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Citation: 39 J. Legal Prof. 25 2014



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PERSONAL PLIGHT LEGAL PRACTICE AND TOMORROW'S LAWYERS

By Noel Semple¹

I. INTRODUCTION

Today, many law students and recent graduates are worried about unemployment and financial insecurity. Their career prospects seem threatened not only by the lingering effects of the last recession but also by two accelerating trends in the legal services marketplace. The first is *offshoring*, which replaces lawyers in high-wage developed countries with service-providers in lower-wage developing countries. The second trend is *computerization*, which replaces lawyers with information technology. For the foreseeable future, these trends will continue to threaten many traditional law jobs for junior lawyers. Richard Susskind's recent book, *Tomorrow's Lawyers*, predicts a long-term decline of these positions in North America and Europe.² Susskind and other legal futurologists foresee a continuing place for "superstar" and highly specialized lawyers,³ as well as growth in new jobs such as "legal knowledge engineer[s]."⁴ However, they predict steadily diminishing opportunities for other lawyers in the developed world.⁵

This essay does not reject these ominous prognostications, but it does seek to add nuance to them. It argues that *personal plight legal practice* is, to some extent, sheltered from the offshoring and computerization threats, and therefore offers relatively strong career prospects for those embarking upon legal careers. Personal plight lawyers help individuals and small

1. Assistant Professor, University of Windsor Faculty of Law (Ontario, Canada).

2. RICHARD E. SUSSKIND, *TOMORROW'S LAWYERS: AN INTRODUCTION TO YOUR FUTURE* (2013).

3. John O. McGinnis & Russell G. Pearce, *The Great Disruption: How Machine Intelligence Will Transform the Role of Lawyers in the Delivery of Legal Services*, 82 *FORDHAM L. REV.* 3041, 3057 (2014).

4. SUSSKIND, *supra* note 2, at Table 11.1.

5. See also JORDAN FURLONG, *THE NEW WORLD OF LEGAL WORK: THE CHANGING RULES OF THE 21ST CENTURY* 32 (2014), available at http://www.lod.co.uk/media/pdfs/The_New_World_Of_Legal_Digital_Download.pdf.


businesses involved in disputes.⁶ Plaintiff-side personal injury law, criminal defense law, and family law are among the largest personal plight practice areas, but the field includes many other niches such as estate law, class actions, and immigration law.⁷

Compared to other lawyers, most personal plight legal practitioners spend a high proportion of their time doing things that are very difficult to offshore or computerize.⁸ Legally inexperienced clients and the small size of the average personal plight file help this field of work resist commodification and decomposition. These clients' need for a local human touch to resolve their disputes will likely endure. Tomorrow's lawyers should think seriously about career opportunities in these fields, which offer good medium-term prospects to both "do well" and "do good." Legal educators and regulators have an important role to play in fostering successful personal plight legal practice, in order to enhance both career prospects for tomorrow's lawyers and access to justice for tomorrow's clients.

Part I of this essay reviews recent literature to understand the offshoring and computerization threats to tomorrow's lawyers. Part II defines personal plight practice, and Part III draws on the sociolegal literature to show why it is sheltered, to some extent, from the new sources of competition for developed-country lawyers. Part IV addresses the regulators and educators of the legal profession and shows how and why they should help connect tomorrow's lawyers to personal plight legal practice.

II. FINANCIAL INSECURITY FOR TOMORROW'S LAWYERS

A recent exchange on Twitter illustrates the sense of crisis confronting many people at the outset of a legal career today:



Noel Semple @NoelSemple · Feb 28

"I kid... that most are in law school because they want a secure place in the middle class & can't add or stand the sight of blood": R Abel

Expand

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6. See *infra* Part II (detailing the origin and definition of this term).

7. *Id.*

8. See *infra* Part III.

9. Noel Semple, TWITTER (Feb. 28, 2014, 7:06 AM), <https://twitter.com/NoelSemple/status/439416358183649280> (referencing RICHARD L. ABEL, LAWYERS IN THE DOCK: LEARNING FROM ATTORNEY DISCIPLINARY PROCEEDINGS 492 (2008)).



Juris Debtor @JurisDebtis · Feb 28

@NoelSemple in the USA, most law grads are unemployed, have huge debt, & will NEVER join the middle class ever

Expand

☆ Favored

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Juris Debtor's pessimism is shared by many American and Canadian law students and new lawyers today, especially those from lower-ranked law schools.¹¹ In addition to increasing law school tuition and the resulting student debt, this pessimism is borne of a sense that job prospects for new lawyers are not what they used to be. Indeed, American corporate demand for lawyers fell dramatically in 2008¹² and has failed to track the subsequent economic recovery. While the general unemployment rate in the United States peaked at 10% in October 2009 and has subsequently fallen to 6.7%,¹³ the unemployment rate for new graduates of American law schools has increased in each year since 2008.¹⁴ Nine months after graduation, the unemployment rate of the class of 2013 was 11.2%, up from 10.6% in the previous year.¹⁵ Only about 56% of new graduates are in the most coveted law jobs—full-time positions for which passage of the bar exam is required.¹⁶ This bad news has filtered down to prospective law

10. Juris Debtor, TWITTER (Feb. 28, 2014, 7:35 AM), <https://twitter.com/JurisDebtis/status/439423662962520064>. The Twitter profile for @JurisDebtis, provides a profile link to a "scamblog" entitled "Law School Lemmings." See <https://twitter.com/search?q=%40JurisDebtis&src=typd>.

11. See Renee Newman Knake, *Cultivating Learners Who Will Invent the Future of Law Practice: Some Thoughts on Educating Entrepreneurial and Innovative Lawyers*, 38 OHIO N.U. L. REV. 847, 848-9 (2012); see also David Barnhizer, *Cultural Narratives Of The Legal Profession: Law School, Scamblogs, Hopelessness, And The Rule Of Law*, 2012 MICH. ST. L. REV. 663, 201 (2012).

12. Adam S. Cohen, *Is There a 'Lawyer Bubble'?*, TIME (May 7, 2013), <http://ideas.time.com/2013/05/07/is-there-a-lawyer-bubble/>.

13. BUREAU OF LABOR STATISTICS, U.S. DEP'T OF LABOR, LABOR FORCE STATISTICS FROM THE CURRENT POPULATION SURVEY: UNEMPLOYMENT RATE, <http://data.bls.gov/timeseries/LNS14000000> (last visited May 23, 2014).

14. Jacob Gershman, *Law School Graduate Unemployment Rate Creeps Up*, WALL ST. J. L. BLOG, <http://blogs.wsj.com/law/2013/06/20/law-school-graduate-unemployment-rate-creeps-up/> (last visited May 23, 2014).

15. A.B.A. SEC. LEGAL EDUC. & ADMISSIONS TO THE BAR, 2013 LAW GRADUATE EMPLOYMENT DATA, [available at http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/2013_law_graduate_employment_data.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/2013_law_graduate_employment_data.authcheckdam.pdf) (last visited Sept. 19, 2014). Many of those who are employed would probably consider themselves underemployed.

