

THE FUTURE ROLE OF “LAW WORKERS”: RETHINKING THE FORMS OF LEGAL PRACTICE AND THE SCOPE OF LEGAL EDUCATION

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I. INTRODUCTION

Change does not come easily to professions. Professionals invest heavily in education and training, and devote years to gaining the experience and expertise that allows them to demand significant fees from the clients who seek to access that expertise. While professionals welcome new developments in their particular fields of knowledge, because clients will keep coming to take advantage of these developments, they are less welcoming, and often fearful, of other developments that provide new avenues for accessing the expertise that is traditionally their exclusive province. Yet, the late twentieth century witnessed precisely these developments that cause concern to professionals.

In a previous essay,¹ I argued that these changes are leading toward a phenomenon that I labeled “post-professionalism.” I describe post-professionalism as involving the combination of three elements:

A profession’s loss of exclusivity;

The increased segmentation in the application of abstract knowledge through increased specialization; and

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1. Herbert M. Kritzer, *The Professions Are Dead, Long Live the Professions: Legal Practice in a Post-Professional World*, 33 L. & SOC’Y REV. 713 (1999).

The growth of technology to access information resources.

The combination of these developments has made it possible for services that were previously provided only by members of what we commonly call the professions to be delivered by specialized nonprofessionals. The combination of developments with regard to the production and delivery of professional services is somewhat analogous to what happened vis-à-vis production by craftspeople with the development of the factory and automation. Specifically, the decline of guilds (for controlling access), the rationalization of production (by dividing the production process into very discrete, simplified tasks), and the development of machinery, led to factories employing relatively unskilled laborers, replacing the traditional craft-oriented form of production.²

In this Article, I sketch an image of the future world of “law workers”:³ those who are involved in the production and delivery of legal services, other than persons who perform strictly clerical or support tasks (i.e., typists/word processing operators, filing clerks, computer technicians, bookkeepers, etc.). In terms of the occupations that we know today, law workers include lawyers, paralegals, legal assistants, and possibly law librarians. As I have shown in my study of nonlawyer advocacy, law workers also include tax preparers (enrolled agents),⁴ accountants, unemployment compensation specialists, union agents, and specialized advocates who handle welfare appeals, social security disability appeals, domestic violence cases, workers compensation claims, immigration issues, and so on.⁵ If our goal is to understand categories in terms of competencies and the services that can be delivered, those categories have ceased to be useful and we need to find new ways of conceptualizing the occupations that comprise the broad category of “law workers.”

Traditionally, being admitted to the practice of law was supposed to indicate that a lawyer was competent to provide legal services to clients. Today, being admitted to practice, and hence licensed to provide *any* type of legal service within the geographic area of admission, has little to do with competence to practice. In fact, the most recent ABA “statement” regarding legal education from the profession itself, the “MacCrate Report,” speaks not in terms of competence,

2. While craft-oriented production remains for a limited market, even that often involves a more rationalized form of production than was the tradition. For example, I ordered a new dining room table from a local store that purchased from Amish “craftsmen”; in discussing my order, I was told that I could also order matching chairs, although they would actually be made, not by the person who made the table, but by someone else who specialized in chairs. When I said I was concerned about the stain matching if the pieces came from different sources, I was told not to worry because the finishing was actually done by a third person who specialized in this task, so the stain used on all pieces would actually be the same.

3. Compare to “law-jobs.” Karl Llewellyn, *The Normative, the Legal and the Law-Jobs*, 49 *YALE L.J.* 1355 (1940). Or, “law experts.” See Harry W. Arthurs & Robert Kreklwich, *Law, Legal Institutions, and the Legal Profession in the New Economy*, 34 *OSGOODE HALL L.J.* 1, 34–35 (1996).

4. 31 C.F.R. § 10.3 (2002).

5. HERBERT M. KRITZER, *LEGAL ADVOCACY: LAWYERS AND NONLAWYERS AT WORK* (1998).

but in terms of skills and values, with the goal of attaining competence relegated to a “fundamental value” to be instilled, rather than something the law school experience is supposed to produce.⁶ A person whose lawyer proves “incompetent” actually has little recourse unless that incompetence constitutes “negligence.” In practice, the profession itself does little or nothing to ensure competence, and there is little that others can do either. This point was driven home to me in a conversation that I had with an official of the New York State Workers’ Compensation Board, which requires nonlawyers to pass an examination on workers’ compensation law and procedures before being allowed to appear as representatives, and has established procedures for disciplining those whom it licenses.⁷ As part of my study of nonlawyer advocacy, I had contacted the official to obtain information on the Board’s experience in disciplining the advocates that it licenses. The official told me that the Board initiates disciplinary proceedings against “very few” nonlawyers; the official then went on to tell me that the problems that the Board saw were generally not with the nonlawyers that it licenses but with nonspecialist lawyers. The problem from the Workers’ Compensation Board’s viewpoint is that any lawyer licensed in New York may handle a workers’ compensation matter, and that the Board has no regulatory authority over lawyers who appear before it; furthermore, the New York Bar has no inclination to deal with the incompetence that the Board encounters.⁸

In the nineteenth century, the practice of law was a much more limited undertaking. It dealt largely with a few types of issues (criminal law, property, contracts, and occasionally torts—what continue today to comprise the core first-year curriculum in American law schools). With the growth of the administrative and welfare state, and with the rise of the large corporate enterprise, the legal field has expanded beyond anything that could have been envisioned 150 years ago. While this development may have originally manifested in what Heinz and Laumann have labeled the corporate hemisphere,⁹ it is by no means limited to those who practice in large firms. While the idea of “general practice” might have once meant dealing with anything that came through the door, “general practice” today is really a label for a kind of limited range practice that involves a small number of traditional areas. Even those areas are often limited to a relatively routinized subset of issues. This growing complexity and the corresponding explosion of legal knowledge and information are making it difficult, probably

6. ROBERT MACCRATE, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL CONTINUUM: REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP (1992).

7. See N.Y. COMP. CODES R. & REGS. tit. 12, § 302 (2002).

8. Under the terms of the Agency Practice Act, 5 U.S.C. § 500(b), a federal agency (other than the Patent and Trademark Office—see 35 U.S.C. §31) may not set any requirements for admitting attorneys to practice before the agency beyond the admission to the bar of the highest court of at least one state. See WILLIAM F. FOX, JR., UNDERSTANDING ADMINISTRATIVE LAW 230 (1997).

9. JOHN P. HEINZ & EDWARD O. LAUMANN, CHICAGO LAWYERS: THE SOCIAL STRUCTURE OF THE BAR (1982) For an update, see John P. Heinz et al., *The Changing Character of Lawyers’ Work: Chicago in 1975 and 1995*, 32 L. & SOC’Y REV. 751 (1998) [hereinafter Heinz et al., *Changing Character of Lawyers’ Work*].

impossible, to sustain the image of *the* legal profession.¹⁰ Globalization, and the demands that it has placed on law, legal institutions, and legal professions, adds a further dimension to this growing complexity.¹¹

My goal is not to propose rules or policies that improve the competency of those who deliver legal services. Rather, I want to begin to reconceptualize what it means to deliver legal services and to prepare those who will do the delivering. To this end, I want to describe three distinct roles for law workers, and then discuss what law schools need to do to educate and train these different types of workers.

