission to the bar who has satisfied the educational or examination requirements for admission to the bar is not entitled to licensure. Before administering the oath of an attorney (and often before administering the exam), the licensing authority in each state must be satisfied of each applicant's "good character and fitness" to practice law. The applicant must usually claim to have such good character and then provide a record of all previous names by which the candidate has been known, previous employers, and addresses of domicile, along with a list of individual references. The licensing office will examine the record and search for other evidence, such as court and police records.[89] Applicants must usually also be certified by the deans of their law school as having sufficient character and fitness. The licensing office will then allow a candidate to sit for the exam, and once having passed it, to seek to take the oath, though in many states, a candidate must still be sponsored by a practicing member of the bar who is willing to attest to the candidate's fitness. A candidate whose past or current records demonstrate crimi-

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Sheppard, ed., 2008). For the Wisconsin rule, *see* Wisconsin Supreme Court Rule 20.03 (2013), allowing admission to qualified law graduates of the University of Wisconsin and to Marquette University.

87. *See* Rule 520.6, at Foreign Legal Education, http://www.nybarexam.org/Foreign/ForeignLegalEducation.htm (last visited Dec. 1, 2013).

88. *Admissions to the Bar by Type, 2008–2012* The Bar Examiner, Volume 82, Number 1, March 2013 - 8201132012statistics.pdf, http://www.ncbex.org/assets/media_files/Bar-Examiner/articles/2013/8201132012statistics.pdf (last visited Nov. 24, 2013).

89. Some jurisdictions employ the National Conference of Bar Examiners' Character and Fitness Investigations Service. *See* Character & Fitness, http://www.ncbex.org/character-and-fitness/ (last visited Dec. 1, 2013).

nal conduct, academic malfeasance that suggests untrustworthiness, untreated mental illness, untreated substance abuse, financial irresponsibility, or a lack of candor is likely to be denied admission to the bar.[90]

The final requirement for admission to practice is to take the oath of an attorney.[91] No attorney can be licensed without taking the oath of an attorney before a judge to be admitted to practice before a court in that jurisdiction, and most states require admission to the highest court of that state as a condition for licensure in that state. Besides taking the oath on first admission, attorneys must take the oath again at the time that attorney is admitted to every court for the first time, including federal courts. The oath of attorney varies from state to state, and sometimes from court to court and judge to judge. A typical short form of oath is that required by the U.S. Supreme Court: "I, _____, do solemnly swear (or affirm) that as an attorney and as a counselor of this Court, I will conduct myself uprightly and according to law, and that I will support the Constitution of the United States."[92]

Many courts require a longer form, expressing what is implied in the short form. The discretion implied in the scope of office for attorneys is broad but can be understood in sufficient detail to include both legal and moral obligations.[93]

IV. Organization of the Profession

There is no national regulatory law society in the United States. The American Bar Association, as noted, is a voluntary association rather than a regulatory body. Its Section on Legal Education has regulatory authority over much but not all of the legal education in the United States. Its nearly 400,000 members support a variety of law reform initiatives in the United States and worldwide.[94]

The professional organizations in each of the states, the District of Columbia, and the various possessions, territories, and trusts vary, as described above, among those that are voluntary and those whose membership is unified. As described in Part II, in some jurisdictions, attorney licensure and discipline is a function of the bar, and in

90. *See* Lori Shaw, *Professionalism: What Does it Take to Satisfy Character and Fitness Requirements?,* 44 Syllabus, at http://www.americanbar.org/publications/syllabus_home/volume_44_2012-2013/winter_2012-2013/professionalism_whatdoesittaketosatisfychracterandfitnessrequire.html (last visited Dec. 1, 2013).

91. On the antecedents and significance of the attorney's oath, *see* Josiah Henry Benton, The Lawyer's Official Oath and Office (Boston Book Co., 1909).

92. Supreme Court of the United States, Instructions For Admission To The Bar, http://www.supremecourt.gov/bar/barinstructions.pdf (last visited Nov. 25, 2013).

93. *See* Steve Sheppard, I Do Solemnly Swear: The Moral Obligations of Legal Officials (2009).

94. *See About the American Bar Association*, http://www.americanbar.org/about_the_aba.html (last visited Dec. 2, 2013).

others it is in a state agency subordinate to the courts. In all cases, however, a decision by a lawyer disciplinary committee will be subject to judicial review by a state court and, if there is a claim that the disciplinary committee violated a constitutionally protected right, there is a possibility of review by civil action in a federal court.