16. Mark Hansen, *Job market for would-be lawyers is even bleaker than it looks, analysis says*, A.B.A. J. (Apr. 1, 2013), http://www.abajournal.com/news/article/job_market_for_would-be_lawyers_is_bleaker_than_it_looks_analysis_says/; see also Jerry Organ, *Is the Employment Market for Law Graduates Going to be Improving?*, THE LEGAL WHITEBOARD (Mar. 1, 2014), <http://lawprofessors.typepad.com/legalwhiteboard/2014/03/is-the-employment-market-for-law-graduates-going-to-be-improving.html>. Recruitment of new lawyers by large American law firms has also remained flat for five years in a row. See *Entry-Level Law Firm Recruiting Remains Mostly Flat*, NALP (Feb. 19, 2014), http://www.nalp.org/march14_perspectives_pressrel.

students, who have responded by deciding not to apply. There were only 59,400 applications to American law schools for 2013 entry, down from the 2004 peak of more than 100,000 applications.¹⁷

Canada has seen similar trends, though in a more muted form. In Ontario (the largest province), the percentage of graduates unable to find an articling position grew from 4.3% in 2006 to 10.7% in 2012.¹⁸ Several of the largest Canadian firms have been shedding staff, and Heenan Blaikie LLP's 500 lawyers were thrown out of work at least temporarily when their firm dissolved in early 2014.¹⁹ Hiring of summer students by Toronto's largest firms fell steadily from 446 students in 2007 to only 351 in 2013.²⁰

In fact, the prospects for some types of law jobs started to stagnate long before the recession began. Between 2002 and 2012, large American law firms reduced the number of summer law student positions from 11,300 to 5,600.²¹ Another trend that predates the recession is the replacement of relatively high-paid law firm jobs with less remunerative "legal services" jobs, including legal process outsourcers.²² William D. Henderson and Rachel Zahorsky found that in the four years *preceding* 2008, American law firms cut 20,000 jobs.²³ During that period, they observe, 3,200 jobs were added in the "legal services" sector, but they paid an average of only \$46,800 compared to \$79,500 in the increasingly scarce law firm positions.²⁴

Among the largest law firms, demand for domestic, entry-level lawyers eroded before the recession and has failed to keep pace with the recovery. This suggests to many that the problems are to some extent permanent, as opposed to cyclical.²⁵ Commentators have identified two

17. *End of Year Summary: ABA Applicants, Applications, Admissions, Enrollment, LSATs, CAS, LSAC*, <http://www.lsac.org/lsacresources/data/lsac-volume-summary> (last visited May 23, 2014).

18. LAW SOCIETY OF UPPER CANADA, PLACEMENT REPORT: 2013 LICENSING PROCESS (2013).

19. Alec Scott, *After Heenan Blaikie, is it all over for Big Law?*, THE GLOBE & MAIL (Mar. 27, 2014), <http://www.theglobeandmail.com/report-on-business/rob-magazine/after-heenan-blaikie-is-it-all-over-for-big-law/article17692894/#dashboard/follows/>.

20. *Bay Street Hiring a Bloodbath This Year*, ULTRA VIRES (Nov. 27, 2013), <http://ultravires.ca/2013/11/bay-street-hiring-a-bloodbath-this-year/>; see also *Hiring Falls to Historic Lows: Lowest Recruitment Numbers Since 2003*, ULTRA VIRES (Nov. 28, 2012), <http://ultravires.ca/2012/11/hiring-falls-to-historic-lows-lowest-recruitment-numbers-since-2003/>.

21. William D. Henderson, *Sea Change in the Legal Market*, NALP BULLETIN (Aug. 2013), available at <http://www.jdsupra.com/legalnews/sea-change-90478/>.

22. William D. Henderson, *A Blueprint for Change*, 40 PEPP. L. REV. 461, 462 (2013) [hereinafter Henderson, *Blueprint for Change*].

23. William D. Henderson & Rachel M. Zahorsky, *Law Job Stagnation May Have Started Before the Recession—And It May Be a Sign of Lasting Change*, A.B.A. J. (July 1, 2011, 9:40 AM), http://www.abajournal.com/magazine/article/paradigm_shift/.

24. *Id.*

25. William D. Henderson, *Letting Go of Old Ideas*, 112 MICH. L. REV. 1111, 1115 (2014) [hereinafter Henderson, *Letting Go of Old Ideas*]; contra Rene Reich-Graefe, *Keep Calm and Carry On*,

developments that undermine long-term demand for developed-country lawyers.²⁶ The first is offshoring; the second is computerization. These are disruptive innovations, fundamentally unlike sustaining innovations of the past.²⁷ Instead of making it easier or more profitable for lawyers to practice, they change the entire structure of the market and create space for new competitors at the expense of incumbents.²⁸

A. Offshoring

Offshoring is the replacement of expensive labor in wealthy jurisdictions with cheaper labor in poorer jurisdictions.²⁹ Lawyers in places like Mumbai are increasingly able to replicate, at significantly lower cost, the work of junior lawyers in places like New York, London, and Toronto.³⁰ Legal education and English language skills are proliferating in developing countries, and technological advances make it increasingly more feasible to integrate their efforts with the work done by North American and European firms. Susskind distinguishes between *outsourcing* (law firms drawing on foreign labor to serve corporate clients) and traditional offshoring (corporate clients directly employing lawyers in the low-cost jurisdiction).³¹ In either case, new lawyers in high-wage jurisdictions will be less in-demand.

B. Computerization

The second threat is *computerization*.³² Intelligent machines replace legal workers and facilitate commodification, in which legal services are

27 GEO. J. LEGAL ETHICS 55 (2014); Edward Rubin, *The Future and Legal Education: Are Law Schools Failing and, If So, How?*, 39 LAW & SOC. INQUIRY 499 (2014).

26. Some developments that threaten traditional law firms, such as the move to in-sourcing by large corporate clients, do not necessarily threaten lawyers per se. A corporation can reduce its reliance on external law firms while still keeping the same number of lawyers busy as in-house counsel. The focus of this article is on developments that affect the total demand for lawyers, in any context.

27. See generally McGinnis & Pearce, *supra* note 3.

28. Ray Worthy Campbell, *Rethinking Regulation And Innovation In The U.S. Legal Services Market*, 9 NEW YORK UNIVERSITY JOURNAL OF LAW & BUSINESS 1 (2012); McGinnis & Pearce, *supra* note 3, at 3056.

29. Regarding the offshoring threat to North American lawyers, see Ray Worthy Campbell, *Rethinking Regulation and Innovation in the U.S. Legal Services Market*, 9 N.Y.U. J.L. & BUS. 1, 41 (2012) and FURLONG, *supra* note 5, at 38.

30. See Henderson & Zahorsky, *supra* note 23.

31. SUSSKIND, *supra* note 2, at Chapter 4. Susskind also defines “near-shoring,” in which “the work is carried out in a neighbouring, low-cost jurisdiction that is in a closer time zone to the law firm or in-house department that is parceling out the legal tasks.” *Id.* at 35.

32. SUSSKIND, *supra* note 2 at 37; FURLONG, *supra* note 5, at 45.

provided with decreasing quantities of lawyer labor.³³ The print journalism industry has been profoundly disrupted by information technology, and John McGinnis and Russell Pearce argue that a similar development is imminent for law.³⁴

In document-heavy litigation, for example, e-discovery software already allows disclosure requirements to be fulfilled by one lawyer overseeing an automated process, in lieu of a large team of associates sifting through boxes of paper.³⁵ This is an example of the “one-to-many modes of legal problem solving” that Henderson sees increasingly replacing traditional “one-to-one artisan lawyering.”³⁶ Another example is quantitative legal prediction, in which computers forecast likely case outcomes using inductive reasoning and large databases of prior outcomes.³⁷

For individual clients who need simple agreements or forms, computerization is allowing companies like LegalZoom to compete very effectively with lawyers.³⁸ Non-profits can also deploy computerization to expand access to justice for individuals. For example, a team of Georgetown Law students created a “Same-Sex Marriage Adviser” app to show same-sex couples their matrimonial options in all of the American states.³⁹

C. Decomposition

Decomposition of legal work is essential for most forms of offshoring and computerization.⁴⁰ Computers and developing-country lawyers are not yet capable of entirely replicating the work of a firm or in-house legal department in North America or Europe; rather, they succeed by cost-effectively performing certain tasks within a file, overseen by a senior lawyer or team in the wealthy jurisdiction.⁴¹

Thus, offshoring and computerization are more serious threats to junior lawyers than they are to senior ones. To the extent that junior lawyers’

33. SUSSKIND, *supra* note 2, at Chapter 3; Daniel Martin Katz, *Quantitative Legal Prediction—or—How I Learned to Stop Worrying and Start Preparing for the Data Driven Future of the Legal Services Industry*, 62 EMORY L.J. 909, 910 (2013); McGinnis & Pearce, *supra* note 3, at 3052-53.

34. McGinnis & Pearce, *supra* note 3, at 3051-52.

35. *Id.* at 3047-48.

36. Henderson, *Letting Go of Old Ideas*, *supra* note 25, at 119.

37. See generally Katz, *supra* note 33.

38. Campbell, *supra* note 28, at 39; McGinnis & Pearce, *supra* note 3, at 3050.

39. Tanina Rostain, et al., *Thinking Like a Lawyer, Designing Like an Architect: Preparing Students for the 21st Century Practice*, 88 CHI.-KENT L. REV. 743 (2013).