II. LAW WORKERS: TODAY AND TOMORROW

A. Varieties of Legal Occupations Today

While, at least in the formal sense, there is only one “legal profession” in the United States, the reality is much more complex. There is a wide variety of “law workers,” broadly defined to include all individuals who deliver services of a legal nature. Many of these law workers provide very specialized, specific services, such as property title transfers, tax preparation and tax law consultation, or legal document preparation assistance.¹² Others, such as legal assistants and many paralegals, work under the formal guidance of licensed lawyers and handle most of the tasks that lawyers handle, other than actually appearing in court.¹³

10. See H.W. Arthurs, *A Lot of Knowledge is a Dangerous Thing: Will the Legal Profession Survive the Knowledge Explosion?*, 18 DALHOUSIE L.J. 295 (1995).

11. See H.W. Arthurs, *Globalization of the Mind: Canadian Elites and the Restructuring of Legal Fields*, 12 CAN. J. OF L. & SOC'Y 219 (1997); Kritzer, *supra* note 1, at 730–31.

12. See Crystal Nix Hines, *Chain of Legal Self-Help Centers Is Expanding*, N.Y. TIMES, July 31, 2001, at C1; Fred Bernstein, *Being of Sound Mind, and a \$55 Consultation*, N.Y. TIMES, May 16, 2002, at E1; COMM'N ON NONLAWYER PRACTICE, AM. BAR ASS'N, NONLAWYER PRACTICE IN THE UNITED STATES: SUMMARY OF THE FACTUAL RECORD BEFORE THE COMMISSION ON NONLAWYER PRACTICE (1994); Arthurs & Kreklwlich, *supra* note 3, at 42–44.

13. Even in the court context, there may now be some exceptions. For example, in Wisconsin, it is possible for a nonlawyer to appear in court as an advocate for victims of domestic violence; victims have a right to have such “service representatives” present with them in court to assist them (unless a victim is represented by counsel or is actually testifying) and, with the permission of the court, to address the court. WIS. STAT. § 895.73(2) (2002). An exception may also depend on the meaning of “court”; certain nonlawyers, either accountants or “enrolled agents,” may appear as advocates in the U.S. Tax Court. In England, it is now common for nonlawyer legal executives, formally under the supervision of solicitors, to routinely appear in court for the early stages of criminal proceedings. See Inst. of Legal Executives, *Use It or Lose It*, LEGAL EXECUTIVE: J. INST. LEGAL EXECUTIVES, June 29, 2001 available at <http://www.ilexjournal.com/ilexopinion/article.asp?theid=288&themode=2> (last visited Jan. 24, 2002). In Ontario, nonlawyers who work without the supervision of lawyers can appear as advocates in at least some types of minor criminal cases, such as driving while intoxicated. See W.A. BOGART & NEIL VIDMAR, EMPIRICAL PROFILE OF INDEPENDENT PARALEGALS IN THE PROVINCE OF ONTARIO (1989), cited in KRITZER, *supra* note 5, at 4.

Even in the area of formal advocacy, at least outside the courts, nonlawyers regularly appear in a wide variety of venues.

Not only are there many types of nonlawyer law workers in the United States, but efforts to assess the quality of their work, or to compare the quality of that work to that of licensed lawyers, indicate that the general quality of these services is quite good, and may even, in certain circumstances, be better than that provided by lawyers.¹⁴ For example, the American Bar Association's Commission on Nonlawyer Practice found no evidence that nonlawyers delivered poor services.¹⁵ My own study comparing lawyer and nonlawyer advocates in four different venues showed that nonlawyers could, and often did, provide high quality representation. In certain circumstances, the typical lawyer was better. In other circumstances, the typical nonlawyer was better. In still other circumstances, there was no apparent difference between lawyers and nonlawyers.¹⁶ The findings of research in the United States parallel those of studies in Ontario and England that show that specialist nonlawyers can and do provide quality representation.¹⁷ In England, the Law Society (the national organization of solicitors) has long decried and criticized nonlawyer "claims assessors" who represent injured persons in settling damage claims on a commission basis.¹⁸ However, a recent effort to determine what, if any, problems exist with regard to the results achieved by claims assessors was unable to identify any systematic issues, although it did raise the possibility of applying some form of regulatory scheme to this now unregulated group of service providers.¹⁹

14. DEBORAH L. RHODE, IN THE INTERESTS OF JUSTICE: REFORMING THE LEGAL PROFESSION 135-41 (2000).

15. See COMM'N ON NONLAWYER PRACTICE, AM. BAR ASS'N, NONLAWYER ACTIVITY IN LAW-RELATED SITUATIONS: A REPORT WITH RECOMMENDATIONS (1995) [hereinafter COMM'N ON NONLAWYER PRACTICE REPORT].

16. See KRITZER, *supra* note 5.

17. See BOGART & VIDMAR, *supra* note 13; HAZEL GENN & YVETTE GENN, THE EFFECTIVENESS OF REPRESENTATION AT TRIBUNALS: REPORT TO THE LORD CHANCELLOR (1989); Richard Moorhead et al., *Contesting Professionalism: Legal Aid and Nonlawyers in England and Wales*, L. & SOC'Y REV. (forthcoming 2002) (on file with author). In fact, the apparent success of a California teenager who provides basic legal advice on the website AskMe.com might raise questions about whether significant specialized expertise is needed for much of what passes for legal advice; maybe all that is needed is basic common sense and a bit of self-confidence. See Michael Lewis, *Faking It*, N.Y. TIMES MAG., July 15, 2001, at 32.

18. See LAW SOCIETY, MEMORANDUM ON MAINTENANCE AND CHAMPERTY: CLAIMS ASSESSORS AND CONTINGENCY FEES (1970).

19. See THE LORD CHANCELLOR'S DEPT., THE REPORT OF THE LORD CHANCELLOR'S COMMITTEE TO INVESTIGATE THE ACTIVITIES OF NON-LEGALLY QUALIFIED CLAIMS ASSESSORS AND EMPLOYMENT ADVISORS ¶¶ 79-80, 113-51 (2001), available at <http://www.lcd.gov.uk/civil/blackwell/indbod.htm> (last visited Nov. 4, 2002) [hereinafter REP. OF THE LORD CHANCELLOR'S COMM.].

B. The Structure of Legal Occupations in the Twenty-First Century

Richard Susskind has written extensively on the impact of information technology on the practice of law.²⁰ Much of Susskind's writing has dealt with how information technology can be integrated into the day-to-day functioning of legal practice, particularly large scale, corporate practice. He envisions new roles in what he calls the "client service chain." For example, one of these roles is the "legal infomediary," who assists the client in identifying the kinds of legal expertise and service providers that he or she needs.²¹ Susskind also sees clients increasingly gaining access to legal resources provided by the law firm through its extranet and intranet services (the former being publicly available and the latter being selectively available to paying clients, either on a fee-for-access basis or as part of the rebundled service provided by the firm).²² A second new role that Susskind envisions is the "legal information engineer" or LIE (my abbreviation, not Susskind's). In Susskind's vision, the LIE's role is to build legal information systems that systematize work that is currently done manually.²³ For example, reasonably good software already exists for handling routinized legal tasks; the most widely used programs are popular tax preparation software packages, such as TaxCut and TurboTax. One can imagine many areas to which such tools can be expanded, with the crucial caveat that for matters governed by state law, there will have to be separate solutions for each state (just as TaxCut and TurboTax offer separate packages for each state's income tax).

Susskind's work illustrates a way to think about the future structures of legal services delivery and the different roles that will ensue. I envision three primary roles:

Legal Information Engineers (LIEs) who design and maintain systems to routinize legal service delivery and facilitate access to legal information. Thus, LIEs' roles are not limited to building the kinds of straight-forward systems envisioned by Susskind but go beyond those to implement protocols developed by Legal Consultants, design triage systems to properly route users, and build access tools that allow both end recipients and Legal Processors to access appropriate bases of expertise.

