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## Practicing Law in the Interests of Justice in the Twenty-First Century

### Cover Page Footnote

Oppenheim Professor of Antitrust & Trade Regulation Law, The George Washington University Law School. Antonella Karlin provided helpful research assistance in preparation of this article.

# PRACTICING LAW IN THE INTERESTS OF JUSTICE IN THE TWENTY-FIRST CENTURY

*Thomas D. Morgan\**

Practicing law in the interests of justice—in the twenty-first or any other century—will be harder than it looks. A lawyer’s well-advised client frequently wants almost any outcome but justice. A client’s well-prepared lawyer often invokes legal authority that is unlikely to produce justice and relies upon an adversarial system that may make justice at best an incidental result.

Professor Deborah Rhode has approached that hard reality with admirable temerity.<sup>1</sup> She has offered three “general principles” under which to organize reform of the lawyer’s complex world:

1. Lawyers should accept personal responsibility for their professional acts.
2. Citizens should have equitable access to legal services and a choice among services.
3. Lawyer professional regulation is too important to leave entirely to lawyers.<sup>2</sup>

I wholeheartedly agree with each of these principles and with many of her other calls for reform. In particular, I agree that lawyer professional rules have often provided ways to avoid the demands that ordinary morality would make of non-lawyers. I also agree that lawyer control of the lawyer regulatory system has probably helped deny justice to many and increase the price of justice for all.

Indeed, I agree with so many of the causes that Professor Rhode has championed over the years that this paper could become excessively fawning. Thus, I will qualify my admiration by suggesting that Professor Rhode tends—like most of us who write about legal ethics—to deal largely with the twentieth-century experience through which we have lived. Some of those issues have crossed the millennial divide and none of us can see ahead perfectly, but I hope in this article to try to take seriously the call of this colloquium’s title to focus on

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1. Deborah L. Rhode, *In the Interests of Justice: Reforming the Legal Profession* (2000) [hereinafter Rhode, *Interests of Justice*].

2. *Id.* at 17-20.

some likely realities of the century ahead that will affect how lawyers may conduct their practice.

This article will suggest eight ways that I believe the practice of law seems likely to develop over the next twenty years or so. I believe three evolving realities will run throughout the developments—a growth in the demand for services lawyers traditionally have provided, increased client choice among service providers and thus increased client influence on the way law is practiced, and expanded lawyer opportunities for building a practice that includes a well-ordered life.

### 1. DEMAND IS LIKELY TO CONTINUE TO GROW FOR WHAT HAVE BEEN CALLED LEGAL SERVICES

Over the last century the number of lawyers grew almost ten fold, from just over 100,000 in 1900 to over one million today.<sup>3</sup> A consistent fear among lawyers throughout the century was that the supply of lawyers would soon exceed the demand for their services.<sup>4</sup> Some saw the unmet legal needs of the poor and the middle class and hoped the new lawyers would provide a way to meet those needs,<sup>5</sup> but somehow the expected lawyer surplus never came.

Economist B. Peter Pashigian has provided what I believe is still the best analysis of the demand for legal services. He found that growth in demand for legal services is most closely related to growth in national GDP.<sup>6</sup> That is, if the GDP increases three percent in a given year—as it has on average over the past twenty-five years—the demand for lawyers will increase about three percent as well and annually absorb about 30,000 new entrants to the profession, just to do the kinds of business-oriented work most lawyers do.

The reason for this relationship may be that a lawyer's role in society most often involves what Dean Robert Clark has called

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3. The figure for 1900 is taken from Richard L. Abel, *American Lawyers* 280 (1989); the current figure is widely assumed to be true based on projections from American Bar Foundation data reported in Barbara A. Curran, et al., *The Lawyer Statistical Report* (1985) and its periodic supplements.