The history of the bar associations, and their relationship to both access to the profession and professional regulation, is beyond the scope of this report, but it is in some manner essential to understand the profession. The eighteenth-century colonial American bar was, in many ways, an elite organization of lawyers trained in London, Edinburgh, and Dublin, who trained local apprentices with care into something of a professional cadre. The revolution and a wave of anti-authoritarianism diminished the role of the bars, which revived after the American civil war of the 1860s.[95] A new wave of organization in the late nineteenth century led to the creation of the American Bar Association and most of the modern state and local associations, which grew quickly from social to professional organizations, committed to developing educational and professional standards.[96]

Today's bar associations provide services to the profession and to the public, as well as regulatory and licensing functions. Bar associations typically provide public outreach on matters of public concern related to law and justice. The American Bar Association, for instance, is engaged in many countries around the world, developing court systems and promoting the rule of law. In many states, the state bar encourages (and often requires) attorneys to engage in representation and advice to the poor, for no fee but *pro bono publico*.[97] In all states, the bar association encourages professional education, usually in the form of continuing legal education classes. Bar associations host an array of specialized sections, which encourage training and service in a variety of subject-specific areas of practice, such as labor law, or professional life, such as the integration of young lawyers.

Besides the ABA and the state bars, private voluntary associations abound, some of which are deeply engaged in law reform, such as the American Law Institute, which authors the respected *Restatements of the Law*,[98] and the Uniform Law Commissioners, who draft model legislation.[99] Specialized associations and bar organizations focus on particular areas of legal practice, some large and well

95. *See* CHARLES WARREN, A HISTORY OF THE AMERICAN BAR (1911).

96. *See* ROSCOE POUND, THE LAWYER FROM ANTIQUITY TO MODERN TIMES (1953).

97. A list is maintained by the ABA. *See* http://www.americanbar.org/groups/bar_services/resources/state_local_bar_associations.html.

98. *See* ALI, http://www.ali.org/ (last visited Dec. 2, 2013).

99. *See* Uniform Law Commission, http://www.uniformlaws.org/ (last visited Dec. 2, 2013).

known, such as the Federal Bar Association[100] or the American Society for International Law,[101] and many more specialized, like the Railroad Accident Trial Lawyers Association.[102] Further, there are usually bar associations in each county or parish (the administrative districts in each state) and in most cities and towns, such as the Association of the Bar of the City of New York, which has over 24,000 members.[103]

V. Organization of Practice

As noted, of 1.2 million registered U.S. lawyers, just over 700 thousand practice law. These work primarily in firms, corporations and similar entities, and, of course, in the government.

An eighth of all U.S. lawyers (127,500) worked for governments, not counting judges. Only 37,300 lawyers worked for the federal government, including attorneys working for the Congress, the courts, and the various executive departments, including the Department of Defense and the Department of Justice. The other 90,200 worked for local or state governments. Among the many roles played by lawyers for government is the role of criminal prosecution. The bulk of prosecutors are employed by state and local governments.

Forty thousand more attorneys provided lawyering work within non-legal institutions. 12,400 lawyers worked in corporate management. 7,800 worked in religious, civic, or similar philanthropic entities. The largest corporate employers as a group were finance and insurance companies, which employed 20,800 attorneys in house.

The remaining three-fourths of practicing lawyers are engaged in the private practice of law, organized into law firms. Roughly half of these lawyers are solo practitioners. This proportion has remained relatively stable for thirty years. Some law firms are of two to five lawyers, and about an eighth to a tenth of the lawyers in private practice are in these small practices. About a fifth of the lawyers in private practice are in firms of between six and one hundred lawyers.[104]

About a sixth of the lawyers in private practice work in firms of over a hundred lawyers, and among these, a significant proportion work in global colossi, employing thousands of lawyers in individual firms, each organized into many far-flung offices. Twenty-five law

100. *See* Federal Bar Association, http://www.fedbar.org/ (last visited Dec. 2, 2013).
101. *See* http://www.asil.org/ (last visited Dec. 2, 2013).
102. Railroad Accident Trial Lawyers Association, http://www.rtla.org/ (last visited Dec. 2, 2013).
103. *See* New York City Bar Association - About Us, http://www.nycbar.org/about-us/overview-about-us (last visited Dec. 2, 2013).
104. *See* Lawyer Demographics 2012, http://www.americanbar.org/content/dam/aba/migrated/marketresearch/PublicDocuments/lawyer_demographics_2012_revised.authcheckdam.pdf (last visited Dec. 6, 2013).

firms had over a thousand lawyers, and the largest five were over two thousand attorneys in 2013.[105] These firms of hundreds and thousands, Big Law, recruit about a third of all U.S. law graduates,[106] although the employment structure of the largest firms is based on the planned attrition of young attorneys.[107] As David Clark has noted, the United States leads the world in developing the law firm to its logical extreme.[108]