Legal Consultants (LCs) who both deal with highly specialized matters and develop protocols to be implemented by a combination of LIEs and Legal Processors.

Legal Processors (LPs) who perform two key roles: engaging in protocol-based triage procedures to determine whether they are the appropriate

20. See RICHARD E. SUSSKIND, *THE FUTURE OF LAW: FACING THE CHALLENGES OF INFORMATION TECHNOLOGY* (1998) [hereinafter SUSSKIND, *FUTURE OF LAW*]; RICHARD E. SUSSKIND, *TRANSFORMING THE LAW: ESSAYS ON TECHNOLOGY, JUSTICE, AND THE LEGAL MARKETPLACE* (2001) [hereinafter SUSSKIND, *TRANSFORMING THE LAW*]. The latter book includes both an update to the first book and reprints of a number of Susskind's earlier article-length pieces.

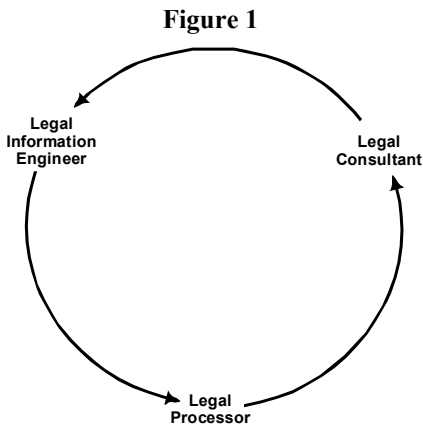
21. SUSSKIND, *TRANSFORMING THE LAW*, *supra* note 20, at 50.

22. *Id.* at 47-49.

23. SUSSKIND, *FUTURE OF LAW*, *supra* note 20, at 270.

providers of services and delivering those relatively routine services that cannot be automated or are needed by clients who choose not to use the automation tools available. LPs will refer complex or otherwise nonfitting matters to the Legal Consultants (LCs), both for the purpose of allowing the LCs to service those clients and to provide input to the LCs for developing and improving existing service protocols.

Figure 1 graphically displays the model that I envision. In the next section, I discuss in detail the roles of each of the components of this “legal services triad,” starting from the bottom of the list above.



III. THE LEGAL PROFESSION TRIAD

A. Legal Processors

In 1996, I spent three months observing in the offices of three different lawyers whose work involved cases taken on a contingency fee basis. The practices of two of those lawyers concentrated on this type of work while the third lawyer’s practice combined contingency fee cases with other court-oriented work (criminal, divorce, and simple commercial litigation). In one of the offices, the lawyer that I observed clearly preferred some aspects of his work to others, and he delegated the tasks that he did not enjoy to a paralegal. Those tasks included legal research and legal drafting; he focused on interacting with clients, negotiating with opposing parties, and spending time in court. The work that he did himself drew largely on his people skills and less on the formal skills that he learned in law school. In the second office, the lawyer told me point blank that most of the work that he did could readily be done by a nonlawyer with the appropriate specialized training (and in fact, in some states, the workers’ compensation cases that he handled could have been handled by nonlawyers).²⁴

24. Circa 1980, twenty out of fifty states permitted nonlawyers to represent workers’ compensation claimants. See Deborah L. Rhode, *Policing the Professional Monopoly: A Constitutional and Empirical Analysis of Unauthorized Practice Prohibitions*, 34 STAN. L. REV. 1 (1981).

While each case handled by these lawyers was unique in certain ways, the cases were marked much more by their commonalities. As a result, the work became heavily repetitive. The lawyers paid careful attention to detail in order to avoid problems and challenges, and there were only occasional opportunities for creative solutions or arguments. Still, neither the care required nor the nature of the creativity that might be exercised was closely tied to legal training as we know it today.²⁵ As I watched these lawyers work, I could easily imagine how one might create written protocols that would guide a trained nonlawyer in handling the tasks required by a case. The key elements, in addition to following routines and recognizing key issues (e.g., determining the nature of insurance coverages available for compensation), were (1) keeping up with important changes in the law, such as new judicial interpretations of insurance policy provisions (i.e., knowing when a routine needs to be modified), and (2) knowing the other players in the system in order to communicate effectively with them.

While I focused on contingency fee cases (largely personal injury and workers' compensation cases), much of the work in the personal services/personal plight sector of the market could be similarly handled by trained nonlawyer specialists working with protocols or from specialized experience. Relevant areas of practice might include writing wills and estate planning, handling noncomplex estates, divorce and child custody cases, property transfers, welfare and benefits claims, consumer cases, routine criminal matters (for either the prosecution or defense), personal bankruptcy and debt (including debt collection), and guardianship matters.

One could see appropriate protocols programmed into a software tool that requires the entry of key elements of information, and then cross-checks for particular problems and issues in order to alert the service provider to possible issues that had been overlooked or additional information that should be sought.²⁶

25. Some may argue that attention to detail is one aspect of legal training. It is perhaps encountered most often by academics publishing in law reviews who must deal with endless questions from student editors about the content of footnotes. However, in my experience with this "attention," it often raises more problems than it solves because it evidences a lack of understanding on the part of the editors, particularly if they are dealing with materials or arguments with which they have no familiarity (e.g., statistical analyses); my favorite example is the demand from one editor that I provide a citation to some statistics that I was reporting when those very statistics were derived from my own data and the purpose of the article was to present them for the first time. Detail is important only when a person understands the role of that detail.

26. In fact, hospitals are increasingly using such protocols to reduce the possibility of medical errors. A good example is medication delivered to patients. While an ordering physician is supposed to keep track of other medications that a patient is taking in order to avoid harmful drug interactions, frequent failures to detect such contraindications have led to computer-based systems—Computerized Physician Order Entry (CPOE) systems—that monitor the medications that are prescribed for patients and issue alerts when a newly ordered medication may interact with a previously ordered one. These systems also check dosage amounts against patient characteristics like age and weight. See Rainu Kaushal & David W. Bates, *Computerized Physician Order Entry (CPOE) with Clinical Decision Support Systems (CDSSs)*, in MAKING HEALTH CARE SAFER: A CRITICAL ANALYSIS OF PATIENT SAFETY PRACTICES 59 (Kaveh G. Shojania et al. eds., July 20, 2001),

A key issue for LPs would be licensing and regulation.²⁷ Clearly, some level of training (or comparable experience) would be needed. Who would determine what those requirements would be for a given type of practice? Who would regulate such providers? What kinds of recourse would disgruntled clients have? I hesitate to specify in detail what might be required because that could vary significantly by specific practice area. For example, in Ontario, Canada, one type of provider of specialized services handles defense of driving while intoxicated cases; many of these providers are former members of the Ontario Provincial Police and, as a result, have extensive experience in court as witnesses and know the issues that are involved in drunk driving cases. While this experience does not necessarily mean that a former officer will be an effective representative, the experience is probably more directly related to handling these cases than is the general law school experience. A second example, in the area of representing persons with personal injury claims, would be former insurance adjusters; in evaluating claims, an experienced adjuster will know the issues and what is needed both in the way of documents and arguments.²⁸ Both of these examples turn largely on related experience rather than on formal training.