4. See, e.g., Homer D. Crotty, *Who Shall Be Called to the Bar?*, 20 *Bar Examiner* 173, 175 (1951) (suggesting that permitting use of the G.I. Bill for law school threatens "possible serious overcrowding of the bar"); John C. York & Rosemary D. Hale, *Too Many Lawyers? The Legal Services Industry: Its Structure and Outlook*, 26 *J. Legal Educ.* 1, 22-25 (1973) (suggesting that graduates of "new" or "least selective" law schools are not as likely to find jobs as the number of law students expands in the 1970s).

5. See, e.g., Barbara A. Curran, *The Legal Needs of the Public: The Final Report of a National Survey* (1977).

6. See, e.g., B. Peter Pashigian, *The Market for Lawyers: The Determinants of the Demand For and Supply of Lawyers*, 20 *J.L. & Econ.* 53, 53 (1977); see also, Thomas D. Morgan, *Economic Reality Facing 21st Century Lawyers*, 69 *Wash. L. Rev.* 625 (1994) (updating Pashigian's statistics). For another analysis of the demand for lawyers, see Richard H. Sander & E. Douglas Williams, *Why Are There So Many Lawyers? Perspectives on a Turbulent Market*, 1989 *Law & Soc. Inquiry* 431.

private “normative ordering,” i.e., facilitating transactions, planning for their consequences, resolving disputes associated with them, and seeking to affect the regulatory structure in which they are conducted.<sup>7</sup> It also may affect the impact of economic activity on third parties, but the justice concern about equitable allocation of legal services is likely to continue to find poor and middle class victims competing with better-paying clients for the scarce time of people offering legal services.

## 2. DISTINCTIVELY LEGAL SERVICES WILL DECLINE IN SIGNIFICANCE AND COMPETITION WILL BE THE OVERARCHING FORCE AFFECTING LAWYERS

Lawyers who remember the 1950s and 1960s as the “golden age” of practice purport to remember a time when a lack of real competition was part of what it meant to be a professional. Whether that was ever really true, it certainly will not be true in the twenty-first century. In coming years, lawyers are likely to experience a continued breakdown in the number of issues seen as distinctively “legal” in character and that require a lawyer’s advice.

Mergers, for example, are increasingly driven more by issues of accounting and finance than by corporation or antitrust law. Lawyers like to think they are good at everything, but professionals in accounting and finance are equally likely to think they can look up the law or hire relatively inexpensive lawyers to do it for them.

Even some traditional legal issues are now often international in scope and beyond most domestic lawyers’ expertise. Mergers of U.S. businesses, for example, can face as much risk from European regulators as from those in the United States, as General Electric and Honeywell learned when objections raised by the European Competition Commission killed their merger after the U.S. Department of Justice had approved it.<sup>8</sup> Thus, the skills on which lawyers are tested when they are granted a license to practice in a particular U.S. jurisdiction often have little or nothing to do with the work they will be asked to do for twenty-first century clients. As clients begin to internalize that reality, lawyers will find even fewer issues within their distinctive expertise.

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7. Robert C. Clark, *Why So Many Lawyers? Are They Good or Bad?*, 61 *Fordham L. Rev.* 275, 281 (1992); see also Frank B. Cross, *The First Thing We Do, Let’s Kill All the Economists: An Empirical Evaluation of the Effect of Lawyers on the United States Economy and Political System*, 70 *Tex. L. Rev.* 645 (1992) (asserting that economic studies are not conclusive evidence that the United States has too many lawyers); Ronald L. Gilson, *Value Creation by Business Lawyers: Legal Skills and Asset Pricing*, 94 *Yale L.J.* 239 (1984) (discussing the way in which business lawyers add value to a transaction).

8. See, e.g., 81 *Antitrust & Trade Reg. Rep.* 14-15 (2001).

Clients, especially business clients, are likely to demand a varied mix of services and traditional law firms will not be their obvious supplier. A greater and greater share of those services likely will be provided by teams of professionals in large organizations, in part to reduce the costs of searching for providers of individual services and in part to realize the benefits of closer relationships with fewer outside firms. Indeed, not only will other professionals try to deliver what have traditionally been called legal services,<sup>9</sup> but the stakes will rise as law firms seek to assemble teams of persons to serve their existing clients.<sup>10</sup> If recruiting a finance specialist will encourage clients not to change firms, for example, there will be intense competition to hire such a specialist.