One element of the practice that is not easily understood from the attention to size alone is the tribalism that develops between law firms and attorneys who are generally representing one form of client or another and who tend to adopt a worldview contrary to the worldview of the lawyers representing clients with adverse interests. In part, this tribalism is caused and in part it is merely reflected in ethical rules on conflict of interest that are, as written, similar to those in other common law jurisdictions, so that no lawyer may represent two parties with directly conflicting interests or represent a party after representing another party from whom information useful to the first was acquired.[109] Yet the rules reflect a culture in which attorneys tend to represent only one side of a recurring issue: there is a "Defense Bar" and a "Plaintiffs' Bar;" some lawyers represent corporations and insurers and defend insured corporations, while other lawyers sue corporations and insurers and represent plaintiff claimants. Voluntary associations reinforce this division, represented by such lawyers' clubs as the Association of Defense Trial Attorneys,[110] DRI,[111] and the International Association of Defense Counsel,[112] for the defense, and the American Association for Justice for plaintiffs' lawyers.[113] There are, of course, organizations that straddle the divi-

105. The *National Law* Journal reported that the ten largest U.S. firms in 2013 ranged from (1) DLA Piper, with 4,036 lawyers, to (10) Sidley Austin with 1,636 lawyers. *Employment at Largest U.S. Law Firms Up Just 1.1 Percent Last Year, According to The National Law Journal's 2013 NLJ 350* — ALM, http://www.alm.com/about/pr/releases/employment-largest-us-law-firms-just-11-percent-last-year-according-national-law (last visited Dec. 1, 2013).

106. *NALP - The Association for Legal Career Professionals — Employment Patterns 1999-2010, http://www.nalp.org/employmentpatterns1999-2010 (last visited Nov. 10, 2013).*

107. The ratio of partners to associates among the twenty-five largest firms in 2013 was only 1 to 1, though the average ratio for the hundred smaller firms from the top 350 was 1.75. Given the longer time a partner may practice than an associate, a ratio of 1 to 1 for a firm hiring associates annually requires considerable attrition among associates.

108. In David Scott Clark, *Legal Professions and Law Firms*, in DAVID SCOTT CLARK, ED., COMPARATIVE LAW AND SOCIETY 384-85 (Edward Elgar, 2012).

109. *See* American Bar Association, Model Rules of Professional Conduct 1.6-1.12.

110. *See* http://www.adtalaw.com/

111. *See* http://www.dri.org/ DRI was formerly the Defense Research Institute.

112. *See* http://www.iadclaw.org/

113. *See* www.justice.org/ The AAJ was formerly the National Association of Claimants' Compensation Attorneys (NACCA), then the Association of Trial Lawyers of America (ATLA).

sion between plaintiff and defendant, such as the National Trial Lawyers.[114]

A law firm may be organized as a partnership, a corporation, or a similar business entity. The powers to form various entities are conferred by state law, and not every jurisdiction allows all of them, nor does every jurisdiction define them in the same way. The differences among these are that the forms of corporation or entity, including options for the structure of partnerships, affect taxation, liability to third parties, and the manner in which the entity might be dissolved. Despite the attractions of various forms of organization, more firms remain organized as general partnerships than as other forms of entity.[115]

The most common forms include:

—The sole proprietorship, in which the individual lawyer owns all of the assets of a practice and is liable for all of its debts.

—The general partnership is the most traditional form of law firm, in which every partner is an owner and each partner has unlimited personal liability for all debts of the partnership, as well as an undivided share of ownership in all partnership assets.

—The limited liability partnership, or LLP, has only limited partners, any of whom may engage in management of the partnership but all of whose liability is limited to the value of their investments. In most states, LLPs have a stringent minimum requirement for professional insurance, and the extent of limitation of liability may be less than that of a corporation.

—The professional corporation, or PC, is a corporation formed of members of a single profession. Thus, a PC may be a law firm, or a doctors' firm, or an engineer's firm, but it is usually barred under state law from being a multidisciplinary firm. All shareholders of the corporation must be qualified members of the profession. A PC may be formed for only one member of the profession, and many solo practitioners are incorporated as a PC in order to limit liability.

Less common forms of law firm organization include two forms of partnership and three forms of corporation:

—Partnerships include the limited partnership, or LP, and the limited liability limited partnership, or LLLP. Each are variations on the general partnership. In the LP, one or more partners may act as general partners, capable of engaging in firm management and liable for all debts, the others having liability limited to a given investment and no management authority. An

114. *See* http://www.thenationaltriallawyers.org/#

115. *See* Robert W. Hillman, *Organizational Choices of Professional Service Firms: An Empirical Study*, 58 BUS. LAW. 1387 (2003).

LLLP is like a limited partnership, though the liability of the general partner is also limited. The LLLP is still quite rare.