40. SUSSKIND, *supra* note 2, at 29.

41. This arrangement allows the offshoring to conform with the prohibition on unauthorized practice of law. Campbell, *supra* note 28, at 40-41.

work is more routine, it is more readily replaced by these processes. This disproportionate competitive threat to newer lawyers may underlie the reportedly increasing perception among corporate clients that juniors' work is no longer worth the price that firms have traditionally charged for it.⁴² Offshoring and computerization are entrenched and accelerating phenomena that already have significant impact on the legal services marketplace.⁴³ Tomorrow's lawyers must understand what these trends mean for their career prospects. Regulators, law schools, and other professional groups must respond. Understanding the differential impact of the trends on different parts of the legal services marketplace is key.

II. A MAP OF THE BAR

John Heinz and Edward Laumann introduced the phrase "personal plight" in a 1978 article as a way to characterize a certain type of legal practice.⁴⁴ After interviewing 777 Chicago-area lawyers, Heinz and Laumann found that the profession was divided into two "hemispheres" based on clientele.⁴⁵ Lawyers tended to have *either* (i) large corporations and government agencies as clients *or* (ii) individuals and small businesses as clients.⁴⁶ The average American lawyer was unlikely in the 1970s to draw clients from both groups⁴⁷ and is even less likely to do so today.⁴⁸

Heinz and Laumann subdivided their personal client hemisphere into "personal business" and "personal plight" practice groups.⁴⁹ The personal *business* group includes legal services related to financial transactions, such as drafting or probating a will, arranging the transfer of residential real estate, or buying or selling a small business.⁵⁰ In the personal *plight* group,

42. SUSSKIND, *supra* note 2, at 20; MITCH KOWALSKI, AVOIDING EXTINCTION: REIMAGINING LEGAL SERVICES FOR THE 21ST CENTURY 107 (2012); Rubin, *supra* note 25, at 499.

43. Regarding the accelerating rate of advances in information technology, see McGinnis & Pearce, *supra* note 3, at 3043.

44. John P. Heinz & Edward O. Laumann, *The Legal Profession: Client Interests, Professional Roles, and Social Hierarchies*, 76 MICH. L. REV. 1111, 1126 (1978). A revised version appeared in JOHN P. HEINZ & EDWARD O. LAUMANN, CHICAGO LAWYERS: THE SOCIAL STRUCTURE OF THE BAR (1982) [hereinafter HEINZ & LAUMANN, CHICAGO LAWYERS].

45. HEINZ & LAUMANN, CHICAGO LAWYERS, *supra* note 44, at 55.

46. *Id.* at 55.

47. *Id.* at 43.

48. See generally JOHN P. HEINZ, ET AL., URBAN LAWYERS: THE NEW SOCIAL STRUCTURE OF THE BAR (2005) [hereinafter HEINZ ET AL., URBAN LAWYERS]. Regarding the increasing degree of specialism among American lawyers, see RONIT DINOVIETZ, ET AL., AFTER THE JD II: SECOND RESULTS FROM A NATIONAL STUDY OF LEGAL CAREERS 32 (2009), and David B. Wilkins, *Some Realism about Legal Realism for Lawyers: Assessing the Role of Context in Legal Ethics*, in LAWYERS IN PRACTICE: ETHICAL DECISION MAKING IN CONTEXT 29-30 (Leslie C. Levin & Lynn M. Mather eds., 2012).

49. HEINZ & LAUMANN, CHICAGO LAWYERS, *supra* note 44, at 73.

50. *Id.*

they placed criminal defense, plaintiff-side personal injury work, and divorce practice.⁵¹ These three practice areas have two things in common: (i) the presence of a dispute or adverse interests in each file,⁵² and (ii) the fact that the clients are individuals.

Personal plight lawyers help people negotiate with and assert legal rights against other individuals, corporations, and state bodies. Contested immigration and personal tax matters, consumer protection law, employment law, and human rights law are other examples of personal plight legal practice (when the lawyer is representing the individual as opposed to the business or government agency on the other side). Work for small corporate clients embroiled in legal disputes also seems to belong in the personal plight group.⁵³ If a corporation is small enough (e.g., controlled by a single individual or family) that the outcome of a legal dispute will have significant personal ramifications for the corporation's principals, and if those principals are legally inexperienced, then the distinct dynamics of personal plight practice discussed below are likely to be present.

"Plight" is defined by the *Oxford English Dictionary* as a "[p]eril, danger, or risk . . . struggle or battle."⁵⁴ The word has an undeniably archaic ring. However, its choice by Heinz and Laumann (in lieu of a less evocative word such as "problem") is apt. These legal disputes, and their outcomes, usually have important personal ramifications for the clients. As these authors point out:

. . . the "personal plight" group includes fields concerned with emotional issues, with personal freedom or liberty, or with personal anguish. . . . [T]he distinguishing characteristic of the "personal plight" fields is their emotive content.⁵⁵

For the typical criminal defendant or personal injury plaintiff—unlike the large institutional client on the other side—a case is not "just another case," whose ideal resolution is a function of a risk-reward calculation. As will be

51. *Id.*

52. A few files in these practice areas have no outstanding dispute. An example would be the uncontested divorce in which all financial and parenting arrangements have been agreed upon by the parties and the lawyer is only needed to secure the formal divorce order from the court. However, the overwhelming majority of effort by lawyers in these practice areas is dedicated to contested matters.

53. Here, the author parts company with Heinz and Laumann. They categorized "general litigation" within the personal business group rather than the personal plight group. See HEINZ & LAUMANN, *supra* note 44, at 73; HEINZ ET AL., *URBAN LAWYERS*, *supra* note 48, at 35. This term is not defined, but it probably refers to disputes experienced by small businesses.

54. OED ONLINE (2004), available at <http://www.oed.com/view/Entry/145835?rskey=0zqczo&result=1&isAdvanced=false#eid>.

55. HEINZ & LAUMANN, *CHICAGO LAWYERS*, *supra* note 44, at 72; see generally, *supra* note 11.

seen below, this fact helps personal plight legal practice resist both offshoring and computerization.

III. A SHELTERED FIELD

Personal plight practice is relatively sheltered from the long-term offshoring and computerization threats to developed country lawyers.⁵⁶ Compared to the corporate-client hemisphere as well as personal business work involving uncontested transactions and planning, personal plight legal practice involves many tasks that offshore lawyers and computers will have difficulty performing in the foreseeable future. It would be foolhardy to predict that this lawyer work can never be offshored or computerized. However, it can reasonably be suggested that during the careers of today's law students, these fields will be better sheltered from the bracing winds of offshoring and computerization than corporate and personal business work will be. The next Part of the essay explains why this is so.

A. The Local Human Touch

Personal plight legal practice typically involves a relatively low proportion of document reviewing, drafting, and legal researching, and a relatively high proportion of client counselling, advocating, and negotiating. This is good news for the lawyers who do this work because these tasks tend to require a local human touch.⁵⁷ Most courts still require an in-person appearance by a lawyer licensed in the local jurisdiction, which excludes offshore professionals and computers.⁵⁸ Alternative dispute resolution options (e.g., mediation and arbitration) and online dispute resolution are scarcely more flexible in this regard. Personal plight practitioners must sometimes persuade neutral adjudicators in order to secure favorable outcomes for their clients. Computers are many years from being able to argue persuasively in this context, and offshore lawyers are excluded by unauthorized practice prohibitions.⁵⁹

Most personal plight cases settle, but here too, the local human touch seems far from obsolete. Computerization of settlement negotiations has

56. See *supra* Part I.

57. Richard Susskind and Jordan Furlong, two of the leading prognosticators of the offshoring and computerization trends, both recognize trial advocacy as one of a lawyer's endeavors that remains valuable. See SUSSKIND, *supra* note 2, at Chapter 6; Jordan Furlong, *Three Ways to Compete in the Coming Legal Market*, DAILY DISPATCH (Mar. 3, 2014), available at <http://www.attorneyatwork.com/three-ways-to-compete-coming-legal-market/>.

58. See McGinnis & Pearce, *supra* note 3, at 3055 (arguing that oral advocacy will not be performed by computers in the foreseeable future).