Changes in the methods of delivering legal services will only increase the competitive pressure. Even today, some firms are delivering legal services directly over the Internet. Some services, for example, can be tailored to a client's needs revealed by a questionnaire that the client completes on-line.<sup>11</sup>

### 3. CLIENTS WILL TEND TO USE FEWER OUTSIDE LAW FIRMS AND LAWYERS WILL TEND TO HAVE GREATER AFFILIATION WITH THEIR CLIENTS

A recurring complaint of older lawyers decrying the alleged decline in lawyer professionalism has been the perceived loss of the lawyer's role as trusted client adviser.<sup>12</sup> The decline is seen not only as a loss of prestige; it represents a diminishing of the lawyer's alleged former ability to steer client conduct toward the common good. A second effect of the decline in influence has been the tendency to abandon general retainer fees under which firms would meet all a client's reasonable needs for a fixed price, and move instead to hourly-rate billing with its associated dehumanizing consequences for lawyers.<sup>13</sup>

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9. See, e.g., Sheryl Stratton, *Texas Investigates Unauthorized Practice of Law by Big Six Firm*, Tax Notes, Sept. 19, 1997, at 1521.

10. See, e.g., Bruce A. Green, *The Disciplinary Restrictions on Multidisciplinary Practice: Their Derivation, Their Development, and Some Implications for the Core Values Debate*, 84 Minn. L. Rev. 1115 (2000); James W. Jones, *The Challenge of Change: The Practice of Law in the Year 2000*, 41 Vand. L. Rev. 683 (1988).

11. Leading firms delivering such services today include Linklaters and Clifford Chance Rogers & Wells, both based in London, and Blake, Dawson & Waldron, based in Sydney. When the client and lawyer never meet face to face, the location of each becomes irrelevant, except as a matter of court regulation. For an introduction to such developments, see Richard Susskind, *The Future of Law: Facing the Challenges of Information Technology* (1996) and Richard Susskind, *Transforming the Law: Essays on Technology, Justice and the Legal Marketplace* (2000).

12. See Sol M. Linowitz with Martin Mayer, *The Betrayed Profession: Lawyering at the End of the Twentieth Century* 30-32 (1994).

13. *Id.* at 28, 97-98; Michael H. Trotter, *Profit & the Practice of Law: What's Happened to the Legal Profession* 7-8 (1997).

Some of those complaints are highly suspect. Lawyers still advise business clients; the advisers simply tend to be inside general counsel, not outside law firms. General counsel are often corporate officers, part of the management team, and correctly perceived to know more about the client's interests and concerns than outside counsel ever could.

However, it is likely that outside counsel will regain at least some of the insider role they covet. The effects will not all be positive, but outside counsel may increasingly look more like inside counsel who are simply housed elsewhere. What will drive that development is the same technology that allows communication with a law firm across the country—or around the world—almost as easily as with counsel down the hall. Indeed, systems now being introduced will allow clients direct access, for what is likely to be a fixed price, to law firm files, including billing records, depositions, and legal or factual research on whatever the firms and their clients decide is relevant to the clients' needs and consistent with the firms' obligations to other clients.<sup>14</sup>

If increased interconnection of inside counsel and outside firms comes to pass, reliance on hourly-rate billing as the principal measure of a lawyer's worth may also decline. This will tend to reduce a major source of frustration experienced by lawyers<sup>15</sup> and put the principal focus back on the value they are adding to their clients' activities. In that sense, Professor Rhode's view of practice in the interests of justice seems likely to be enhanced.

On the other hand, a tendency to have outside counsel become more like inside counsel may intensify the concern about lawyer independence.<sup>16</sup> My own view is that the concern about inside counsel's loss of independence can be exaggerated. Companies and their lawyers differ widely as to how much dissent the chief executive can tolerate and how much bad news she can be told. To the extent difficulty giving independent advice impedes a lawyer's ability to practice in the interests of justice, however, the difficulty may be exacerbated by the decrease of inside counsel's independence.