—Corporations include the limited liability company, or LLC, the professional limited liability company, or PLLC, and the professional services corporations, or PSC. The LLC a form of business entity for professionals, which is treated for tax purposes as either a sole proprietorship or a general partnership (if there are two or more shareholders), though shareholders enjoy limited liability. In some jurisdictions, the LLC is known as the professional limited liability company, or PLLC. Likewise, the limited liability law company, or LLLC, is an informal variation on the LLC.) The PSC is a tax designation that includes all forms of professional corporation, including the PC, the LLC, and the PLLC, which often requires the payment of a higher federal tax rate than other corporations.[116]

As with all of these business forms, the power to create one or another form of entity derives from the state law in which the business is created, in these cases the law of the jurisdiction in which the attorneys maintain their main location for practice. Even so, the inherent power of the courts to regulate the profession of law allows the courts to penetrate statutory limits on individual partners' liability for law firm debts, regardless of the structure of the legal entity.[117]

In general, lawyers provide legal services through firms wholly owned by lawyers and dedicated to providing professional legal services. Such firms contract services from other professions, such as accountants, actuaries, psychologists or counselors, engineers or architects, expert witnesses, and others. Likewise, such firms provide services by contract to other professions, such as hospitals and construction firms. This division is enforced by an ethical obligation of professional independence of the lawyer, reflected in ABA model rule of professional conduct 5.4, which forbids lawyers and law firms from sharing a legal fee with a non-lawyer, except in very limited and exceptional circumstances.[118]

The limits inherent in such a division of labor are obvious, and in 1998 the ABA created a Commission on Multidisciplinary Practice,[119] which proposed changes to Rule 5.4 in 2013, to allow lawyers to share

116. A handy overview is provided online by the U.S. Chamber of Commerce. *See* https://www.uschambersmallbusinessnation.com/toolkits/guide/P12_4210

117. *See* First Bank & Trust Co. v. Zagoria, 302 S.E.2d 674 (Ga. 1983).

118. *See* ABA Center for Professional Responsibility, Rule 5.4: Professional Independence of a Lawyer, online at http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_5_4_professional_independence_of_a_lawyer.html (last visited Dec. 7, 2013).

119. *See* http://www.americanbar.org/groups/professional_responsibility/commission_multidisciplinary_practice.html

fees with entities including non-lawyer owners.[120] But that draft rule has been withdrawn from immediate consideration by the ABA House of Delegates, though it is being considered in some states. In October 2013, the ABA Standing Committee on Ethics and Professional Responsibility determined that an attorney bound in one jurisdiction by Rule 5.4 does not violate it by sharing fees with an entity owned in part by a non-lawyer in another jurisdiction that does not have such a rule.[121]

VI. Professional Liability

Lawyers in the United States are subject to several distinct and overlapping regimes for enforcing standards of professional conduct. In general, lawyers are not subject to national regulation as a profession, and so there is no U.S. statute or other single source of national standard for professional liability. Rather, as with the regulation of most professions, such matters are left to the states. Thus the states enact standards of professional conduct that are the basis for attorney discipline, as discussed in part VI. Additionally, the courts, including the federal courts, retain disciplinary powers under both the rules of court and their inherent power to regulate the bar. Lastly, the market for professional insurance for lawyers, though regulated in each state, is in effect a national market, so that standards of liability and coverage in one jurisdiction may directly affect standards in others.

None of these sources of law or attorney regulation establish the basic standards of professional liability of a lawyer to a client. That is a matter of common law as applied in each jurisdiction. The common law provides for an array of theories under which claims of legal malpractice may arise. Under some facts, the claim may be brought for breach of contract. Under some facts, the claim may be brought in tort, particularly for negligence if the plaintiff can establish the lawyer owed the plaintiff a duty of professional service and acted unreasonably or failed to act reasonably, resulting in the plaintiff's harm. Numerous jurisdictions allow claims to be brought under a standard of greater care than mere reasonableness, when the lawyer is held to the standard of a fiduciary. And, some claims can be brought under more specific standards of care under theories such as quasi-contract or detrimental reliance.[122] The doctrines a plaintiff

120. *See* Jamie Gorlich and Michael Traynor, *Discussion Paper on Alternative Law Practice*, http://www.americanbar.org/content/dam/aba/administrative/ethics_2020/20111202-ethics2020-discussion_draft-alps.authcheckdam.pdf (last visited Dec. 7, 2013).

121. Formal Opinion 464, at http://www.americanbar.org/content/dam/aba/publications/YourABA/ fo_464.authcheckdam.pdf (last visited Dec. 7, 2013).

122. *See* Ray Ryden Anderson & Walter Steele Jr., *Fiduciary Duty, Tort and Contract: A Primer on the Legal Malpractice Puzzle,* 47 SMU L. Rev. 235 (1994).

may select as the basis for a claim against a lawyer-defendant depends on the nature of the services being performed by the lawyer, the exact relationship between the lawyer and the plaintiff, the allegation by the plaintiff of the wrongful action or inaction by the lawyer, and the harm suffered by the plaintiff.