59. Campbell, *supra* note 28, at 43-44.

some prospects in purely distributive disputes over money.⁶⁰ However, in cases where an individual client has complex and shifting interests, computers are very far from being able to understand and effectively secure those interests in a negotiated resolution. A client who is divorcing from a co-parent, or contesting the care of an older relative, is often best served by a settlement that creatively identifies options that work well for everyone involved, within the framework of the law.⁶¹ Cost-effectively securing such an outcome may require an advocate with a personal reputation within a local community of practice and a working knowledge of what outcomes are considered reasonable by other lawyers and judges within the local legal culture.⁶² The advocate may also need “insider” familiarity with the idiosyncrasies of local law and procedure.⁶³

Personal plight clients are usually legally inexperienced “one-shotters,” who have only occasional recourse to the law.⁶⁴ Unlike in-house counsel or executives within a large corporate client, personal plight clients often have little sense of what their legal rights are. Lawyers with inexperienced clients must *translate* between the law and the lived reality of their clients. When personal plight clients tell stories about their lives and needs, lawyers must empathetically understand these stories and respond with intelligible stories of their own about the law and what it means for the client.⁶⁵ Personal plight lawyers must not only provide information but also create bonds of trust with their clients in order to cement effective alliances with them.⁶⁶ Lawyers must shape their clients’ expectations, strengthening

60. See e.g., *Resolution Center*, EBAY, <http://resolutioncenter.ebay.com>, (last visited Sept. 19, 2014); RICHARD E. SUSSKIND, *THE END OF LAWYERS?: RETHINKING THE NATURE OF LEGAL SERVICES* 218 (2008).

61. See ROGER FISHER & WILLIAM L. URY, *GETTING TO YES: NEGOTIATING AGREEMENT WITHOUT GIVING IN* (1981); Bernard S. Mayer, *Facilitative Mediation*, in *DIVORCE AND FAMILY MEDIATION: MODELS, TECHNIQUES, AND APPLICATIONS* (Jay Folberg, et al. eds., 2004); Carrie Joan Menkel-Meadow, *Too Many Lawyers? Or Should Lawyers be Doing Other Things?*, 19 INT’L J. LEGAL PROF. 147, 156 (2012).

62. Thomas Church, *Examining Local Legal Culture*, 10 AM. B. FOUND. RES. J. 449 (1985), available at http://spokane.wsu.edu/academics/crimj/Brody/class_readings/church.pdf; see also LYNN M. MATHER, ET AL., *DIVORCE LAWYERS AT WORK: VARIETIES OF PROFESSIONALISM IN PRACTICE* 48-51 (2001); JULIE MACFARLANE, *THE NEW LAWYER: HOW SETTLEMENT IS TRANSFORMING THE PRACTICE OF LAW* 35-37 (2008) [hereinafter MACFARLANE, *THE NEW LAWYER*].

63. See CARROLL SERON, *THE BUSINESS OF PRACTICING LAW: THE WORK LIVES OF SOLO AND SMALL-FIRM ATTORNEYS* 111 (1996); AUSTIN SARAT & WILLIAM L. F. FELSTINER, *DIVORCE LAWYERS AND THEIR CLIENTS: POWER AND MEANING IN THE LEGAL PROCESS*, Chapter 5 (1997).

64. Marc Galanter, *Why the “Haves” Come Out Ahead: Speculations on the Limits of Legal Change*, 9 LAW & SOC’Y REV. 59 (1974); Campbell, *supra* note 28, at 36.

65. SARAT & FELSTINER, *supra* note 63 at 17; Daphne Dumont, “Better . . . or Worse?” *The Satisfactions and Frustrations of the Lawyer-Client Relationship*, in *WHY GOOD LAWYERS MATTER* 24, (David L. Blaikie et al. eds., 2012).

66. Stephen Ellmann, *Client-Centeredness Multiplied: Individual Autonomy and Collective Mobilization in Public Interest Lawyers’ Representation of Groups*, 78 VA. L. REV. 1103, 1128-29 (1992); SERON, *supra* note 63, at 107; McGinnis & Pearce, *supra* note 3, at 3055.

resolve in some cases and throwing cold water in others, in order to set the stage for (typically) a negotiated resolution acceptable to both sides.⁶⁷

In order to advance a client's interests, a lawyer must first comprehend those interests. In personal plight practice, this may involve proactively helping clients decide what they really want.⁶⁸ Empathy, emotional intelligence, and communication skills are very important for most personal plight lawyers.⁶⁹ These skills are useful for other lawyers as well, but more sophisticated and experienced clients are less likely to require the same level of interpersonal and "soft" skills from their lawyers.

Personal plight matters are, by definition, contested matters. The lawyer's strategy in each case must take into account not only the "shadow" of the law⁷⁰ but also the position and tactics of the adversary.⁷¹ In time-billed practices, such as family law and estate litigation, decisions about how to proceed with a given file have cost consequences, but the price of the procedure to the client must remain proportional to the value of the outcome.⁷² While different personal plight niches demand different lawyer skills, they share a high reliance on the local human touch. For this reason, lawyers in these practice areas are relatively well-positioned to survive the offshoring and computerization threats.

B. Resistance to Decomposition

As noted above, offshoring and computerization usually depend on the decomposition of legal matters.⁷³ Compared to corporate-hemisphere work, it is relatively uneconomical to subdivide personal plight files into constituent tasks. Inexperienced personal plight clients are less able than corporate clients are to decompose and parcel out their own legal needs to a "vendor network."⁷⁴ An intermediary can work with the client to decompose the work, but the necessity of a middle-person makes decomposition less economically viable.

67. MATHER, *supra* note 62, at 96 and Chapter 5.

68. Ellmann, *supra* note 66, at 1139; SARAT & FELSTINER, *supra* note 63 at 53.

69. SERON, *supra* note 63 at 111-112; MACFARLANE, *THE NEW LAWYER*, *supra* note 62 at 23 and 137; Ann Juergens, *Valuing Small Firm and Solo Law Practice: Models for Expanding Service to Middle-Income Clients*, 39 WM. MITCHELL L. REV. 80, 108 (2012).

70. Robert H. Mnookin & Lewis Kornhauser, *Bargaining in the Shadow of the Law: The Case of Divorce*, 88 YALE L.J. 950 (1979).

71. SERON, *supra* note 63, at 107-08; BECKY BATAGOL & THEA BROWN, *BARGAINING IN THE SHADOW OF THE LAW: THE CASE OF FAMILY MEDIATION* (2011).

72. ACTION COMM. ON ACCESS TO JUSTICE IN CIVIL AND FAMILY MATTERS, *ACCESS TO CIVIL & FAMILY JUSTICE: A ROADMAP FOR CHANGE* (2013), available at http://www.cfcj-fcjc.org/sites/default/files/docs/2013/AC_Report_English_Final.pdf.

73. See *supra* Part I.C.

74. Campbell, *supra* note 28, at 36.

The size of personal plight files is another impediment to decomposition. Compared to a corporate lawyer, a family lawyer or a personal injury lawyer is likely to work on a much larger number of much smaller files within a year.⁷⁵ Decomposing each file would involve fixed costs, and these costs are harder to justify if each file is smaller. For example, an offshore legal process outsourcer specializing in document review must be briefed about what to look for in each file that is allocated to it. If the work is a single large transaction or corporate litigation file with 10,000 documents, this fixed cost can easily be recouped. However, if the work is 500 criminal defense files with 20 documents each, then the fixed cost of bringing the outsourcer up to speed on each file is much harder to justify.