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14. The technologies are widely advertised in lawyer publications, and, even when discounted for puffing, the implications are enormous. See, e.g., Neil Cameron, *Client Portals: 20 Years Late But Moving Fast*, *The American Lawyer*, July 2001 (advertising insert).

15. Rhode, *Interests of Justice*, *supra* note 1, at 10, 35-37.

16. See, e.g., Robert W. Gordon, *The Independence of Lawyers*, 68 B.U. L. Rev. 1 (1988); see also Robert W. Gordon, *Corporate Law Practice as a Public Calling*, 49 Md. L. Rev. 255 (1990) (discussing the ideal corporate lawyer as a public servant and a servant of the client).

#### 4. LITIGATION WILL BE AS ADVERSARIAL AS THE RULES ALLOW AND AS CLIENTS DEMAND

Professor Rhode is clearly correct that "what is professionally convenient is not always socially desirable."<sup>17</sup> The client-centered adversarial system in which lawyers' work often tends to produce results in which broad public benefits are at best a fortuitous consequence. A client injured by a dangerous product may prefer a generous settlement with a pledge of secrecy, for example, to a lesser sum that includes public disclosure of the danger, and the defendant may be only too happy to agree.<sup>18</sup>

Indeed, if I am even close to right about the emerging competitive pressures on lawyers and the consequent leverage of their clients, this problem is likely only to get worse. One sometimes hears calls for more alternative dispute resolution as a way out of the problem,<sup>19</sup> but that largely confuses process with substance. Even at its best, mediation is no guarantor of justice; indeed, the effort to reach settlement can become a search for the party least able to hold out. Further, when authoritative precedent for future cases is a significant object of litigation, even an otherwise favorable settlement may constitute a defeat.<sup>20</sup>

Professor William Simon has suggested that lawyers should alter today's client-centered system and use "contextual judgment" to pursue justice even where their clients' interests might dictate another result.<sup>21</sup> If a plaintiff's lawyer has demanded less for her client than justice requires because of a failure to discover a critical fact, for example, Simon suggests that defense counsel should disclose the fact so the ultimate settlement will be higher.<sup>22</sup> A lawyer certainly may have what is sometimes called a "moral conversation" with her client and propose such a disclosure,<sup>23</sup> but surely taking the action behind the client's back can only set the lawyer against the client. As long as clients can choose among lawyers, lawyer disloyalty as a long-term

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17. Rhode, *Interests of Justice*, *supra* note 1, at 50.

18. Several such examples may be found in Richard Zitrin & Carol M. Langford, *The Moral Compass of the American Lawyer: Truth, Justice, Power, & Greed* 183-208 (1999).

19. See, e.g., Carrie Menkel-Meadow, *Ethics in Alternative Dispute Resolution: New Issues, No Answers From the Adversary Conception of Lawyers' Responsibilities*, 38 S. Tex. L. Rev. 407 (1997); Carrie Menkel-Meadow, *The Trouble with the Adversary System in a Postmodern, Multicultural World*, 38 Wm. & Mary L. Rev. 5 (1996).

20. See, e.g., Harry T. Edwards, *Alternative Dispute Resolution: Panacea or Anathema?*, 99 Harv. L. Rev. 668 (1986); Owen M. Fiss, *Against Settlement*, 93 Yale L.J. 1073 (1984).

21. William H. Simon, *The Practice of Justice: A Theory of Lawyers' Ethics* 138 (1998).

22. *Id.* at 141-42.

23. Thomas L. Shaffer & Robert F. Cochran, *Lawyers, Clients and Moral Responsibility* 40-54 (1994).



strategy will have a very low probability of adoption and an even lower probability of success.

