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# The Internet and the Practice of Law\*

Mark Pruner\*\*

## I. How the Internet is Changing the Practice of Law

The Internet is accelerating changes that have been going on throughout the 20th Century. While the Internet has a unique combination of capabilities, each of these capabilities had a precursor in prior technologies. For example, the telephone in some ways made geography irrelevant. Anyone with a telephone can call anyone else in the world with a telephone. However, due to economic considerations, such as high priced long distance rates, New York and California remained far apart. The Internet has changed that. Let's look at some of the Internet's capabilities and some examples of legal-related websites that take advantage of these capabilities.

### A. *Geography is Irrelevant*

On the Internet, geography is irrelevant. It is as easy to send e-mail or view a webpage in Tasmania as it is to send e-mail or view a webpage in Tennessee or Tuckahoe, New York. Moreover, unlike traditional telephone rates, there is no additional cost for viewing webpages, regardless of the physical location of the server.

#### 1. *Siskind Susser & Haas*<sup>1</sup>

This was one of the earliest firms on the Internet and their website has been one of the most successful in generating business for the firm. Greg Siskind left a larger firm to start a solo practice in Nashville, Tennessee. Using the Internet, his firm

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\* This outline was originally presented as the keynote address to the 1998 Pace Law Review Symposium, *Untangling the Web: The Legal Implications of the Internet*, held at Pace University School of Law on March 20, 1998.

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1. *Visalaw - The Siskind Susser & Haas Immigration Law Website* (last modified Oct. 22, 1998) <<http://www.visalaw.com>>.

has grown steadily in the last four years. He now has offices across the United States and Canada. His practice of immigration law is ideally suited to take advantage of the Internet's geographic irrelevancy. Siskind Susser's website has limited use of graphics, making for fast downloading in countries with communications systems supporting limited bandwidth.<sup>2</sup> When looking at how the Internet affects the practice of law, many people focus on the World Wide Web portion of the Internet. However, Siskind Susser's website illustrates many of the ways that the Internet can be used today and in the future, particularly with expanding bandwidth.

a. *Electronic Publishing*

Siskind Susser has one of the more successful cyber-bulletins in their "Siskind's Immigration Bulletin."<sup>3</sup> This bulletin is e-mailed to over 13,000 subscribers in all 50 states and over 100 countries. The Bulletins are archived on the Siskind Susser website and seen by thousands of additional people. If this were a traditional print publication, it would be considered highly successful, but very expensive to deliver. The minimal distribution costs of the Internet have given rise to a huge number of additional resources, making available detailed current legal information to anyone with a web browser or e-mail.

b. *Remote Conferencing, Text, Audio and Video*

The Internet is not just e-mail and the World Wide Web (WWW). There are a variety of other ways to communicate on the Internet, including Internet Relay Chat (IRC), audio (IP telephony) and video (e.g., C-U Seeme, NetMeeting). Siskind Susser uses a variety of these technologies to communicate with clients and prospective clients around the world.<sup>4</sup> The biggest impediment to more widespread use of these technologies is the lack of bandwidth for most clients; it requires a 28.8kbps

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2. Bandwidth is defined as "the smallest range of frequencies constituting a band, within which a particular signal can be transmitted without distortion." RANDOM HOUSE UNABRIDGED DICTIONARY 163 (Stuart Flexner & Leonore Crary Hauck eds., 2d ed. 1993).

3. *Siskind's Immigration Bulletin* (visited Oct. 24, 1998) <<http://www.visalaw.com/bulletin.html>>.

4. *See How to Contact Siskind and Susser* (visited Oct. 24, 1998) <<http://www.visalaw.com/contact.html>>.

modem. Even if both parties have adequate bandwidth, difficulties of configuring the necessary hardware and software might temporarily slow these channels of communication.