Adding to the possibility for confusion when a given claim of professional negligence may fall within more than one of these different theories of liability is that the claim may be, and in fact is usually, subject to different times for limitations under differing statutes of limitations or doctrines of repose, like laches, even in the same jurisdiction.[123] There are usually shorter limitations for actions arising in tort than in contract, shorter limits for breach of oral contracts than written contracts, and flexible standards for determining when a claim is stale under equitable doctrines. Though some jurisdictions have a statute generally establishing a shorter statute of limitations for a civil cause of action for malpractice, these statutes are not always applied to legal malpractice under various, specific facts.

Regardless of the theory of law under which claims are made, the failings by the lawyers alleged by plaintiffs against them are routinely brought, usually as private claims and then as civil litigation. The most common types of attorney misconduct alleged are failure to know or apply the proper substantive law and failure to act timely; the practice area that gives rise to the most claims is real estate.[124]

A lawyer may usually not contract away a client's rights to indemnity from the lawyer for harms the client suffers through the lawyer's malpractice.[125] Model Rule of Professional Conduct 1.8 prohibits a lawyer from making an agreement that prospectively limiting the lawyer's liability to a client for malpractice, unless the client is represented by a different attorney (and not an attorney from the same firm) in the making of the agreement.[126]

Most lawyers in private practice carry professional liability insurance, which assures the lawyer against the risk of loss in the event of a claim, or a successful claim. The insurer issues a policy to the insured lawyer or law firm, agreeing to defend the insured lawyers if a claim is brought and to pay a judgment or settlement if required. Some law firms maintain liability coverage through standard business insurance policies, the Commercial General Liability policy, or CGL. Other firms maintain either sole coverage or addi-

123. *See* Debra T. Landis, *What Statute Of Limitations Governs Damage Action Against Attorney For Malpractice,* 2 A.L.R. 4TH 284 (2013).

124. Kathleen M. Ewins & Jason T. Vail, *Profile of Legal Malpractice Claims: 2008-2011*, A.B.A. Standing Committee on Lawyers' Professional Liability (2012).

125. *See* Steven K. Berenson, *A Cloak For The Bare: In Support Of Allowing Prospective Malpractice Liability Waivers In Certain Pro Bono Cases*, 29 J. LEGAL PROF. 1, 3 (2004).

126. American Bar Association, Model Rule of Professional Conduct 1.8.

tional coverage for claims arising from the professional services owed or provided, which are usually excluded from the CGL. These additional policies (or riders on a CGL) are usually referred to as E&O coverage, or Errors and Omissions insurance. E&O does not cover claims arising from the ordinary course of business, such as tax deficiencies, labor & employment complaints, or premises liability. As with many forms of coverage, E&O may vary in its scope, the two most common scopes of coverage being coverage only for claims that occur during the period of the insurance coverage or only for claims made and presented to the insurer during the period of coverage, which is the more common form of coverage.[127] The cost of E&O premiums vary from place to place, as well as according to the nature of the practice areas in which the insured attorneys are engaged, the experience of the lawyers insured, the volume and value of the services performed, and the history of claims against the insured lawyers.[128]

As of 2013, seven states require lawyers to disclose the status of their professional liability insurance directly to each of their clients.[129] Eighteen other states require lawyers to disclose the status of E&O insurance in their annual process of bar registration.[130] Only Oregon now requires lawyers with an active license to purchase E&O insurance.[131]

VII. Remuneration and Fees

In general, U.S. lawyers are paid well (but not extremely well) in comparison to many other forms of employment in similar geographic markets.

127. "David A. Baugh And Ellen L. Flannigan, *Protecting the Professional: Brush up on E&O Insurance*, Business Law Today (Sept./Oct. 1999), at http://apps.americanbar.org/buslaw/blt/9-1protect.html (last visited Dec. 8, 2013).

128. Glenda Wertz, The Ins and Outs of Errors and Omissions Insurance, http://www.insurancejournal.com/magazines/features/2004/07/19/44745.htm (last visited Dec. 8, 2013).

129. States Weigh Disclosure of Liability Insurance Status to Clients — Litigation News — ABA Section of Litigation, http://apps.americanbar.org/litigation/litigationnews/top_stories/professional-liability-insurance-states.html (last visited Nov. 8, 2013).

130. States Weigh Disclosure of Liability Insurance Status to Clients — Litigation News — ABA Section of Litigation, http://apps.americanbar.org/litigation/litigationnews/top_stories/professional-liability-insurance-states.html (last visited Nov. 8, 2013).

131. In Oregon, private practice attorneys are required to carry $300,000 professional liability insurance per claim and $300,000 aggregate insurance coverage through the Oregon Professional Liability Fund. States Weigh Disclosure of Liability Insurance Status to Clients — Litigation News — ABA Section of Litigation, http://apps.americanbar.org/litigation/litigationnews/top_stories/professional-liability-insurance-states.html (last visited Nov. 8, 2013).