Professor Bob Tuttle and I have taken a quite different view, suggesting that compliance with legal and professional rules is *prima facie* the proper moral course—as well as the only practical course—for the lawyer trying to achieve justice.<sup>24</sup> To say we live in a complex moral world understates the problems lawyers face.

In the twenty-first century—as in the twentieth—a lawyer’s loyalty is likely to be to the client and that loyalty will have to be pursued “zealously within the bounds of the law.”<sup>25</sup> It will often be true that at least one party will want to be as adversarial as possible, and until rules such as those of broad confidentiality<sup>26</sup> and permitting secret settlements are changed, the adversary system will produce an inferior brand of justice. On the other hand, Professor Rhode is clearly correct that if lawyer rule compliance were not seen as the *prima facie* moral standard, the clients who benefited most from the change “would not be the poor and oppressed.”<sup>27</sup> Changing bad legal and professional rules should be among a lawyer’s public interest objectives, and many lawyers and professors have been leaders in that effort. While they are in force, however, the rules we have are likely to provide the best guides for lawyers trying to preserve integrity in dealings with both their clients and third parties.

##### 5. LEGAL SERVICES FOR THE MIDDLE CLASS INCREASINGLY WILL BE PROVIDED THROUGH NEW MEDIA AND INSTITUTIONS SUCH AS BANKS AND INSURANCE COMPANIES

Provision of services to the middle class has long been a serious concern for persons worried about justice for all. Lawyer referral services have tried to match lawyer availability with client needs, and group legal service organizations have tried to create pools of clients large enough to justify lawyers addressing those needs.

I believe the next significant group of suppliers in the twenty-first century, however, will be those who help clients help themselves,<sup>28</sup> and banks and insurance companies who want to serve other needs of

24. Thomas D. Morgan & Robert W. Tuttle, *Legal Representation in a Pluralist Society*, 63 *Geo. Wash. L. Rev.* 984 (1995).

25. Both the command of zealotry, and the explicit limitation on zealotry, are found in Model Code of Professional Responsibility, Canon 7.

26. Important amendments to Model Rule 1.6 were proposed by the ABA Commission on Evaluation of Professional Standards (Ethics 2000), but in August 2001, the most ambitious changes were again rejected by the ABA House of Delegates at the urging of the American College of Trial Lawyers.

27. *Interests of Justice*, *supra* note 1, at 78.

28. See, e.g., Joan C. Rogers, *Cyberlawyers Must Chart Uncertain Course in World of Online Advice*, 16 *Laws. Man. on Prof. Conduct (ABA/BNA)* No. 4, at 96 (Mar. 15, 2000); Julee C. Fischer, *Policing the Self-Help Legal Market: Consumer Protection of Protection or the Legal Cartel?*, 34 *Ind. L. Rev.* 121 (2000).

the clients as well. Bar organizations are likely to resist such developments with all the resources at their command. It will be said to be not only the unauthorized practice of law by a corporation,<sup>29</sup> but a traditional conflict of interest as well, because the corporate sponsor might engage in various other business transactions with the clients.<sup>30</sup>

However, those objections will not necessarily succeed. Insurance company provision of legal services is well established in the context of auto and homeowner liability litigation.<sup>31</sup> When a company similarly pays for the cost of a insured's house closing, adoption, name change, or the like, we call it group legal services. In both cases, insured clients receive services from lawyers they often hardly know, but one rarely hears objection to the quality of those services.

The next step in these developments may be bank provision of estate planning services or assisting lay executors in the administration of estates. Similar kinds of help may come from investment advisors or financial planners. At least in the early years, the services may be provided by lawyers working for the commercial organizations, but the services may soon be standardized and delivered by non-lawyers either in person or via telephone or Internet.

These developments will be a blow to lawyers who see traditional individualized services turned into relative commodities, but from the point of view of the middle-class clients, they may spell the difference between adequate services and no services at all. In that sense at least, they will genuinely expand the sense of justice experienced by those middle-class clients.