B. *Massive Amounts of Information can be Stored and Delivered Quickly to Anywhere*

Modern computer storage systems, such as hard drives, CD-ROMs and floppy disks can store massive amounts of information. The Internet connects the massive amounts stored on these devices with the world. The Internet is the logical progression from data processing on punch cards, through mainframe processing, personal computers, local area networks, proprietary standard wide area networking and at present the internetworking of networks using a common Transmission Control Protocol and Internet Protocol (TCP/IP) standard. Massive amounts of information that used to be difficult to get and require specialized knowledge to acquire is now just a few clicks away. Massive amounts of information is putatively public, but in reality is only occasionally accessed by lawyers, and their agents such as title searchers or private investigators. Information that was once only accessible for substantial costs in money, time and training, because it was stored in little known file cabinets in widely scattered locations, is now available to everyone.

1. *KnowX*<sup>5</sup>

This site provides a good example of how massive amounts of information from a variety of sources that was previously difficult to find or access is now available to anyone. KnowX, a subsidiary of West, has made personal and business records available for free, or for a small fee.<sup>6</sup> The same records, prior to the advent of the WWW, were only available to lawyers and other professionals for substantial monthly or hourly fees. Many of these records were difficult, or impossible, for a private citizen to obtain without the assistance of a lawyer. The implications for personal privacy in making such public information

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5. *Public Records from KnowX.com — Your Courthouse on the Web!* (visited Oct. 24, 1998) <<http://www.knowx.com>>.

6. *See id.*

readily available to anyone is beyond the scope of this presentation, but the WWW generates additional ways to track people.

## 2. *Meta-information*

This is information about information. In the print world, things such as tables of contents, bibliographies and indexes are considered meta-information. Because of the WWW's ability to list sources of information and link directly to this information anywhere in the world, meta-information has become much more important.

### a. *Court TV Small Business Center*<sup>7</sup>

This website organizes a variety of forms and documents found on law firm websites across the country.<sup>8</sup> Court TV provides a valuable service simply by providing information and links to other websites, containing forms that are useful to small businesses. The WWW creates a variety of ways to organize legal information from sources across the United States and around the world. The information provided is useful to clients and prospective clients, and to people who will never become a client because of their physical location, income or prior relation with another attorney.

### b. *Jurist Project*<sup>9</sup>

This is another excellent example of the potential effects of meta-information on law. The Jurist project organizes websites created by law professors from across the nation. It also provides the means for them to exchange both professional information and the informal banter that does much to define the culture of an institution. It is not difficult to see how such a website, that covers everything from Real Property to Internet Law, could be organized into a virtual law school with no specific physical location.

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7. *Court TV Small Business Law Center* (visited Oct. 24, 1998) <<http://www.courtstv.com/legalhelp/business/forms/index.html>>.

8. *See id.*

9. Bernard J. Hibbits, *JURIST: The Law Professors' Network. . . The Home Page of Legal Education* (visited Oct. 24, 1998) <<http://jurist.law.pitt.edu>>.

*c. Pace Second Circuit Courts of Appeals*<sup>10</sup>

Pace Law School is one of several law schools that have joined to put all federal circuit court decisions on-line. These law schools are to be highly commended for what they have done. Just as the paper case reporters make the practice of law based on precedent possible, these electronic records make these precedents available to everyone. The basic sources of law are no longer available only in law school and courthouse libraries. They are now available to everyone at a low cost. Some consequences of this arrangement are as follows:

- Even with enhancements, the price that Thomson and Reed Elsevier charge for their basic service has dropped, and will drop substantially over the next five years. However, lower distribution costs will not necessarily result in lower profits. In fact, Thomson and Reed Elsevier should maintain high profit margins on this public domain information.
- The judicial branch of the federal government has been a miserable failure thus far in providing information and services to the public.

*C. The World Wide Web can be Searched Quickly**1. AltaVista*<sup>11</sup>

Information of all types, whether public records, meta-information, court cases, law firm articles or disciplinary actions can now be searched as quickly as any other information available on the Internet. Millions of people each day are looking for, and are being directed to legal information, often without actively seeking such information. For example, an AltaVista search for "Francis A. Duckworth" returned only one hit, to a list of Arizona Bar attorney disciplinary actions.

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10. *U.S. Court of Appeals for the Second Circuit Decisions* (last modified Oct. 23, 1998) <<http://www.law.pace.edu/lawlib/legal/us-legal/judiciary/second-circuit.html>>.