Fees Charged to Clients

Legal fees and lawyer compensation are not regulated in the United States. Each lawyer or law firm sets the amount to be charged to a given client for given work, and the amount may vary according to the client's ability or willingness to pay.

Client engagement varies considerably in the setting of the fee. Sophisticated clients with large volumes of work negotiate these fees. Less sophisticated clients shop for attorneys in part based on cost. Mildly sophisticated clients either hire or do not hire a lawyer based on their ability to pay the cost quoted, and unsophisticated clients and clients with a sense of urgent need enter into legal representation without fully considering the costs or their ability to pay.

There are very distinct forms of lawyer fee common in the U.S. American lawyers may represent clients for a fee based on an hourly rate, for a fixed price for a given service, or for a portion of the recovery or award. The billable hour, the charge for time worked by an attorney at a specified rate, as well as additional charges for expenses, which became a mainstay of firm practices in the 1950s, remains the basis for most lawyer and law firm fees, despite its difficulties.[132] Fees charged in 2012 ranged from less than $100 per hour by many solo practitioners in smaller markets to well over $1000 per hour by leading partners in major firms, with an average hourly rate for partners in Big Law firms of between $500 and $600.[133]

The allowance of representation for a fee that is contingent on the level of success for the client, is controversial, but this "contingent fee" arrangement is allowed in the U.S. under the theory that it allows an attorney to bear the risk and costs of some cases that might not otherwise be brought, while creating sufficient risk for the attorney to discourage the pursuit of meretricious cases. Owing to the likelihood of settlement and the size of awards, there remain disputes, particularly between those in the plaintiff's bar, who favor contingent fees, and those in the defense bar, who have customarily opposed them. That said, the use of fees for a given representation of corporations in negotiations and disputes appears to be becoming less uncommon, as corporations seek to restrain their legal hourly bills.

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132. *See* MARK A. ROBERTSON AND JAMES A. CALLOWAY WINNING ALTERNATIVES TO THE BILLABLE HOUR: STRATEGIES THAT WORK (ABA, 3d ed., 2008).

133. *See* Jeffrey Lowe, *Major Lindsey & Africa Partner Compensation Survey 2012*, *at* http://www.mlaglobal.com/partner-compensation-survey/2012/FullReport.pdf; The 2012 Law Firm Billing Survey National Law Journal, Jan. 2, 2013, on line *at* http://www.law.com/jsp/lawtechnologynews/PubArticleLTN.jsp?id=1356878074938&rss=rss_ltn&slreturn=20131108135528 (last visited Dec. 8, 2013).

Fee Shifting

The default rule in the United States, known often as the American Rule of attorneys' fees, is that clients pay their own lawyers. Under this rule, even successful litigants bear the cost of their own litigation. There are, however, many exceptions that allow for fee shifting allowing a prevailing party to recover reasonable costs of litigation or alternative dispute resolution, including lawyers' fees. The most widespread source of fee shifting arises from contract clauses that specify a party may recover costs and fees incurred in an effort to enforce the contract.

Both federal and state laws allow a successful litigant or claimant in a dispute to recover attorneys' fees from the other in causes of action brought under specific theories of the law or in certain circumstances. The purposes for these statutes vary, and some are overlapping. Some statutes are intended by their drafters to encourage litigation of matters in the public interest, according to the "private attorney general" theory of litigation. Some are to ensure full compensation for an injury or harm, rather than reducing a recovery by the cost of its pursuit. Some are to punish wrongdoers. Some are intended to reduce litigation through increased risks to plaintiffs in bringing an action and to defendants in opposing it. Some are to make equal a playing field between typically wealthy litigants and typically poor litigants on either side of some recurring disputes.[134]

Federal law allows fee shifting by statute for parties in a variety of actions, sometimes only for plaintiffs and sometimes for prevailing parties. The most famous of these statutes awards fees for actions in defense of civil rights, including actions based on deprivation of rights under color of state law and actions based on unlawful discrimination in employment. The mechanism for computing fees to be awarded under federal law has been developed by federal courts interpreting its statutory origin, in the Civil Rights Act Attorneys Fee Award Act of 1976, codified at 42 U.S.C. § 1988, which allows the court in its discretion to award a prevailing party, other than the United States, a "reasonable attorney's fee as part of the costs" taxed against the other party. The prevailing party must move for an award, which it must justify by demonstrating the number of hours of legal work performed, and computing an hourly rate based on a lodestar amount, which considers what an attorney of comparable skill and experience would likely for such a case, in the market in which the case is brought. The lodestar is a rough approximation of the fee that the prevailing attorney would have received if the lawyer had been representing a paying client who was billed by the hour in a

134. *See Note: State Attorney Fee Shifting Statutes: Are We Quietly Repealing The American Rule?* 47 L. & Cont. Probl. 321 (1984).