C. Resistance to Commodification

Personal plight practice is distinguished not only from corporate-hemisphere work, but also from personal business work involving uncontested transactions and planning for individual and small business clients.⁷⁶ Personal business work, like personal plight work, is typically performed for legally inexperienced clients.⁷⁷ However, it lacks the adversaries and the necessity for compromise, which characterize personal plight work. Companies like LegalZoom and RocketLawyer have led the way in computerizing and commodifying personal business work, posing a grave and immediate threat to lawyers' revenue from tasks such as incorporation, will drafting, and transfer of real estate.⁷⁸

However, when these new businesses offer personal plight legal services, they do so by referring clients to lawyers. Computerization, which has allowed LegalZoom and its peers to provide personal business services with minimal lawyer input, has not yet been successfully applied to personal plight matters. Moreover, these businesses expose themselves to legal liability for unauthorized practice when they attempt to deploy non-lawyers.⁷⁹

75. See HEINZ & LAUMANN, CHICAGO LAWYERS, *supra* note 44, at 1120-21; see also RICHARD L. ABEL, AMERICAN LAWYERS 204 (1989); Sara Parikh, *How the Spider Catches the Fly: Referral Networks in the Plaintiffs' Personal Injury Bar*, 51 N.Y.L. SCH. L. REV. 243, 247 (2007).

76. See *supra* Part II.

77. Campbell, *supra* note 28, at 36.

78. McGinnis & Pearce, *supra* note 3, at 3050-51.

79. Campbell, *supra* note 28, at 43-47; Gillian Hadfield, *Innovating to Improve Access: Changing the Way Courts Regulate Legal Markets*, 143 DAEDALUS 1, 16-17 (2014), available at <http://law.bepress.com/cgi/viewcontent.cgi?article=1252&context=usclwps-lss>.

D. Not Future-Proof, but Sheltered

Personal plight legal practice is not future-proof. The “‘more-for-less’ challenge”—people’s inability to go without legal services combined with their inability to pay for those services as traditionally delivered—is very pressing for personal plight clients.⁸⁰ They are certainly part of the “tremendous pent-up demand for better, faster, and cheaper legal products and services.”⁸¹ Some personal plight lawyers will face competition from non-lawyers in jurisdictions that license independent paralegals, such as New York, Washington State, and Ontario.⁸² However, legal services regulation in North America requires that most paralegal services be provided under the supervision of a lawyer.⁸³ These rules tend to make paralegals a sustaining innovation that enhances lawyer profits, rather than a disruptive innovation, which puts lawyers out of business.⁸⁴

Thus, it seems plausible that personal plight legal practice will offer better career prospects than other practice areas will, at least over the 40-50-year period during which today’s law students and new lawyers will be practicing.⁸⁵ To the extent that offshoring and computerization do occur, personal plight lawyers are relatively well-positioned to be the beneficiaries, rather than the victims, of these trends. Because inexperienced clients have difficulty decomposing their own legal needs, lawyers will have the opportunity to do so on their clients’ behalf. If these lawyers take advantage of this opportunity, they will be able to reduce

80. SUSSKIND, *supra* note 2, at 4; Campbell, *supra* note 28, at 36.

81. Henderson, *Letting Go of Old Ideas*, *supra* note 25, at 1128.

82. See, e.g., *Court Navigator Program*, NEW YORK CITY HOUSING COURT, <http://www.courts.state.ny.us/COURTS/nyc/housing/rap.shtml> (last visited May 23, 2014); *Supreme Court Adopts Rule Authorizing Non-Lawyers to Assist in Certain Civil Legal Matters*, WASHINGTON COURTS (June 15, 2012), <http://www.courts.wa.gov/newsinfo/?fa=newsinfo.internetdetail&newsid=2136>; *By-Law 4: Licensing*, LAW SOCIETY OF UPPER CANADA §§ 5-6 (2014), available at <http://www.lsuc.on.ca/WorkArea/DownloadAsset.aspx?id=2147485805>; see also Furlong, *supra* note 57. For a summary of these and other threats to the legal profession’s monopoly, see Leslie C. Levin, *The Monopoly Myth and Other Tales about the Superiority of Lawyers*, 82 FORDHAM L. REV. 2611 (2014).

83. Campbell, *supra* note 28, at 40.

84. *Id.*

85. It is difficult to confirm or deny this argument using lawyer employment data. Personal plight work is predominantly done by small firms and solo practitioners. See HEINZ ET AL., URBAN LAWYERS, *supra* note 48, at 69. Hiring and revenue figures for these firms are not part of the data gathered by organizations such as the National Association for Law Placement (NALP), nor do lawyer unemployment statistics issued by the American Bar Association distinguish between practice areas. See, e.g., *2012 Law Graduate Employment Data*, A.B.A. SEC. OF LEGAL EDUC. & ADMISSIONS TO THE BAR, http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/reports/law_grad_employment_data.authcheckdam.pdf (last visited Sept. 20, 2014).

prices while preserving profits and remaining essential to their clients.⁸⁶ Heinz, Nelson, Sandefur, and Laumann found that the proportion of all Chicago lawyers' time devoted to corporate and institutional clients increased markedly between 1975 and 1995.⁸⁷ It would be unsurprising to find this trend halted or reversed in the coming decades if corporations and institutions increasingly substitute technology and foreign labor for their domestic lawyers, while personal plight clients remain unable to do so.

In any court or tribunal where individuals' matters predominate, the large cohort of self-represented litigants offers evidence of extensive, unmet demand for personal plight legal services.⁸⁸ Empirical research with self-represented litigants suggests that most of these people have *not* decided that they do not need expert help.⁸⁹ Rather, they want, and in many cases have some ability to pay for, expert legal services.⁹⁰ Scholars such as Russell Pearce and Edward Rubin predict continuing, and perhaps increasing, demand for lawyers to assert human and economic rights for individuals in the face of growing socioeconomic inequality.⁹¹ Tomorrow's lawyers have an opportunity to tap a large and potentially lucrative middle-class market if they can surmount the affordability and other problems that make lawyers' services inaccessible to middle- and low-income people today.⁹²

IV. OPENING DOORS TO PERSONAL PLIGHT PRACTICE

Law schools, regulators, and professional groups should work to open doors between tomorrow's lawyers and personal plight legal practice. If it is true that these fields offer relatively strong long-term career prospects, then opening these doors is a constructive and practical response

86. See Part III.B, *supra*.

87. HEINZ ET AL., *URBAN LAWYERS*, *supra* note 48, at 46-47.

88. Drew Swank, *The Pro Se Phenomenon*, 19 *BYU J. PUB. L.* 373, 376 (2004).

89. JULIE MACFARLANE, THE NATIONAL SELF-REPRESENTED LITIGANTS PROJECT: IDENTIFYING AND MEETING THE NEEDS OF SELF-REPRESENTED LITIGANTS 82, 121 (2013), *available at* http://www.lsuc.on.ca/uploadedFiles/For_the_Public/About_the_Law_Society/Convocation_Decisions/2014/Self-represented_project.pdf.

90. Moreover, those who do have lawyers are generally pleased with them. See Rachel Birnbaum et al., *The Rise of Self-Representation in Canada's Family Courts: The Complex Picture Revealed in Surveys of Judges, Lawyers and Litigants*, 91 *CAN. B. REV.* 67, 77 (2013).

91. See Samuel J. Levine & Russell G. Pearce, *Rethinking the Legal Reform Agenda: Will Raising the Standards for Bar Admission Promote or Undermine Democracy, Human Rights, and Rule of Law?*, 77 *FORDHAM L. REV.* 1635, 1636-38 (2009); Russell G. Pearce & Sinna Nasser, *The Virtue of Low Barriers to Becoming a Lawyer: Promoting Liberal and Democratic Values*, 19 *INT'L J. LEGAL PROF.* 357 (2013); Rubin, *supra* note 25, at 513-14.

92. Noel Semple, *Canada: Depending on the Kindness of Strangers: Access to Civil Justice*, 16 *LEGAL ETHICS* 373, 374-75 (2013) [hereinafter Semple, *Kindness of Strangers*]; Noel Semple, *Access to Justice: Is Legal Services Regulation Blocking the Path?*, 21 *INT'L J. LEGAL PROF.* 267 (2013) [hereinafter Semple, *Legal Services Regulation*].

to the insecurity and pessimism afflicting many at the outset of their careers today. Moreover, bringing more lawyers into personal plight practice can help to address the endemic inaccessibility of justice in North America.⁹³ Personal plight is the epicenter of the access to justice problem, and having more trained “boots on the ground” to meet these needs is part of the solution.

A. Debunking Myths and Fostering Prestige

One key problem is that law students and new lawyers consider personal plight careers unappealing. They are perceived as less remunerative, less personally satisfying, and less prestigious than legal careers in the corporate hemisphere.⁹⁴ What is the origin of these perceptions and can anything be done to overcome them?