11. *AltaVista: Main Page* (visited Oct. 24, 1998) <<http://www.altavista.digital.com>>.

## 2. *Arizona Bar's Attorney Disciplinary Actions*<sup>12</sup>

This site reported that Francis A. Duckworth was disbarred on May 22, 1996.<sup>13</sup> However, this page no longer resides at the same address as on March 20, 1998; a common problem on the WWW. The search engine did not return any hits showing a reinstatement, which might be why the page was removed. The page on the Arizona Bar's website did not indicate why Mr. Duckworth was disbarred.<sup>14</sup> In other cases, information about disciplinary actions will continue to make information available to anyone searching for the proper name. In a "wired world," disciplinary actions can result in more widespread social implications. Also, anything communicated on the WWW, in a newsgroup, or an archived e-mail discussion group, whether accurate or not, can be found by your friends, your enemies and curious significant others.

### D. *New services can be Delivered Interactively*

#### 1. *Robinson & Cole's Deregulation.com*<sup>15</sup>

This website illustrates how law firms are redefining client services and marketing.<sup>16</sup> Most law firm websites consist of brochureware and shovelware articles. Brochureware is simply a law firm brochure coded in the lingua franca of the WWW, Hypertext Markup Language ("HTML") without significant enhancements. Shovelware is an article or text prepared for other media, usually paper, and then "shoveled" onto the WWW with only the minimum changes needed to accommodate HTML formatting. Unlike such brochureware sites, Deregulation.com provides a daily news service to clients, utility executives and government officials throughout the United States, Canada, Asia and Europe.<sup>17</sup> The site also has a discussion group for these individuals to discuss the rapid utility changes in the

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12. 1996 *Annual Report and Statistics* (visited Oct. 24, 1998) <<http://www.azbar.org/Discipline/1996.asp>>.

13. *See id.*

14. *See id.*

15. *Deregulation.com - Homepage* (visited Oct. 24, 1998) <<http://www.deregulation.com>>.

16. *See id.*

17. *See id.*

Northeast.<sup>18</sup> In addition, anyone can download Powerpoint presentations and accompanying scripts that explain important deregulation matters.<sup>19</sup> This site exemplifies the various methods that law firms are using to enhance client services, and allows law firms to make contact with prospective clients.

## 2. *QuickForms Contracts Online*<sup>20</sup>

Lawyers use a variety of software packages to prepare contracts and other legal forms. Making such software packages available to anyone via website interface is neither difficult, nor expensive. In addition, firms are putting forms on-line with accompanying instructions. Legal publishers with self-help books, such as Nolo Press, are making form completion interactive and other “publishers” are creating contract creation sites from scratch. If a form has only certain options for entering data, a website can be designed to explain these options, provide the supporting law and precedents, and complete the form as well as any attorney. Where options are not so well defined, an interactive website can be designed to provide well-drafted agreements. This area is ripe for controversy as such interactive websites may take business away from lawyers practicing in the traditional manner. In fact, Texas has already announced an investigation of Nolo Press for such activity.<sup>21</sup>

## E. *New Ways to Advocate for Clients*

### 1. *Anderson Kill's Vacatur Center*<sup>22</sup>

This site illustrates how law firms can use the web to advocate for a particular type of client.<sup>23</sup> A major part of Anderson Kill's business consists of representing policyholders against insurance companies that refuse to honor their policies. In some

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18. *See id.*

19. *See id.*

20. John A. Newman and Thomas R. Mielke, *QuickForms Contracts Online — Automates Drafting of Computer Industry Documents* (visited Oct. 24, 1998) <<http://www.quickforms.com>>.

21. *See* John Greenwald, *A Legal Press in Texas — A state court targets self-help publisher Nolo Press for making it too easy to bypass lawyers*, *TIME*, Aug. 3, 1998, at 51.

22. *Anderson Kill & Olick — Vacatur Center* (visited Oct. 24, 1998) <<http://www.andersonkill.com/vacatur.htm>>.