In other areas, the relevant approach may involve more formal educational requirements combined with some type of specialized examination. Some existing voluntary programs have already adopted this approach. For example, the Certified Financial Planner (CFP) Board of Standards is an “independent professional regulatory organization” that sets requirements and offers examinations to individuals who wish to describe themselves as “certified financial planners.”²⁹ The CFP Board, in turn, is accredited by the National Commission for Certifying Agencies (NCCA), which is the accrediting arm of the National Organization for Competency Assurance (NOCA).³⁰ NOCA accredits a

at <http://www.ahcpr.gov/clinic/ptsafety/chap6.htm> (last visited Mar. 22, 2002) (brief description and references). Such systems are part of a larger set of developments under the rubric of Clinical Decision Support Systems (CDSS), which are computer-based systems that assist and guide physicians in medical diagnosis and treatment. See Derek L. Hunt et al., *Effects of Computer-based Clinical Decision Support Systems on Physician Performance and Patient Outcomes: A Systematic Review*, 280 (15) J. AM. MED. ASS'N 1339 (Oct. 21, 1998), available at <http://www.ncbi.nlm.nih.gov/htbin-post/Entrez/query?uid=9794315&form=6&db=m&Dopt=b> (last visited Sept. 21, 2002) (abstract).

27. For a general overview of approaches to regulation, see Alan D. Wolfson et al., *Regulating the Professions: A Theoretical Framework*, in OCCUPATIONAL LICENSURE AND REGULATION 165–79 (Simon Rottenberg ed., 1980). A good discussion of contemporary issues concerning the regulation of lawyers can be found in David B. Wilkins, *Who Should Regulate Lawyers?*, 105 HARV. L. REV. 799 (1992).

28. At least some of the claims assessors in England who do this work previously worked as “claims inspectors,” the English equivalent of claims adjusters. See KRITZER, *supra* note 5, at 3.

29. See CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, ABOUT CFP BOARD, at http://www.cfp-board.org/main_abtus.html (last visited Jan. 10, 2002).

30. See NATIONAL ORGANIZATION FOR COMPETENCY ASSURANCE, at <http://www.noca.org> (last visited Jan. 10, 2002).

number of different “certifying agencies,” most dealing with providers that are connected to medical care.³¹

In 1998, California passed SB1418, creating the formal occupation of Legal Document Assistant (LDA).³² The law, which became fully effective on January 1, 2000, allows a licensed LDA to distribute published materials written or approved by an attorney, prepare documents under the direction of the customer, and file the documents in the appropriate court.

To be licensed, a Legal Document Assistant must meet one of the following educational requirements:

(1) A high school diploma or general equivalency diploma, and either a minimum of two years of law-related experience under the supervision of a licensed attorney, or a minimum of two years experience, prior to January 1, 1999, providing self-help service.

(2) A baccalaureate degree in any field and either a minimum of one year law-related experience under the supervision of a licensed attorney, or a minimum of one year of experience, prior to January 1, 1999, providing self-help service.

(3) A certificate of completion from a paralegal program that is institutionally accredited but not approved by the American Bar Association, and that requires successful completion of a minimum of twenty-four semester units, or the equivalent, in legal specialization courses.

(4) A certificate of completion from a paralegal program approved by the American Bar Association.³³

To become licensed, an LDA must be bonded in the amount of \$25,000 or more (or post a bond of that amount with the county clerk who issues the license).³⁴ In addition to specific limitations on the services that an LDA may provide,³⁵ an LDA must have a written contract with each client, specifying what the LDA will do and for what fee.³⁶ An LDA who violates any of the provisions of the regulatory and licensing statute may be charged with a misdemeanor punishable by a fine of up to \$2,000 and imprisonment for up to one year.³⁷ These regulations also apply to

31. For a list of accredited certifying agencies, see NAT'L ORG. FOR COMPETENCY ASSURANCE, NATIONAL COMMISSION FOR CERTIFYING AGENCIES, at <http://www.noca.org/NCCA/accredorg.htm> (last visited Jan. 24, 2002).

32. After enacting this law, the California Association of Independent Paralegals was renamed the California Association of Legal Document Assistants (CALDA). Background information on LDAs, requirements for practice, services offered, and similar information can be found on CALDA's website. CALIFORNIA ASSOCIATION OF LEGAL DOCUMENT ASSISTANTS, at <http://www.calda.org> (visited Mar. 21, 2002).

33. CAL. BUS. & PROF. CODE § 6402.1 (West 2002).

34. *Id.* § 6405.

35. *Id.* § 6411. In addition to limitations on services, an LDA may not maintain a file of documents prepared on behalf of a client. *Id.* § 6409.

36. *Id.* § 6410.

37. *Id.* § 6415.

nonlawyers licensed as Unlawful Detainer Assistants (i.e., individuals who provide services in connection with eviction proceedings).³⁸

The model developed in California was a political compromise between many segments of the bar that adamantly opposed any legislation legitimizing or recognizing nonlawyer practice and groups that advocated broad recognition of law workers other than lawyers.³⁹ Another approach is for a specific venue to adopt licensing or certification procedures for those who appear before it (e.g., “enrolled agents” before the IRS).⁴⁰ The goal needs to be that of protecting the consumer from incompetent or unscrupulous practitioners, regardless of a practitioner’s formal qualifications. One implication is that if nonlawyers are required to be insured or bonded, then why shouldn’t lawyers also be required to provide such protections to their clients? Only one state, Oregon, currently requires that lawyers carry malpractice insurance in order to be licensed to practice in the state.⁴¹

B. Legal Consultants

While a significant portion of legal matters are routine and lend themselves to alternative approaches to service delivery, a lot of legal work is not appropriate for such an approach. This work will typically involve some combination of significance (i.e., amount at stake, precedential implications, etc.), uniqueness, and complexity. The key that makes such cases different is the need for creativity on the part of the practitioner; thus, the distinction between the legal processor and the legal consultant might be summed up by whether or not their cases call for what is sometimes labeled “creative lawyering.” The issue here is not so much one of presence or absence of creativity, but rather one of degree. The legal processor will occasionally encounter a case that needs creative lawyering, and should realize that such cases need to be referred to a legal consultant. For the legal consultant, a large percentage of his or her cases will require creative lawyering; in a sense, creativity will be part of the routine of the legal consultant’s work.

38. One provider of eviction-related services is The Eviction Center, which advertises that it will employ an attorney at the client’s option (for an additional fee of \$145). *See* THE EVICTION CENTER, at <http://www.eviction-center.com> (last visited Mar. 21, 2002).

39. There was also substantial conflict between different groups of nonlawyers, with one preferring a model where paraprofessionals work only under the direct supervision of lawyers and another wanting the recognition of independent practice. While the nomenclature is by no means unambiguous, “legal assistants” typically prefer the former model, while those who prefer the latter model use the label “paralegals.”

40. *See* 31 C.F.R. § 10 (2002).

41. *See* COMM’N ON NONLAWYER PRACTICE REPORT, *supra* note 15, at 129 n.441. Legal malpractice insurance is not the only possible form of protection for clients. Lawyers in some jurisdictions must make payments into a fund to compensate clients for unscrupulous behavior such as embezzlement from trust funds; however, such funds typically do not provide for compensation for incompetent representation, only for unethical behavior.

Since many matters are inappropriate for routinized handling, one role of LPs is to recognize when they have such cases and refer those cases to Legal Consultants (hence the arrow from the LPs to the LCs in Figure 1).

One of the lawyers that I observed had a practice that was dominated by these kinds of cases. For example, one of his clients had suffered a disabling injury on the job. The lawyer sought compensation, not just through workers' compensation, but also from third parties who were responsible for the situation that caused the injury. The case raised complex issues of what constituted reasonable precautions on the part of the client, the employer, and the third parties. Framing the issues and establishing relevant proofs required extensive investigation and creativity. Ultimately, the case concluded with a seven figure settlement.