comparable case. That amount is then subject to adjustment according to the contingent nature of the work involved, the quality of the work performed, the complexity of the issues involved, and the result achieved.[135] The court will then award a fee based on a reasonable number of hours that should have been expended times the adjusted loadstar amount for each of the attorneys representing the prevailing party.[136] Other federal fee shifting statutes, usually employing the lodestar approach, include enforcement of environmental laws, workplace safety laws, actions to protect intellectual property, actions against racketeers, and class actions, among many others.[137]

There is considerable variation among states in allowing fee shifting in actions subject to state procedural rules. Many provide for fee shifting for state actions similar to federal actions that provide for fee shifting. Some states have quite idiosyncratic fee-shifting rules, such as the allowance of fees to a party who enforces a contract in Arkansas.[138] There is, however, great variation among states, even when there is widespread shifting for similar causes of action. For example, though all states allow some form of fee shifting in actions for divorce from a marriage, there is great variation in the forms of shifting allowed.[139]

Attorney Compensation

The median pay for all lawyers in the United States in 2010 was $112,760 per year or about $54 per hour for a year in which the lawyer works 2,100 hours.[140] This average pay is nearly four times the national average for all occupations in the United States, which was then $33,840.[141]

The average, however, is not typical of lawyer pay in the U.S., which is bimodally distributed. The lowest ten percent earned less than $54,130, and the top ten percent earned more than $166,400.[142] This bimodal distribution accords with salary data reported by law school graduates commencing their first jobs. Sixteen percent of the 2012 law graduates reporting data to their schools earned about $160,000. Eleven percent reported earning about $50,000. Overall,

135. *See* Lindy Bros. Builders, Inc. of Philadelphia v. American Radiator & Standard Sanitary Corp., 540 F.2d 102, 117 (3d Cir. 1976).

136. Perdue v. Kenny A. ex rel. Winn, 559 U.S. 542 (2010).

137. Justice Brennan created a useful list of 100 federal fee-shifting statutes. *See* Marek v. Chesny, 473 U.S. 1, 43 (1985) (Brennan dissenting).

138. *See* Ark. Code Anno. § 15-22-308 (2013).

139. *See* Stewart Douglas Hendrix, *"Better You Than Me:" Shifting Attorney's Fees In Divorce Actions*, 34 U. LOUISVILLE J. FAM. L. 671 (1996).

140. Lawyers: Occupational Outlook Handbook: U.S. Bureau of Labor Statistics, http://www.bls.gov/ooh/Legal/Lawyers.htm#tab-1 (last visited Nov. 10, 2013).

141. *See* Lawyers: Occupational Outlook Handbook : U.S. Bureau of Labor Statistics, http://www.bls.gov/ooh/Legal/Lawyers.htm#tab-5 (last visited Dec. 8, 2013).

142. Lawyers: Occupational Outlook Handbook : U.S. Bureau of Labor Statistics, http://www.bls.gov/ooh/Legal/Lawyers.htm#tab-5 (last visited Dec. 8, 2013).

the mean, or average of all salaries reported by the first-year lawyers was just over $75,000.[143]

Lawyer's compensation varies most by the nature of the employment, but it also varies with location among regions in the United States and the clientele served by the lawyer or law firm.

Government lawyers are paid government rates. For instance, lawyers in the U.S. Department of Justice (DOJ) are paid according to the federal civil service rates, and a lawyer entering the DOJ immediately after law school would be designated a GS-11 and paid between $50,000 and $62,000, depending on location. Though advancement is usually slower, a GS-11 could advance through the grades to GS-15 within three to four years, earning a salary between $100,000 and $130,000, with increases possible owing to location.[144] State salaries tend to vary. An assistant district attorney general in Tennessee is paid between $45,000 and $104,000 per year, which is quite similar to the salary range for public defenders.[145] Likewise, salaries for first-year lawyers in the New York County District Attorney's office in 2013 were $60,500,[146] though the pay scale in the office ranges to the salary of the elected district attorney, which is $190,000.[147]

Compensation for lawyers in private firms in urban markets is much higher. U.S. firms compete with one another for a high profit per partner, or PPP. This number, as with any law firm, is the result of the gross revenues of the firm, minus staff and associate salaries and other expenses, divided among the number of partners. It does not reflect the greater shares drawn at many firms by some partners. Yet several firms had a PPP of over $4 million in 2012, and 68 law firms had a PPP of over $1 million.[148]

There is not a single model or pattern for allocating profits (or losses, claims, or debts) among law partners. Each firm has a partnership agreement or corporate bylaws that determine the rules for allocations, which are usually adjusted among the partners each year, depending on the firm's performance as a whole and each partner's contributions to it. There are many forms of partnership compensation, but among large firms, there are two models of part-

143. NALP - The Association for Legal Career Professionals—Salary Distribution Curve, http://www.nalp.org/salarydistrib (last visited Dec. 8, 2013).