23. *See id.*



cases, insurance companies will offer a plaintiff additional compensation if the judge can be convinced to vacate a decision against the insurance company. Because many of these cases are never officially reported, this practice has become all too common. The WWW gave Anderson Kill the ability to publicize such cases that were never officially reported. Additionally, this site has received publicity in newspapers, on radio and television, in industry trade journals and on the Internet.<sup>24</sup> Such publicity may well deter future efforts to exploit the practice of publishing unreported cases.

### 2. *NAAG State Tobacco Information Center*<sup>25</sup>

This site exemplifies how the web can be used as a forum for expressing one's political views.<sup>26</sup> The National Association of Attorney Generals' website is one of several websites dealing with the multiple suits, bills, and proposed agreements to resolve the tobacco industry's liability. The tobacco industry has a website, as do plaintiffs' attorneys and other parties, such as Blue Cross/Blue Shield. Websites are ideally suited to explain complex issues to a large diversified audience. Complex arguments can be broken down into their component parts and delivered as requested by the viewer, who can skip information already known or information not of interest to that particular viewer.

### 3. *Hagens Berman Class Action Advocacy*<sup>27</sup>

This is an example of a private firm that has started to use its website to advocate for clients. Hagens Berman brought a class action against Quincy Fertilizer, who alleged that distributed fertilizer was contaminated with heavy metals.<sup>28</sup> The website, which navigates poorly, tells the story of Duke and Jaycie

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24. See, e.g., Sandra Torrey, *It's a Magical History Tour at Vacatour Center*, WASH. POST, March 10, 1997, at F7; Alan Cohen, *Beyond the On-Line Brochure: Putting a Firm's Site to Work*, N.Y.L.J., August 17, 1998, at S2.

25. *State Tobacco Information Center* (visited Oct. 24, 1998) <<http://www.stic.neu.edu>>.

26. See *id.*

27. *Hagens Berman Attorneys at Law* (visited Oct. 24, 1998) <<http://www.hagens-berman.com>>.

28. See *Hagens & Berman - Fertilizer* (visited Nov. 6, 1997) <<http://www.hagens-berman.com/fertilizer/mainnews.html>>.

Giraud, the lead plaintiffs in a class action suit against Quincy Farm and Chemical.<sup>29</sup> The site also gives you a place to fill in information to join one of the firm's class actions.<sup>30</sup> With the new securities reform law, getting the largest number of plaintiffs becomes a critical issue if the firm wants to receive the benefits of being lead counsel in securities class actions.

## II. Litigation in a Wired World

Lawyers have always had a monopoly on litigation work, except for a few pro se individuals. In a wired world, the task of moving text around becomes much more efficient. At the same time, this text can be enhanced. Lawyers have always written in hypertext. However, until the invention of hypertext, all of our sites have been dead. This is no longer necessary.

### A. *New Ways to Advocate*

The Internet gives lawyers new ways to advocate for their clients. In political cases, such as tobacco litigation, websites can be a very effective means in which to present your client's case. Websites, because of their ability to deliver large amounts of information about complex issues and to customize this information to the viewer's particular interest, give attorneys a powerful tool for communicating the nuances and complexities of the client's case. In addition, websites give a lawyer the ability to bypass the press and reach directly out to the people that may be most interested in the case. Litigants that are particularly susceptible to social opprobrium, such as large corporations sensitive about their public image, may be particularly susceptible to pressure brought to bear in cases that they would prefer not to have publicized.

### B. *Hypertext Briefs*

Hypertext briefs are likely to be a major innovation in litigation. For centuries, judges had to physically look up the cases that the advocates were citing, if the judge had any doubts

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29. See *Fertilizer - The Girauds* (visited Nov. 6, 1997) <<http://www.hagens-berman.com/fertilizer/farmfamily.html>>.

30. See *Hagens Berman Attorneys at Law* (visited Oct. 24, 1998) <<http://www.hagens-berman.com>>.

about the advocate's analysis. With hypertext briefs and storage devices such as CD-ROMs, the judge may simply click from link to link verifying that the cases really do support the advocate's position. The advent of hypertext briefs will encourage advocates to be accurate in their analysis, since the case language will be only a click away. Hypertext briefs will also encourage the use of a paragraph numbering citation system rather than the West citation system, broken down by artificial page elements that do not apply in an electronic environment.