While all three of the lawyers that I observed had some cases that required creative handling or raised unusual issues, the bulk of the other two lawyers' work was highly routine; their work involved important knowledge and skill, but it could have been readily handled by a trained non-JD specialist. Most of their work involved assembling information (largely medical records to document treatment and loss), reviewing that information for uncertainties and problems, presenting that information as the core of a demand, and working toward a final settlement figure. The lawyers needed to know how to handle a specific range of legal issues and, more importantly, how to communicate the dimensions of a claim to the opposing side. The specific legal knowledge required could readily be acquired through training (or experience) that falls well short of a standard law school education. While my research focused on contingency fee practice, the same argument could be made regarding other routinized areas of work, such as probate, special areas of criminal defense (e.g., driving while intoxicated), or divorce.⁴² The key is the nature of the mix of work for various types of legal practice.

In addition to handling cases that do not fit the standardized protocols, a legal consultant has an important role in developing these protocols. In part, this happens over time as new issues arise and get worked out, or as new areas of practice develop. For example, *Goldberg v. Kelly*⁴³ held that a person whose welfare benefits were to be reduced or terminated is entitled to due process in the form of a "fair hearing." In the immediate wake of *Goldberg*, there was much uncertainty as to what the parameters and requirements of such hearings would be, and what standards of proof and judgment the adjudicators would employ. During this period, effective representation called for significant creativity and a broad understanding of legal concepts and advocacy. However, over time, the hearings became routinized as evidentiary issues and other legal questions were resolved; while a unique situation may occasionally arise, most issues are sufficiently straightforward that specialized nonlawyer advocates can be effective

42. Regarding the relatively routinized content of divorce practice, see LYNN MATHER ET AL., *DIVORCE LAWYERS AT WORK: VARIETIES OF PROFESSIONALISM IN PRACTICE* (2001); AUSTIN SARAT & WILLIAM L.F. FELSTINER, *DIVORCE LAWYERS AND THEIR CLIENTS: POWER AND MEANING IN THE LEGAL PROCESS* (1995).

43. *Goldberg v. Kelly*, 397 U.S. 254 (1970).

representatives.⁴⁴ This by no means eliminates the role of lawyers; having a lawyer with a broader background available as a trainer and a resource, and to take over cases that raise unusual or complex issues, almost certainly improves the overall quality of representation.⁴⁵

The legal consultants of tomorrow will be specialists and this fact raises the important issue of acquiring and certifying *specialized* expertise.⁴⁶ The general legal profession has been reluctant to formalize specialization, with the obvious exceptions of multiple legal professions, such as solicitors and barristers in England.⁴⁷ The issue of specialization has been on the legal profession's agenda for some time.⁴⁸ Some areas of the law, such as tax and intellectual property, have long been the province of specialists. The organization of the large corporate law firm has been based on specialization for most, if not all, of the twentieth century.⁴⁹ Only in the last twenty or thirty years, however, has the issue of specialization begun to produce any formal developments, with the California bar adopting the first state-level system for certifying some specialists in 1973,⁵⁰ and private groups such as the National Board of Trial Advocacy creating their own specialist certification systems.⁵¹ The ABA Model Rules of Professional Conduct

44. See WILLIAM H. SIMON, AN INNOVATIVE MODEL PROVIDING HIGH QUALITY LEGAL ASSISTANCE FOR THE ELDERLY IN WISCONSIN (1988).

45. The idea of a hierarchy of knowledge or specialization is not limited to the multi-occupation model that I am describing. Even within today's legal profession, lawyers routinely refer cases to other lawyers with more specialized practices, or contact such lawyers for advice and information. "Lawyer-to-lawyer" consultation networks are common, and a significant amount of "legal research" is actually conducted not by reading law books but by calling other lawyers for a quick read on an issue.

46. In fact, I adopted the label "legal consultants" based on the term used in England to refer to medical specialists, "consultants."

47. The following discussion of the issue of specialization draws heavily on material in my book, LEGAL ADVOCACY: LAWYERS AND NONLAWYERS AT WORK. See KRITZER, *supra* note 5, at 209–16.

48. For a bibliography of commentaries and other writings on specialization, see NATHAN AARON ROSEN, LAWYER SPECIALIZATION: A COMPREHENSIVE ANNOTATED BIBLIOGRAPHY OF ARTICLES, BOOKS, COURT DECISIONS AND ETHICS OPINIONS (1990).

49. See ROBERT L. NELSON, PARTNERS WITH POWER: THE SOCIAL TRANSFORMATION OF THE LARGE LAW FIRM (1988); MARC GALANTER & THOMAS PALAY, TOURNAMENT OF LAWYERS: THE TRANSFORMATION OF THE BIG LAW FIRM (1991); ERWIN O. SMIGEL, THE WALL STREET LAWYER: PROFESSIONAL ORGANIZATION MAN? (1964); Edward O. Laumann & John P. Heinz, *Specialization and Prestige in the Legal Profession: The Structure of Deference*, 1977 AM. B. FOUND. RES. J. 155 (1977).

50. LYNN M. LOPUCKI, UNIVERSITY OF WISCONSIN-MADISON INSTITUTE FOR LEGAL STUDIES, THE DE FACTO PATTERN OF LAWYER SPECIALIZATION 53 (Univ. Wis. Inst. for Legal Stud. Disputes Processing Research Program Working Paper, Series 9, No. 10, Apr. 1990).

51. In significant part, the specialization issue has been closely tied to the question of lawyer advertising: under what circumstances should a lawyer be permitted to hold himself or herself out as a specialist in a particular area? In *Peel v. Attorney Registration and Disciplinary Commission of Illinois*, 496 U.S. 91 (1990), the Supreme Court struck down an Illinois ban on the communication (advertising) of certification and provided some impetus to the development of certification plans. For a review of relevant Supreme Court decisions, see James Podgers, *Recent Developments in Specialization: The*

prohibit lawyers from claiming specialization, except in officially recognized categories,⁵² and it was not until 1979 that the ABA created model standards for specializations, adopting a plan developed by the Standing Committee on Specialization earlier that year.⁵³

Surprisingly, only a minority of states have actually adopted systems for certifying specialists,⁵⁴ and proposals for such systems have often been controversial, raising such questions as:

Would the recognition of specializations favor some lawyers over others in attracting clients?

Would uncertified lawyers who practice in a particular specialization be more at risk for claims of malpractice in the event of adverse outcomes?

Would specialization drive up fees?⁵⁵

The controversy over the impact of recognizing specialization is complicated by the dilemma of which *dimensions* of specialization to recognize. In addition to substantive areas of law (e.g., tax, admiralty, real estate), there is the question of task-oriented specialties (litigation, administrative process, etc.) or venue-oriented specialties (Internal Revenue Service, Securities and Exchange Commission, federal court, U.S. Supreme Court, etc.).⁵⁶

Specialization has generally been experience-related, rather than training-related.⁵⁷ Unlike the medical profession, where a physician enters a formal training program (a residency) to become a specialist, a lawyer works in the field to become certified as a specialist. A lawyer can seek such certification only after acquiring a number of years of experience. Legal specialization today is where

Relationship Between Specialization and Advertising, in AM. BAR ASS'N STANDING COMM. ON SPECIALIZATION, SPECIALIZATION DESK BOOK (1993).