## 6. SERVING THE POOR WILL BECOME AN INCREASINGLY SPECIALIZED ACTIVITY

A system in which people bid for lawyers' time will always have problems serving the poor. One obvious solution would be mandatory pro bono service by lawyers, but that seems unlikely to happen soon. When proposed to the ABA in the early 1980s, lawyers refused to accept the burden.<sup>32</sup> The ABA Ethics 2000 Commission almost proposed a similar recommendation last year, but that time it was professional poverty lawyers who were most opposed.<sup>33</sup>

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29. The definitive work on unauthorized practice remains Deborah L. Rhode, *Policing the Professional Monopoly: A Constitutional and Empirical Analysis of Unauthorized Practice Prohibitions*, 34 Stan. L. Rev. 1 (1981).

30. The principal prohibitions are Model Rules of Professional Conduct R. 1.7(b) & R. 1.8(a).

31. This kind of service has traditionally been justified as an exception to the usual rules because the insurance company seems largely to be representing its own interest in minimizing the liability of its insured. Restatement (Third) of The Law Governing Lawyers § 134, cmt. f (1998).

32. Model Rules of Professional Conduct R. 6.1 that deals with pro bono services, is the only Model Rule expressed in aspirational rather than mandatory language.

33. The debate proceeded over several Commission meetings but a flavor of the

I have become increasingly convinced that mandatory pro bono service would probably not be practical even if lawyers were willing to assume the burden. My concern is not that lawyers are so specialized that they cannot become familiar with legal issues facing the poor. More telling, issues of language proficiency will increasingly define who can and cannot deliver services to our most vulnerable citizens in the new century. Individualized service for persons from all over the world will not be provided on a large scale by part time professionals. Instead, funding for legal services for the poor will have to come from a combination of public and private sources. Public funding through the Legal Services Corporation has survived attempts to kill it altogether; that source will be important but sums available will be hard to increase.

Private support must be sought more aggressively. Skadden, Arps, Slate, Meagher & Flom gained significant prestige from its creation of a fellowship program for public interest work, for example, and other firms may see a similar opportunity. Professor Marc Galanter's proposal for making more use of senior lawyers in a transition to retirement is yet another imaginative possibility.<sup>34</sup>

Yet another approach might involve creating incentives for lawyers to bring actions on behalf of poor persons. Some such incentives are now provided by fee shifting statutes and class actions, for example, although each presents problems of its own.<sup>35</sup> The simplification of legal processes and increased use of non-lawyers to provide routine services are other possibilities. None of this will be easy,<sup>36</sup> but I believe that if private lawyers and their firms consider it to be in their interest to create such opportunities, these efforts can at least begin to increase justice for the poor.

## 7. LAWYERS WILL HAVE INCREASING OPTIONS FOR USE OF THEIR OWN SERVICES IN AREAS OTHER THAN LAW

As Professor Rhode reports, many lawyers today are depressed.<sup>37</sup> They work too hard, earn too much, are appreciated too little, and spend insufficient time at home or working on matters that make a difference in public life.<sup>38</sup> However, I believe there is room for

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debate can be seen in the minutes for the December 1999 meeting found at <http://www.abanet.org/cpr/121099mtg.html>.

34. Marc Galanter, "Old and In the Way": *The Coming Demographic Transformation of the Legal Profession and Its Implications for the Provision of Legal Services*, 1999 Wis. L. Rev. 1081.

35. No single law review article can capture all of these ideas, but both the possibilities and risks are seen in, e.g., Susan P. Koniak & George M. Cohen, *Under Cloak of Settlement*, 82 Va. L. Rev. 1051 (1996).

36. See Rhode, *Interests of Justice*, *supra* note 1, at 140-41.

37. *Id.* at 23-44.

38. See, e.g., Patrick J. Schiltz, *On Being a Happy, Healthy, and Ethical Member of an Unhappy, Unhealthy, and Unethical Profession*, 52 Vand. L. Rev. 871 (1999).

optimism about these issues and that such concerns may prove cyclical. The kinds of competitive forces that have made lawyers miserable, in short, can be harnessed to provide them hope.