144. *See* USDOJ: Legal Careers: Attorney Salaries, Promotions, and Benefits, http://www.justice.gov/careers/legal/entry-salary.html (last visited Dec. 9, 2013).

145. *See* State Employee Salary Search - Results, https://apps.tn.gov/salary-app/results?d-16544-s=4&d-16544-o=1&d-16544-p=21 (last visited Dec. 9, 2013).

146. "Salary and Benefits" Salary and Benefits—The New York County District Attorney's Office, http://manhattanda.org/salary-and-benefits (last visited Dec. 9, 2013).

147. http://a856-gbol.nyc.gov/gbolwebsite/262.html

148. *See The Am Law 100 - 2012*, http://www.americanlawyer.com/PubArticleTAL.jsp?id=1202597273265 (last visited Dec. 10, 2013).

ner compensation that predominate. The older model, sometimes called the lock-step plan, rewards partners a similar share of firm profits as other partners of the same years in practice, sometimes with slight modifications for the value of hours billed and the amount of work brought in the door. Thus, older partners receive roughly the same share of the profits as other older partners, and younger partners receive roughly the same share of the profits as other younger partners, but it is a smaller share than the older partners. The newer model, sometimes called the Hale & Dorr system, for the firm that introduced it in the 1940s, gives an additional portion of the profits to partners who bring business into the firm ("rainmakers"), as well as to partners who directly supervise a client's affairs.[149] Other compensation schemes abound,[150] including a guaranteed annual minimum, which led to the downfall of Dewey & LeBoeuf.

Concluding Observations

As true in many service sectors since the economic collapse of 2007, there have been several years of seeming trouble in the U.S. law industry. Large law firms in traditionally strong legal markets in New York and Chicago reduced their hiring in a trend that is only now abating. Further, after law schools initially saw an increase in enrollment at the start of the recession, a fall in enrollment has continued, accelerated, perhaps, by loud criticism of legal education compared to the hiring markets.[151] A small industry of legal Cassandras arose, bemoaning the wasted lives of law students and lawyers.[152]

The truth of the matter is more interesting. There is a large, powerful, and growing population of lawyers in the United States, one more diverse in gender, race, and culture than ever. There is a stable of increasingly profitable large law firms that project American law across the globe, and an engaged national bar that encourages the growth of the rule of law throughout the world. There is a large community of solo and small-firm practitioners in every jurisdiction, and although issues of access to justice remain critical in many places, there are efforts to increase governmental and professional efforts to abate them. Though U.S. legal services expands and contracts along with the economy as a whole, it is a robust and fairly

149. Michael J. Anderson, *Partner Compensation Systems In Professional Service Firms*, online at http://www.edge.ai/files/compensation.partner_compensation_systems.pdf (last visited Dec. 10, 2013).

150. *See* James D. Cotterman, ed., Compensation Plans for Law Firms (4th ed.) (ABA, 2004).

151. *See* Steve Sheppard, *The Self-Fulfilling Prophecy of Law School Crisis* H-Net Reviews, https://www.h-net.org/reviews/showrev.php?id=39185 (last visited Dec. 10, 2013).

152. *See* Steven J. Harper, The Lawyer Bubble: A Profession in Crisis (2013).

stable sector of the economy, and likely to remain so. It is a two trillion dollar sector of the U.S. economy, with a payroll of over 95 billion dollars.[153]

U.S. lawyers and the courts are engaged in changes in practice driven by new technology, driven not only by curiosity and self-interest but also by the demands of clients and business sectors. Law schools and other legal institutions continue a process of change, responding not just to new technology but to changing demands from students, practitioners, and society.

Most fundamentally, the lawyers of the United States perform innumerable functions essential to the civic, social, and economic life of the nation. The profession in America holds a unique role in the recognition and protection of rights and powers in the citizen and in the state; in the management of the criminal law, in resolving the private disputes that arise among citizens and firms, in creating contracts and transferring property, in protecting standards of behavior ranging from environmental management to consumer product safety to school-child education. And yet, the influence of the lawyer is far wider, as tens of thousands of lawyers employ the methods and knowledge of the law in the corporate, financial, and institutional landscape beyond the traditional legal practice. As American society continues to change, some of these roles will surely alter, but the broad work of the profession will very likely remain central to American life.

153. Both the value added of legal services in the US GDP and legal services payrolls peaked in 2008 but had substantially recovered in 2011, from a 2008 high of $95.9 billion in payroll and $2.2 trillion in value added to the GDP to a mere $95.5 billion payroll and $2.09 trillion value added to the GDP. *See* "Gross-Domestic-Product-(GDP)-by-Industry Data" BEA: Gross-Domestic-Product-(GDP)-by-Industry Data, http://bea.gov/industry/gdpbyind_data.htm (last visited Dec. 10, 2013).