52. Podgers, *supra* note 51, at 2.

53. See ROSEN, *supra* note 48, at 3. This development came in the wake of the U.S. Supreme Court's 1977 decision to strike down absolute bans on lawyer advertising in *Bates v. State Bar of Arizona*, 433 U.S. 350 (1977). In 1987, the ABA Standing Committee on Specialization published a revised version of the *Model Standards for Specialty Areas*, which contained model standards for twenty-five areas of practice, from admiralty to workers' compensation.

54. By 1990, only fourteen states had adopted plans to certify specialists (most were rather limited) and one state, Georgia, had abandoned its plan. See LOPUCKI, *supra* note 50, at 53. By 1993, eighteen states had adopted such plans. See AM. BAR ASS'N STANDING COMM. ON SPECIALIZATION, SPECIALIZATION STATE PLAN BOOK, at i (1993).

55. LOPUCKI, *supra* note 50, at 1-2.

56. These specialties mirror three types of expertise that I have identified as crucial to effective representation: substantive, procedural, and insider expertise. See KRITZER, *supra* note 5, at 14-15. There are other dimensions of specialization as well: type of client, type of industry, side represented, size of matter, and geographical area. See *id.* at 11; Clarence E. Hagglund & Robert Birnbaum, *Legal Specialization: The Need for Uniformity*, 67 JUDICATURE 436, 438 (1984).

57. This approach to specialization, either certified or informal, seems to be the norm within common law systems. See, e.g., DAVID A.A. STAGER & HARRY W. ARTHURS, *LAWYERS IN CANADA* 199-201 (1990).

legal training was ninety years ago; it is essentially an apprentice system (but often without guidance from experienced mentors).

While the roles of the legal processor and the legal consultant are distinct, they could clearly be combined into a single practice. Both roles turn on the concept of specialized legal expertise. While this structure may resemble a contemporary practice, where one or two lawyers supervise a group of paralegals who handle the routine work,⁵⁸ it is potentially quite different. While there is a hierarchy of expertise, there need not be a hierarchy of control; there is no reason why the firm must be managed by, or owned by, the legal consultants. This concept has been adopted in England by “claims management companies.”⁵⁹ These firms handle routine personal injury claims with a combination of solicitors and claims assessors (adjusters). While there have been some problems with some of these companies, they are probably related to a combination of startup issues and overly ambitious goals.⁶⁰

C. Legal Information Engineers

The third leg of the triad is the legal information engineer (LIE). Richard Susskind created the concept of the legal information engineer.⁶¹ In Susskind’s vision, legal information engineers will be those members of the legal profession “whose knowledge forms the basis of legal information services.”⁶² My image is more specific: LIEs will use information technology and, where possible, artificial intelligence (AI) to design software tools and other systems that will guide legal processors and/or actual users of legal services in dealing with routinized legal tasks and in accessing legal information.

Artificial intelligence will be an important element of what will come in the future developments. Susskind has been writing about the role of artificial

58. In my study of contingency fee practice, I came across several law firms that functioned this way. American “franchise” law firms also function this way, producing routine materials with the supervising lawyer largely handling intake and overseeing the work of the nonlawyer staff. See JERRY VAN HOY, *FRANCHISE LAW FIRMS AND THE TRANSFORMATION OF PERSONAL LEGAL SERVICES* (1997).

59. See REP. OF THE LORD CHANCELLOR’S COMM., *supra* note 19, at ¶ 81.

60. See Conal Walsh, *Claims Direct Cash Crunch*, *OBSERVER* (London), July 22, 2001, at 9; Phillip Inman, *Compensation: Adding Insult to Injury for Accident Victims*, *GUARDIAN* (London), Feb. 10, 2001, at 2.

61. SUSSKIND, *FUTURE OF LAW*, *supra* note 20, at 270.

62. *Id.* at 291. Susskind divides future providers of legal services into two groups: what he calls “legal specialists,” who are akin to my notion of “legal consultants,” and legal information engineers, who would combine some aspects of the roles that I ascribe to legal processors (perhaps because in England, the term “engineer” refers to technicians who handle routine repair and maintenance tasks) and legal information engineers. Susskind describes the main task of the legal information engineer as “that of an analyst . . . [whose role is] to interpret and repackage the formal sources of law . . . and articulate it in a structured format suitable for implementation as part of a legal information service.” *Id.* at 207.

intelligence in the delivery of legal services for over fifteen years.⁶³ In addition to Susskind, other people have been working on such topics as automated legal reasoning and “legal knowledge engineering.”⁶⁴ One early effort to use this technology in the U.S. focused on claim valuation in personal injury cases.⁶⁵ The idea behind this system was to draw on a large body of information about jury verdicts in a given area to identify key factors that influenced the amounts awarded,⁶⁶ and then build a model of the claims evaluation process.⁶⁷ Combining the model and the data leads to a system that can take corresponding information in new cases to estimate valuations. There are already a variety of online tools for handling other tasks, such as simple wills, uncontested divorces, etc.⁶⁸

The role of the legal information engineer is to design and maintain two kinds of systems: those intended for direct client use and those intended for practitioner use (the latter systems are reflected in Figure 1 by the arrow that goes from the legal information engineer to the legal processor). Such systems automate routine work, provide access to legal information data sources, guide simple legal analysis, and provide tools for detecting errors and issues that might otherwise be overlooked. The operational models for consumer-oriented systems and practitioner-oriented systems are likely to differ because the latter will assume a core level of knowledge that allows shortcuts for information entry and more sophisticated cross-checking. While a typical system for consumer-use would probably be built around a “questionnaire” or “interview” model, with the user responding to specific questions,⁶⁹ a system for practitioner-use would probably use a more efficient “form” or “screen” model that presumes that the user knows the reason particular information was needed and understands the nature of the information to be provided on a particular form.

63. See RICHARD E. SUSSKIND, *EXPERT SYSTEMS IN LAW: A JURISPRUDENTIAL INQUIRY* (1987); SUSSKIND, *TRANSFORMING THE LAW*, *supra* note 20, at 161–220.

64. See LEGAL KNOWLEDGE BASED SYSTEMS: FOUNDATIONS OF LEGAL KNOWLEDGE SYSTEMS (R.W. van Kralingen et al. eds., 1996); A. VALENTA, *LEGAL KNOWLEDGE ENGINEERING: A MODELLING APPROACH* (1995); P. WAHLGREN, *AUTOMATION OF LEGAL REASONING: A STUDY ON ARTIFICIAL INTELLIGENCE AND LAW* (1992).

65. See Donald A. Waterman & Mark A. Peterson, *Evaluating Civil Claims: An Expert Systems Approach*, 1 *EXPERT SYS.* 65 (1984).

66. See MARK A. PETERSON, *CIVIL JURIES IN THE 1980S: TRENDS IN JURY TRIALS AND VERDICTS IN CALIFORNIA AND COOK COUNTY, ILLINOIS* (1987); MARK A. PETERSON, *COMPENSATION OF INJURIES: CIVIL VERDICTS IN COOK COUNTY* (1983); MARK A. PETERSON & GEORGE L. PRIEST, *THE CIVIL JURY: TRENDS IN TRIALS AND VERDICTS, COOK COUNTY, ILLINOIS, 1960–1979* (1982); AUDREY CHIN & MARK A. PETERSON, *FAIRNESS IN CIVIL JURY TRIALS: WHO WINS, WHO LOSES IN COOK COUNTY* (1983).