The jump in entry level salaries paid to young lawyers in recent years can be traced to the fact that dot-com companies and investment banks were pursuing many of the same people. On the other hand, government offices, corporate legal departments, and law schools have attracted lawyers seeking better ways to balance time demands of work, family, and community. My point is not that lawyers must choose between law firms and these other ways to use their training; it is that law firms competing for people who have alternatives will have to offer comparable opportunities or lose the people upon whom they rely for the source of their competitive strength.

One should not be naïve about the ease or speed of such market adaptation, but the fundamental point is that lawyers have many more options than they seem to acknowledge. Just as non-lawyers will increasingly compete for the work of law firms, people with legal training can increasingly expect to be able to see a better mix of compensation and responsibilities to meet their needs.<sup>39</sup>

#### 8. SIGNIFICANCE OF PROFESSIONAL ORGANIZATIONS WILL AND SHOULD DECLINE

Bar associations, imagining themselves to be acting in the British tradition, have sought to set lawyers apart from the rest of the economic world. Holding ourselves out as a profession, lawyers are regulated by courts, and Professor Rhode correctly diagnoses the problems that such insularity has produced.<sup>40</sup>

However, I believe that the evolving developments outlined above will increasingly break down the walls dividing lawyers from others. Reputation, not licensing, will tend to be the guarantor of quality, and private actions against lawyers who fail to perform up to standard will tend to replace formal discipline as the regulator of lawyer activity.<sup>41</sup> Even today, malpractice insurance companies have an incentive to audit lawyer compliance with professional standards more rigorously than lawyer disciplinary commissions will ever do.

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39. I believe this analysis will also apply to redress at least some of Professor Rhode's concern about overt discrimination, or at least to her concern that firms have not adapted well to the needs of women and people of color. Rhode, *Interests of Justice*, *supra* note 1, at 38-44. However, I must admit that firms are more likely to accommodate the needs of large groups of persons in their firms, e.g., persons with family responsibilities, than needs of smaller groups such as gay and lesbian lawyers.

40. *E.g.*, *id.* at 207-13.

41. *See, e.g.*, David B. Wilkins, *Who Should Regulate Lawyers?*, 105 Harv. L. Rev. 799 (1992); Ronald J. Gilson, *The Devolution of the Legal Profession: A Demand Side Perspective*, 49 Md. L. Rev. 869 (1990).

Even more important, these developments will tend to free lawyers from the constraints of role morality.<sup>42</sup> A person who can take a job either in a law firm or another entity altogether cannot fairly say she is compelled by her lawyer status to do things that as a non-lawyer she would deem indefensible. Indeed, the decision to use a legal education to practice law in a traditional manner will increasingly itself have to be seen as a moral choice. And while the courts might preserve an evidentiary privilege for communications with some legal representatives, the much broader confidentiality requirement imposed on lawyers today could more easily be narrowed. Thinking selfishly as a teacher of legal ethics, when opportunities for moral choice are again seen to be an integral part of lawyer conduct, focus on fundamental moral questions will become even more central to a lawyer's education.

The rate at which the changes I have outlined will occur is likely to depend primarily on how quickly the world returns to a state of vigorous economic growth. The current war and world-wide slowdown in economic activity will inevitably slow the creation of new kinds of service providers.<sup>43</sup> Thus, we may have a momentary breather before competitive reality hits lawyers with its full force. It is appropriate in this symposium, then, that we acknowledge what is coming and assess its revolutionary impact on our ability to practice "in the interests of justice."

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42. Professor Rhode has long urged the need to free lawyers from professional regulation that inhibited them from doing what moral sensibilities would dictate was right. See, e.g., Deborah L. Rhode, *Ethical Perspectives on Legal Practice*, 37 *Stan. L. Rev.* 589 (1985).

43. On the other hand, it might enhance the development of others. When people are afraid of flying, for example, acceleration of forms of Internet practice may dramatically increase.

*Notes & Observations*