1. Show Them the Money.

Debunking myths would be a good way to start, especially with regard to the economic prospects for personal plight practice. High student debt loads and the desire for financial security compel tomorrow’s lawyers to seek opportunities to “do well,” in addition to “doing good.” Some of them believe that this is impossible in personal plight legal practice. While it is true that these careers do not offer Wall Street’s \$160,000 first-year salaries, they can still be lucrative. According to *Forbes Magazine*, the single wealthiest practicing lawyer in the United States is not a “BigLaw” partner with corporate clients but rather Joe Jamail, a personal injury attorney and a billionaire.⁹⁵ The most successful American plaintiff-side tort lawyers have incomes in the top 1% for the profession.⁹⁶ In 1995, Herbert Kritzer found a median income for Wisconsin contingency fee

93. See, e.g., LEGAL SERV. CORP., DOCUMENTING THE JUSTICE GAP IN AMERICA: THE CURRENT UNMET CIVIL LEGAL NEEDS OF LOW-INCOME AMERICANS 9 (Sept. 2009), available at http://www.lsc.gov/sites/default/files/LSC/pdfs/documenting_the_justice_gap_in_america_2009.pdf; AB CURRIE, THE LEGAL PROBLEMS OF EVERYDAY LIFE: THE NATURE, EXTENT AND CONSEQUENCES OF JUSTICIABLE PROBLEMS EXPERIENCED BY CANADIANS 10, 67 (2007), available at http://www.justice.gc.ca/eng/tp-pr/csj-sjc/jsp-sjp/tr07_la1-tr07_aj1/tr07_la1.pdf; see also Semple, *Kindness of Strangers*, *supra* note 92.

94. See note 110, *infra*, and accompanying text.

95. *The World’s Billionaires: #1077 Joe Jamail Jr.*, FORBES, <http://www.forbes.com/profile/joe-jamail-jr/> (last visited Sept. 20, 2014).

96. See LESTER BRICKMAN, LAWYER BARONS: WHAT THEIR CONTINGENCY FEES REALLY COST AMERICA 35-36 (2011) (concluding that “lawyers specializing in aggregative litigation, including class actions and mass torts, realize effective hourly rates of \$5,000 to \$25,000 per hour . . .” and “the upper tier of contingency fee lawyers, who specialize in product liability, toxic torts, and airline crash litigation, are realizing \$2,500 to \$5,000 per hour.”).

lawyers of \$88,861, somewhat higher than the median for all lawyers in the state.⁹⁷

Contingency tort practice is not the only personal plight niche with prospects for good pay. Family lawyers and estate litigators, especially those with high net-worth clientele, often have very good incomes. There is also a huge untapped market of middle-class people with personal plight legal needs.⁹⁸ While factors including the North American regulatory environment currently make it difficult to provide services that these people can afford, this could change in the near future, as it already has in the UK and Australia.⁹⁹

2. Can't Get No Satisfaction?

Another common perception that may not have any factual basis is that personal plight practice is more stressful or less enjoyable than other legal work. Most empirical studies of lawyer job satisfaction have not distinguished between practitioners in different practice areas.¹⁰⁰ However, the *After the JD* longitudinal study found that solo practitioners and lawyers in firms of less than 20 are at least as satisfied with their careers as are those working in larger private firms.¹⁰¹ Personal plight legal work is

97. HERBERT M. KRITZER, RISKS, REPUTATIONS, AND REWARDS: CONTINGENCY FEE LEGAL PRACTICE IN THE UNITED STATES 32 (2004).

98. Renee Newman Knake, *Democratizing the Delivery of Legal Services*, 73 OHIO ST. L.J. 1 (2012) [hereinafter Knake, *Democratizing the Delivery*]; see generally Semple, *Kindness of Strangers*, *supra* note 92.

99. For evidence that justice is more accessible and that legal services are more affordable in the United Kingdom than in North America, see Gillian K. Hadfield, *Higher Demand, Lower Supply? A Comparative Assessment of the Legal Landscape for Ordinary Americans*, 37 FORDHAM URB. L.J. 129, 135-36 (2010); MARK DAVID AGRAST ET AL., THE WORLD JUSTICE PROJECT RULE OF LAW INDEX 2011 (2011), available at http://worldjusticeproject.org/sites/default/files/WJP_Rule_of_Law_Index_2011_Report.pdf; WORLD JUSTICE PROJECT RULE OF LAW INDEX 2011 DATASET (2011), available at http://worldjusticeproject.org/sites/default/files/wjprol_index_2011_data_0.xls. Regarding the role of legal services regulation, see *infra* Part IV, section 2; Noel Semple, *Access to Justice: Is Legal Services Regulation Blocking the Path?*, 20 INT'L J. OF THE LEGAL PROF. 267 (2013); and Gillian K. Hadfield, *Innovating to Improve Access: Changing the Way Courts Regulate Legal Markets*, 143 DAEDALUS (forthcoming 2014).

100. E.g., John Monahan & Jeffrey Swanson, *Lawyers at Mid-Career: A 20-Year Longitudinal Study of Job and Life Satisfaction*, 6 J. OF EMPIRICAL LEGAL STUD. 451 (2009); David L. Chambers, *Overstating the Satisfaction of Lawyers*, 39 LAW & SOC. INQUIRY 313 (2014). Sheldon and Krieger did find that lawyers in what they call "money" jobs report significantly less personal happiness than those in "service" jobs. (Kennon M. Sheldon & Lawrence S. Krieger, *Service Job Lawyers Are Happier Than Money Job Lawyers, Despite Their Lower Income*, 9 J. OF POSITIVE PSYCHOL. 219 (2014)). Their categorization of legal careers does not map onto that of Heinz & Laumann explained above.

101. RONIT DINOVTZER, ET AL., AFTER THE JD II: SECOND RESULTS FROM A NATIONAL STUDY OF LEGAL CAREERS 50 (2009).

concentrated in small firms and solo practices¹⁰² and probably makes up a sizable portion of the work done in these work environments. The *After the JD* data therefore suggests tentatively that personal plight practitioners are just as satisfied with their careers as are other lawyers.¹⁰³

Of course, personal plight practitioners confront stresses that other lawyers do not. The distinctive challenges of these jobs include the emotional crises of which many clients find themselves and the need to fight David v. Goliath battles against better-resourced state and corporate adversaries.¹⁰⁴ However, there are countervailing satisfactions in personal plight work that may be significant sources of contentment for those who engage in it. One of these is the relatively steady and recession-proof nature of demand for personal plight legal services. Corporate practice areas such as mergers and acquisitions or bankruptcy law are cyclical, which is presumably a source of stress for practitioners. A lawyer with relatively stable client demand for his or her time is likely to enjoy better work-life balance than a lawyer who alternates between periods of long overtime and slack periods in which there is little to do at the office.

Because many personal plight clients are people of modest means, their lawyers have an opportunity for personal fulfilment that is not available to those in the corporate hemisphere: the opportunity to dedicate their careers to helping people who might not otherwise have access to legal services.¹⁰⁵ Personal plight practitioners are more likely to have the opportunity to choose a balance between doing well and doing good. They also have the opportunity to develop innovative practice models in order to do well and do good simultaneously.

One empirically-verified source of job satisfaction is autonomy.¹⁰⁶ Personal plight practice may be more likely to offer autonomy than corporate practice, because the clients' lack of legal experience necessitates more exercise of professional judgment by the lawyer.¹⁰⁷ The relative

102. Leslie Levin, *Guardians at the Gates: The Backgrounds, Career Paths and Professional Development of Private U.S. Immigration Lawyers*, 34 LAW & SOC. INQUIRY 399, 415 (2009) (regarding concentration of immigration lawyers in small and solo firms); see also Parikh, *supra* note 75, at 247 (regarding personal injury practitioners).

103. On the other hand, it is conceivable that the non-personal-plight small firm and solo practitioners have high enough satisfaction scores to outweigh very low personal plight satisfaction scores, producing a high average score for those working in this environment.

104. For example, plaintiff-side personal injury lawyers typically have insurance companies as their adversaries (KRITZER, *supra* note 97) and criminal defenders face off against state prosecutors.