67. See MARK A. PETERSON, *EVALUATING CLAIMS: THEORY AND PRACTICE* (1984).

68. See, e.g., *BEST WILL IN THE WORLD*, at <http://www.bestwillintheworld.co.uk/willquestionnaire.htm> (last visited Jan. 14, 2002); *COMPLETECASE.COM*, at <http://www.completecase.com> (last visited Jan. 14, 2002); *DIVORCE TODAY.COM*, at <http://www.divorcetoday.com> (last visited Jan. 14, 2002); *700LAW.COM*, at <http://www.700law.com> (last visited Jan. 14, 2002).

69. Popular tax preparation software, such as TurboTax and TaxCut, use this approach.

The legal information engineer combines the skills of a systems analyst with a body of core legal knowledge.⁷⁰ The core of the LIE's expertise is in designing systems that automate and/or guide the completion of legal tasks. To this end, the LIE is neither a programmer nor necessarily an expert in a particular area of the law. The engineer relies on a legal consultant for substantive guidance in designing and maintaining a system for a particular legal area or task. Thus, in Figure 1, an arrow goes from the legal consultant to the legal information engineer. The interaction between the legal information engineer and the legal consultant occurs both in the initial design phase and in system maintenance. This latter point is crucial: the law changes and the viability of expert systems in law depend upon those systems keeping up with the changes as they occur. Therefore, a key role of the legal consultant is to alert the legal information engineer to changes in the law that requires modification to a system. Some changes might require nothing more than "tweaking" the system while others may require a major overhaul. As a result, a key to effective design of these systems will be ease of modification to adapt to the dynamic character of the law. One could imagine different groups of legal information engineers, with one group specializing in initial development and design, and another specializing in the maintenance of existing systems.

One obvious complication, at least in federal systems such as the United States, is the variation from state to state (or from province to province) in the law. Even systems that deal with federal law may have to account for significant differences among the circuits. It may be possible to design systems that deal with groups of states that have similar law on a given topic, but some variations will undoubtedly be so significant that purely state-specific systems must be designed. The economic viability of such systems will substantially depend on the potential volume of use. As a result, a wide range of systems may be available for a large state such as California, but not for a small-population state such as North Dakota.

D. Summary

Law workers of the future will be comprised of different groups with different kinds and levels of training. Legal consultants will be the providers of the future who handle the work that requires highly customized analysis and service. Legal processors will handle the routine work that today is often delegated to paralegals and other support staff, as well as work that could readily be delegated to such persons. Legal information engineers will design and maintain information systems that provide access to bodies of legal information and facilitate the completion of many standardized legal tasks. As suggested by the arrows in Figure 1, these three groups of law workers will interact in a regular, structured fashion:

Legal consultants will provide substantive input to legal information engineers. Legal information engineers will create task completion and information retrieval tools to be used by legal processors, as well as lay persons engaged in self-help activities. Legal processors will identify and forward to legal

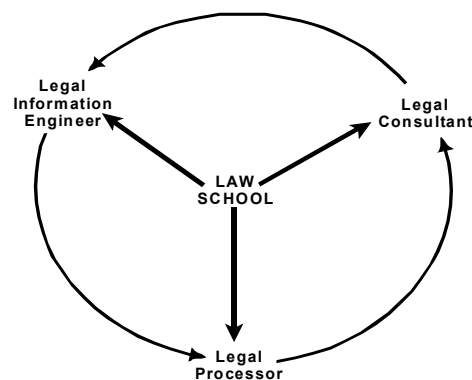
70. In this regard, legal information engineers are similar to today's law librarians, who typically combine knowledge about the law with knowledge about legal information sources and search tools.

consultants matters that are inappropriate for the routine services that the processors offer. As law workers, all three groups will share a core level of legal knowledge and a legal vocabulary.

IV. THE ROLE OF THE LAW SCHOOL IN THE FUTURE WORLD OF LAW WORKERS

So where does the law school fit into this model? Figure 2 illustrates the role that I see for the future law school: it will occupy the center of the world of law workers, providing training (both initial and ongoing) to legal processors, legal consultants, and legal information engineers.

Figure 2



Imagine a redesigned legal curriculum where the first year remains similar to what it is today, with a focus on the traditional areas of the common law. The first year will introduce future law workers to core legal concepts and the basics of legal analysis. The first year might differ only slightly for each group of future law workers:

Those planning to become legal consultants might take a course in legal writing (with the assumption that a significant portion of their future work will involve the preparation of original legal documents). Those planning to become legal processors might take a course on client interviewing and case management. Those planning to become legal information engineers might take a course on the basics of systems analysis. The training for each group would diverge after the first year.

A. Legal Consultants

In the second year, legal consultants would continue with courses that are designed to hone core legal knowledge and legal analysis skills. The third *and* fourth year would be devoted to training in a chosen specialty. Ideally, there would be a significant “clinical” element to this part of the training. This clinical element might mean that law schools will specialize in the particular fields that they offer to legal consultants, reflecting the availability of clinical opportunities in a given area. Perhaps law schools in a given region could form a consortium, with students

moving to the appropriate school for the last two years. An important issue here would be the development of some way to certify specializations at the completion of the fourth year. This might be accomplished through specialized bar exams (different exams for different specialties) and perhaps a voluntary certification system for more fine-grained specialties.

B. Legal Processors

In the second year, legal processors would move on to course and clinical work in their chosen specialties. The course work would be geared to the day-to-day, nitty-gritty of a specialty (e.g., divorce, welfare benefits and advocacy, injury compensation, etc.). At the end of the year, these students would take an examination that tests them on both broad legal skills (from the first year) and the specifics of their specialties.⁷¹ Once in practice, a legal processor would be authorized to make court or administrative tribunal appearances in his or her specialty, at least at the trial level; appellate work might be restricted to legal consultants who are certified in a given area.

There might be an alternative one-year track for those legal processors who have relevant experience in a field. For example, a person who has previously worked as an insurance adjuster might be allowed to sit for the examination on injury compensation after taking the core first-year sequence, on the assumption that the prior experience provides an adequate background in the specialty.

Thus, in terms of academic content, future legal processors and future legal consultants will share the same basic first-year experience. Since a law school would probably offer tracks for both groups, and they may share some classes during the initial years, there might be a good role here for the recently developed “online” law school.⁷² While I am skeptical of the online model’s ability to develop high-level legal analysis and legal reasoning skills, it may be a viable way to instill the basic level that legal processors need. The online approach might be particularly useful to those who seek to transfer to legal processor careers from backgrounds that have already provided significant experience and expertise.

C. Legal Information Engineers

As indicated above, legal information engineers would take the same core curriculum during the first year. The only non-core first-year course should probably introduce students to the conceptual elements of systems analysis. After the first year, the training of legal information engineers will diverge sharply from that of either legal consultants or legal processors.

The second, and possibly third, year of training for legal information engineers would focus largely on the skills and knowledge needed to design and

71. Compare to H.W. Arthurs, *Lawyering in Canada in the 21st Century*, 15 WINDSOR Y.B. ACCESS JUST. 202, 220 (1996).

72. Regarding the structure and potential impact of this style of legal education, see Robert E. Oliphant, *Will Internet Driven Concord University Law School Revolutionize Traditional Law School Teaching?*, 27 WM. MITCHELL L. REV. 841 (2000).

maintain both client-use and provider-use systems. This program should involve both training in system design and training that enables legal information engineers to understand how target audiences actually use their systems. While the substance of legal information systems will be different from those in other areas, their basic functions will undoubtedly resemble systems in other fields. Therefore, the training of legal information engineers could readily be part of a joint enterprise of the future law school, the school of library and information science, and perhaps the department of operations research in the business school.

Because legal information engineers will not directly interact with consumers, I doubt that there will be a need for formal examinations or licensing structures for this group of law workers. On the other hand, certification might lend legitimacy to LIEs. The best form of certification would probably be a voluntary system based on the completion of specific coursework.

D. General Issues

The changes to legal education described above will not come easily. They evoke the ongoing tension between liberal educational goals and vocational training goals.⁷³ At top universities, prestige tends to accrue not to those who serve vocational needs, but to those engaged in research and writing that adheres more closely to the traditional model of liberal education. American legal education has long been torn between the goal of teaching students “to think like a lawyer” and the goal of serving the practical needs of the future practitioner.⁷⁴ One commentator expressed this conflict nicely: “legal education has been and is still almost entirely about law and is only incidentally and superficially about lawyering.”⁷⁵ While the clinical aspect of legal education in the U.S. has grown over the last decade or two, it is still the step-child of the typical law school, with “clinical” faculty possessing a lower status than that of “regular” faculty; clinical programming is more likely to employ faculty on a low-paid, adjunct basis, and seldom offers the security of tenure.

Some of the tensions between the clinical and nonclinical side of American legal education may be attributed to the lack of a department structure within the law school. Contrast the structure of the law school to that of the

73. This is not the first time that I have addressed the need to rethink the structure of legal education. See KRITZER, *supra* note 5, at 209–16. Previously, I focused on the need to adapt legal education to the realities of specialized practice. Others have addressed similar issues. See, e.g., W. SCOTT VAN ALSTYNE ET AL., *THE GOALS AND MISSIONS OF LAW SCHOOLS* 112–25 (1990).

74. See RHODE, *supra* note 14, at 185–92, 196–205; Alex M. Johnson, Jr., *Think Like a Lawyer, Work Like a Machine: The Dissonance Between Law School and Law Practice*, 64 S. CAL. L. REV. 1231 (1991); John Henry Schlegel, *Law and Endangered Species: Is Survival Alone Cause for Celebration?*, 28 IND. L. REV. 391 (1995). This problem is not limited to American legal education. See H.W. Arthurs, *The Political Economy of Canadian Legal Education*, 25 Can. J.L. & SOC'Y 14 (1998) (regarding Canada); Maureen F. Fitzgerald, *Stirring the Pot of Legal Education*, 27 L. TCHR: J. ASS'N. L. TCHRS 4, 14 (1993) (regarding England).

75. Gerald P. Lopez, *Training Future Lawyers to Work with the Political and Socially Subordinated: Anti-Generic Legal Education*, 91 W. VA. L. REV. 305 (1988).

medical school, where there are departments in such areas as anatomy and specialists who teach first- and second-year medical students some of the basics that they will need to become practitioners. One could imagine a redesigned law school with multiple departments, some focusing on the basic analytical skills taught during the first year (and the second year as well for students in the legal consultant track), and others focusing on substantive specialties or practical skills.

V. CONCLUSION

This Article assumes that the world in which legal practice is situated has changed. Some of these changes are technological developments that affect a wide range of occupations and professions, while others, such as the explosion of law itself, are more internal. Legal education continues to be structured around two roles: the general practitioner and the lawyer who enters a large corporate firm that will provide specialized training on the job. A smaller and smaller proportion of lawyers are engaged in general practice,⁷⁶ and the economic pressures on corporate law firms may be bringing to an end the time when those firms could assume a major training function.⁷⁷ Moreover, the self-help movement and competing providers are challenging the traditional providers of legal services, and this challenge is not going to go away.

While the changes upon which my analysis is based are substantial, there are important continuities as well. Fundamental to my argument is growing differentiation within legal practice. However, the idea that legal practice, and the legal profession, are stratified is not new.⁷⁸ Moreover, the idea that stratification and differentiation imply that there should be different training provided to prospective providers of legal services is not new. As far back as the early twentieth century, the potential for differentiation was recognized. In 1913, the Committee on Education of the American Bar Association requested that the Carnegie Foundation for the Advancement of Teaching undertake an investigation “into the conditions under which the work of legal education is carried on in this country.”⁷⁹ Since this was a period in which the ABA was encouraging a model of education in which it would play a prominent role in the accreditation of law schools, one might surmise that the ABA intended to find that the large number of

76. See Heinz et al., *Changing Character of Lawyers' Work*, *supra* note 9, at 765. The authors do not actually refer to “general practice” in their statistics, but they do show that the proportion of legal work devoted to the personal services sector has declined from 40% in 1975 to 29% in 1995. In the 1975 study, Heinz and Laumann reported that 70% of their respondents had described themselves as having a specialization. See HEINZ & LAUMANN, *supra* note 9, at 325. According to data provided to me by John Heinz, this figure rose to 75% in 1995 (on file with the author).

77. See Mike Franch, *Dilemma: Who Will Teach Associates?*, NAT'L L.J., Nov. 20, 1995, at A1.

78. For a brief discussion of the literature on stratification within the legal profession, see Herbert M. Kritzer, *From Litigators of Ordinary Cases to Litigators of Extraordinary Cases: Stratification of the Plaintiffs' Bar in the Twenty-First Century*, 51 DEPAUL L. REV. 219, 221–27 (2001).

79. ALFRED Z. REED, TRAINING FOR THE PUBLIC PROFESSION OF THE LAW, at xviii (1921).

unaccredited, part-time, and evening law schools provided a substandard legal education.⁸⁰ According to Alfred Reed, the author of the Carnegie Endowment study, the issue of the future of part-time legal education was linked to “the perpetuation of the theory of a unitary bar, whose attainments are to be tested by uniform examinations.”⁸¹ In the conclusion of his study, Reed argued that the legal profession was not in fact unitary, that the differentiation among practitioners was functional and would continue to exist, and that developments in legal education should take into account the reality of this differentiation.⁸² History proved that the ABA, perhaps in concert with the economic stresses produced by the Depression, largely succeeded in driving part-time, proprietary legal education out of business (although part-time legal education has re-emerged in the last twenty years). It is, in a sense, ironic that the developments of the closing decades of the twentieth century are forcing a reconsideration of some of the developments of the early decades of the century.

Clearly, the image that I have sketched does not return us to an earlier time. Rather, it moves us forward, based on an understanding that has different foundations. It is important to ask whether the specific structure that I have outlined is actually going to come about. I would estimate that the probability of that occurring is one out of three. Major changes will happen—they are happening in England as a result of changes in legal aid and the less exclusive role possessed by the legal profession⁸³—but they will likely look substantially different from the model that I have outlined. I do expect a bifurcation in legal services providers, with some resembling what I have labeled legal consultants and some resembling legal processors. Whether they will share some basic educational experiences, according to my vision, is harder to say. Still, the myth of the unitary legal profession, which was the goal of reformers ninety years ago, will finally be demolished.

80. *Id.* at 54–57.

81. *Id.* at 57.

82. *Id.* at 417.

83. See JANE STEELE & JOHN SEARGEANT, ACCESS TO LEGAL SERVICES: THE CONTRIBUTION OF ALTERNATIVE APPROACHES (1999); JANE STEELE & GILLIAN BULL, FAST, FRIENDLY AND EXPERT? LEGAL AID FRANCHISING IN ADVICE AGENCIES WITHOUT SOLICITORS (1996); Richard Moorhead, *Legal Aid in the Eye of a Storm: Rationing, Contracting, and a New Institutionalism*, 25 J.L. & SOC’Y 365 (1998).