105. Juergens, *supra* note 69, at 107.

106. ANH NGOC NGUYEN, ET AL., JOB AUTONOMY AND JOB SATISFACTION: NEW EVIDENCE (2003), <http://www.lancaster.ac.uk/staff/ecasb/papers/job%20autonomy%20%20job%20satisfaction%2030july03.pdf>.

107. Lynn Mather, *What Do Clients Want—What Do Lawyers Do?*, 52 EMORY L.J. 1065, 1080 (2003); see MACFARLANE, *THE NEW LAWYER*, *supra* note 62, at 5.

paucity of repeat business for personal plight practitioners creates another variety of professional autonomy. If a family lawyer's working relationship with a client breaks down irreparably due to personality conflicts, then the lawyer can simply move on to the next client. If a Wall Street lawyer's working relationship with a Fortune 500 client breaks down for similar reasons, then his or her entire career may be on the rocks. Different legal practices offer different degrees of satisfaction to different lawyers, but the overall prospects for lawyer happiness in personal plight seem to be just as good as they are in other areas.

3. *The Prestige Mirage*

The perception that personal plight careers lack prestige is perhaps the most complex stumbling block between tomorrow's lawyers and these sheltered (if not verdant) pastures.¹⁰⁸ The prestige deficit is the reason why many students see a personal plight career opportunity as second rate, even if it comes with guaranteed high pay and great job satisfaction. Rebecca Sandefur defines prestige as an "entitlement to deference," obtained due to a person's "position in a certain role or as the practitioner of particular tasks."¹⁰⁹ According to Chicago lawyers surveyed in 1995, the legal profession as a whole accords very little prestige to personal plight fields such as divorce, immigration law, personal injury, and criminal defense.¹¹⁰ High prestige is generally accorded to work for large corporate clients and, to a lesser extent, to pro bono or public interest work for non-profit organizations.¹¹¹

How does personal plight practice come to rank so poorly in this pecking order? Susan Carle suggests that "prestige hierarchies are socially constructed through the transmission of subtle but powerful messages across professional generations."¹¹² The hierarchies are manifested, for example, through (often groundless) "common knowledge" among law

108. See Gillian K. Hadfield, *Exploring Economic and Democratic Theories of Civil Litigation: Differences Between Individual and Organizational Litigants in the Disposition of Federal Civil Cases*, 57 STAN. L. REV. 1275, 1285 (2005).

109. Rebecca L. Sandefur, *Work and Honor in the Law: Prestige and the Division of Lawyers' Labor*, 66 AM. SOC. REV. 382, 383 (2001).

110. Out of forty-two fields of law, the prestige rankings for the largest personal plight areas were as follows: divorce (42/42); immigration law (41/42); personal injury—plaintiff (33/42); criminal defense (31/42). HEINZ ET AL., *URBAN LAWYERS*, *supra* note 48, at 84; see also Levin, *supra* note 102, at 400-01 (discussing immigration law); ZARA SULEMAN, *NOT WITH A TEN-FOOT POLE: LAW STUDENTS' PERCEPTIONS OF FAMILY LAW PRACTICE* (2010), <http://www.divorcemate.com/library/Chapter%204%20-%20Attracting%20Lawyers%20to%20Family%20Law.pdf> (discussing family law).

111. Susan D. Carle, *Re-Valuing Lawyering for Middle-Income Clients*, 70 FORDHAM L. REV. 719, 726 (2001); see Juergens, *supra* note 69, at 81-83.

112. Carle, *supra* note 111, at 727.

students that corporate work is more “interesting” or “sophisticated” than personal plight work.¹¹³

According to Sandefur, sociologists have proposed three distinct theories of professional prestige. According to the “client-type thesis,” the prestige of different practice areas reflects the prestige of their clients.¹¹⁴ Because capitalist societies venerate large corporations and their executives, lawyers who work for them bask in the same glory. A second theory of prestige holds that the most “professionally pure” fields—those with the most connection to abstract legal knowledge and the least engagement with “messy” emotional or other non-legal factors—will be considered the most prestigious.¹¹⁵ Both of these theories help to explain the prestige advantage enjoyed by lawyers in the corporate hemisphere.¹¹⁶

However, there is a third theory of prestige that offers hope for improving the reputation of personal plight work. Heinz et al. identify a “classical theory of professionalism,” which emphasizes “being able to control your own work—being able to tell your client what his problem is and how, with your help, it may be solved.”¹¹⁷ As noted above, working with the typical, legally inexperienced personal plight client offers more scope for this type of professionalism than does working for a legally sophisticated corporate hemisphere client. Lawyers and legal educators can emphasize this reality to students, and in so doing perhaps help lower the prestige barrier to personal plight practice.

B. Bringing Personal Plight Practice into Larger Firms

A second impediment to personal plight practice is the fact that, in North America, this work is almost entirely performed in small firms and solo practices.¹¹⁸ Of course, these practice environments have significant appeal for some clients and some lawyers. To clients, they offer direct personal connection to the profession, unmediated by bureaucracy. To practitioners, they offer unparalleled independence.¹¹⁹ For a new lawyer, one advantage of personal plight practice is the opportunity to begin by

113. *Id.*

114. Sandefur, *supra* note 109, at 384; HEINZ AND LAUMANN, CHICAGO LAWYERS, *supra* note 44, at 128.

115. ANDREW DELANO ABBOTT, THE SYSTEM OF PROFESSIONS: AN ESSAY ON THE DIVISION OF EXPERT LABOR (1988); Rebecca L. Sandefur, *Work and Honor in the Law: Prestige and the Division of Lawyers' Labor*, 66 AM. SOC. REV. 384 (2001).

116. Rebecca L. Sandefur, *Work and Honor in the Law: Prestige and the Division of Lawyers' Labor*, 66 AM. SOC. REV. 384 (2001).

117. HEINZ ET AL., URBAN LAWYERS, *supra* note 48, at 79.

118. KRITZER, *supra* note 97.

119. JEROME CARLIN, LAWYERS ON THEIR OWN (1962); Juergens, *supra* note 69, at 106.

simply “hanging out a shingle.” One need not convince a firm to extend a job offer in order to get started. A mediocre GPA from a non-elite law school may foreclose the top ranks of corporate practice, but it is no impediment to eventually reaching the top ranks of practitioners in a personal plight field, such as family or personal injury law.

However, for many of tomorrow’s lawyers, the lack of opportunities in mid-sized and large firms is a major drawback of personal plight practice.¹²⁰ Larger firms have significant attractions, which smaller ones struggle to match. These include better access to support staff and technology, more opportunities for mentorship and teamwork, and, in the early years of a career, freedom from the administrative and business-generation work which many lawyers find tedious.¹²¹ Law students’ preference for large firms reflects these factors, in addition to the income that these jobs offer.

If there were more mid-size and large law firms doing personal plight work in North America, it is likely that more students would embrace personal plight careers. In the United Kingdom and Australia, large firms like Co-Operative Legal Services and Slater & Gordon are now offering both more accessible services to personal plight clients and new career opportunities to lawyers.¹²² Franchise initiatives such as England’s QualitySolicitors represent another model for supporting personal plight legal practice.¹²³

The absence of similarly large personal plight firms in North America seems to be at least partially attributable to legal services regulation.¹²⁴ Non-lawyer investment in firms, which has been welcomed in England, Wales, and Australia, is still prohibited on this continent. Among other good reasons to roll back these rules,¹²⁵ doing so would allow personal

120. E.g., regarding family law in Canada, see Suleman, *supra* note 110, at 4-217.

121. ALTERNATIVE BUSINESS STRUCTURES WORKING GROUP (LAW SOCIETY OF UPPER CANADA), REPORT TO CONVOCATION (Feb. 27, 2014) 39 (2014), <http://www.lsuc.on.ca/WorkArea/DownloadAsset.aspx?id=2147495044>.

122. For example, Co-Operative Legal Services plans to hire 3,000 lawyers to provide mostly personal plight services by 2017. John Robins, *If people want a Rottweiler, they can go somewhere else*, LEGALVOICE (Oct. 4, 2012), <http://legalvoice.org.uk/family/if-people-want-a-rottweiler-they-can-go-somewhere-else/>.

123. QUALITY SOLICITORS, <http://www.qualitysolicitors.com> (last visited May 23, 2014); Knake, *Democratizing the Delivery*, *supra* note 98; Edward Iacobucci & M. J. Trebilcock, *An Economic Analysis Of Alternative Business Structures For The Practice Of Law*, CANADIAN BAR REVIEW (FORTHCOMING), III(g) (2014).

124. OECD, COMPETITIVE RESTRICTIONS IN LEGAL PROFESSIONS (2007), <http://www.oecd.org/regreform/sectors/40080343.pdf>; Semple, *Legal Services Regulation*, *supra* note 92, at section 3.2.

125. Paul D. Paton, *Multidisciplinary Practice Redux: Globalization, Core Values, And Reviving The MDP Debate In America*, 78 FORDHAM L. REV. 2193 (2010); Knake, *Democratizing the Delivery*, *supra* note 98; Stephen Gillers, *A Profession, If You Can Keep It: How Information Technology and Fading Borders are Reshaping the Law Marketplace and What We Should Do About It*, 63 HASTINGS

plight law firms to become significantly larger and thus create attractive new career opportunities for tomorrow's lawyers to serve personal plight clients.

Evidence from Australia and the UK suggests that regulatory liberalization would not eliminate solo and small firm practice in the personal plight sector.¹²⁶ Instead, these countries now have legal services marketplaces in which both small and large firms are available to individual clients and also to lawyers as career options. A vibrant market for personal plight legal services might resemble the urban food market. A hungry person in a city has options with many price points and many service models (full-service restaurant, bulk food store, and everything in between). Those seeking food services careers have a similar array of options. Regulatory liberalization could allow a similar flourishing of options, for the benefit of both personal plight clients and their lawyers.

C. Reforming Legal Education

Non-elite American law schools are currently imperilled by a dramatic drop in applications and a mounting perception that legal education is no longer worth its six-figure price tag.¹²⁷ Law schools must demonstrate their value proposition to increasingly skeptical prospective students, and career outcomes are among the primary yardsticks by which students measure value.¹²⁸ In reaching out to prospective students, law schools' room to manoeuvre is constrained by the tenure system and, in the case of American schools, by the power of the *U.S. News and World Report* law school rankings.¹²⁹

A plethora of law school reform proposals have emerged from the crisis in American legal education. Susskind says that law students should learn more "21st-century legal skills that will support future law jobs," such as teamwork and information technology.¹³⁰ Henderson calls for a consortium of like-minded law schools to create a competency-based curriculum designed to produce in-demand graduates.¹³¹ Other proposals

LAW JOURNAL 101 (2012); Semple, *Legal Services Regulation*, *supra* note 92; Edward Iacobucci & M. J. Trebilcock, *An Economic Analysis Of Alternative Business Structures For The Practice Of Law*, CANADIAN BAR REVIEW (FORTHCOMING) at section IV(f) (2014).

126. Semple, *Legal Services Regulation*, *supra* note 92.

127. BRIAN Z. TAMANAHA, *FAILING LAW SCHOOLS* Part IV (2012). See also *supra* note 15 and accompanying text.

128. Henderson, *Blueprint for Change*, *supra* note 22.

129. TAMANAHA, *supra* note 127.

130. SUSSKIND, *supra* note 2.

131. Henderson, *Blueprint for Change*, *supra* note 22.

emphasize practice-readiness and skills,¹³² student entrepreneurship and innovation,¹³³ and specialization and differentiation among law schools.¹³⁴ Perhaps most dramatically, some have called for the elimination of the third year of the J.D. program.¹³⁵

Preparing students for personal plight practice is consistent with these initiatives and likely to improve graduate career prospects. One obvious step is for law schools to ensure that courses are available in all of the major personal plight practice areas. Perhaps even more important is to ensure that students develop skills such as client counselling, negotiation, and problem-solving that can be deployed in multiple personal plight areas.¹³⁶ Some law schools might go further and brand themselves and their graduates as specialists in personal plight. A school which does so and can demonstrate that its graduates consistently excel in personal plight practice may gain significant advantages in placing its graduates with personal plight firms and attracting strong students interested in doing this work.

Finally, law schools and regulators may want to reconsider their entrance criteria. Personal plight legal practice requires as many strong interpersonal and client-relationship skills as technical or “hard” legal skills. If it is true that an increasing proportion of legal careers will be in this field, then it is important to ensure that people who have the skills needed to flourish are being admitted to the profession. Just as some medical schools now assess applicants on the basis of interpersonal and other soft skills in addition to MCAT score and grade point average,¹³⁷ it may be time for law school admissions to take into account similar factors.

132. John Burwell Garvey & Anne F. Zinkin, *Making Law Students Client-Ready: A New Model in legal Education*, 1 DUKE F. L. & SOC. CHANGE 101 (2009); Judith S. Kaye, *2011 James P. White Lecture on Legal Education a Chief Judge's After-Life: Reflections on Educating Lawyers Today*, 45 IND. L. REV. 291 (2012).

133. Gillian Hadfield, *Equipping the Garage Guys in Law*, 70 M.D L. REV. 484 (2011); Knake, *Democratizing the Delivery*, *supra* note 98. Knake also calls for law schools to spread public knowledge about the law; Renee Newman Knake, *Democratizing Legal Education*, 45 CONN. L. REV. 1281 (2013) [hereinafter Knake, *Democratizing Legal Education*].

134. Menkel-Meadow, *supra* note 61; TAMANAHA, *supra* note 127, at 172-76.

135. Chester Higgins Jr., *A Bold Bid to Combat a Crisis in Legal Education*, N.Y. TIMES, Apr. 4, 2014, at B1. Samuel Estreicher, *The Roosevelt-Cardozo Way: The Case For Bar Eligibility After Two Years Of Law School*, 15 N.Y.U. J. LEGIS. & PUB. POL'Y 599 (2012); Knake, *Democratizing Legal Education*, *supra* note 133, at 1310. Rubin, *supra* note 25, at 515 (On a contrasting note, Edward Rubin argues that law schools may require four years to train students for the knowledge economy and social justice requirements of the near future).

136. MACFARLANE, *THE NEW LAWYER*, *supra* note 62, at 15; Henderson, *Blueprint for Change*, *supra* note 22.

137. Goldis Chami, *The changing dynamic of medical school admissions*, 182 CAN. MED. ASS'N J. 1833 (2010); CASPer—Computer-Based Assessment for Sampling Personal Characteristics, MCMASTER UNIV., <http://fhs.mcmaster.ca/mdprog/casper.html> (last visited May 23, 2014).

V. CONCLUSION

Law students and recent graduates in developed countries are anxiously wondering: Will computers and foreign competitors steal our jobs? Commentators argue convincingly that computerization and offshoring will undermine demand for traditional lawyers in North America and Europe. Recent employment data seems to bear these predictions out.¹³⁸ This essay suggests, however, that this grim prognosis should not be applied in an undifferentiated manner. Personal plight lawyers, who help individuals and small businesses resolve their disputes, will enjoy some shelter from these brisk winds in coming years.¹³⁹ The legally inexperienced clientele, the emotive content of the disputes, and the small average file size will impede decomposition and commodification in the medium-term future.¹⁴⁰

In order to improve the prospects for tomorrow's lawyers and increase access to justice, the legal profession should concentrate on increasing the viability of personal plight legal practice. Myths should be debunked and accurate information should be provided to students about the opportunities for financial security and job satisfaction in this field.¹⁴¹ The lack of mid-size and large firms offering personal plight legal services is a problem for both lawyers and clients and one that regulators can address by rolling back antiquated prohibitions on non-lawyer investment in firms.¹⁴² Law schools can offer more preparation to students embarking upon these careers and review entrance criteria to ensure that those with the necessary interpersonal skill sets are provided the opportunity to enter the profession. Tomorrow's lawyers, and the profession itself, are challenged to come to terms with gale-force changes sweeping across the legal services marketplace. Understanding and taking advantage of the opportunities in personal plight legal practice is a crucial part of this process.

138. Part I, *supra*.

139. Part II, *supra*.

140. Part III, *supra*.

141. Part IV, section 1, *supra*.

142. Part IV, section 2, *supra*.