### C. *New Ways to Coordinate and Control*

Internet technology levels the playing field between large firms and their smaller brethren, while at the same time raising the bar for the technological have-nots. Those firms that can utilize technology properly will find that they have a significant advantage over firms that rely on more traditional methods to organize the massive amounts of information that are part and parcel of today's litigation.

#### 1. *Extranets – TrialNet*<sup>31</sup>

Several law firms have recently implemented the use of extranet technology. Extranet technology provides firms with the ability to access the internal computers and databases of a firm, through passworded websites on the Internet. Extranets can be used to coordinate multi-district litigation and make research and documents available to firms across the United States. Insurance companies in particular, because of their large number of litigation matters sharing fact patterns, are early adopters of extranets and will continue to develop additional uses for this technology.

### D. *Technology Puts Tremendous Pressure on Hourly Billing - Easier to Monitor Time and Activities*

Curiously, technology has not been the friend of many traditional law firms. The more accurate record keeping that accompanies the use of technology also means that clients can more accurately monitor what attorneys are doing at any given

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31. *Trial Net: Litigation Management Intranets* (visited Oct. 24, 1998) <<http://www.trialnet.com>>.

time. In some cases, clients may even directly access daily records kept by the firm of each attorney's work. Technology also gives in-house counsel the ability to do many functions that they previously might have assigned to outside counsel.

#### E. *The Technology Paradox - More Costs/Less Revenue*

The use of additional technology also has another disincentive for traditional firms. The more technology that firms use, the more money they will spend on this technology. However, this technology should result in a more efficient firm. Consequently, the firm will bill fewer hours and spend less money, while making more money.

#### F. *Result Value Billing*

The result of this technology paradox can only be value billing. Firms are starting to bill for the value of their services, not the units of time required to create that value. No one would be willing to pay a car manufacturer more money for their car simply because it took the car manufacturer more time to build it, but that is exactly what law firms frequently ask their clients to do. Law firms that successfully exploit the use of new technologies will find that they are able to service more clients, and if they adopt value billing, they may also find that they actually have a little more free time. Because there is generally great dissatisfaction among associates in firms that bill very high numbers of hours, firms that can earn the same revenue while billing fewer hours will be able to recruit the best students.

### III. Interstate and Inter-Profession Competition

Lawyers licensed to practice in any particular state have traditionally had a monopoly in that state. Laws and ethical restrictions protect lawyers, not only from competition from other professions, but also from lawyers licensed in other states.

#### A. *Interstate Competition from Other Lawyers*

The licensing of lawyers for most purposes is regulated at the state level. Some practice areas that primarily involve federal laws have federal licensing requirements. Areas such as federal tax law and patent law have separate licensing laws, so

lawyers can practice their "federal" specialty without being licensed in the state where they have an office. At the same time there is, and in the near future there will be, expanding interstate competition among lawyers.

1. *Code of Professional Responsibility as a Competition Regulator*

The Model Rules of Professional Conduct, and its predecessor, the Model Code of Professional Responsibility, have many provisions that are intended to prevent lawyer misconduct.<sup>32</sup> These non-ethical rules regulate competition between lawyers, both within and outside the same jurisdiction. They are absolute and apply regardless of how well the lawyer delivers, or could have delivered, their services.

2. *State Licensing as the Sine Qua Non, Except Sometimes*

Lawyers who are unlicensed in a particular state may practice within that state in a variety of situations.<sup>33</sup> Such rules are illogical if their sole purpose is to protect clients from lawyers who have not received legal training in that state. However, the rules make perfect sense from a competition regulation viewpoint. These "exceptions" to the licensing requirement are reasonable in that they allow minimal competition from non-state licensed lawyers in certain narrowly defined situations.

3. *Someone can Become a New York Attorney Without Taking the Bar Exam*

State licensing is not exclusively focused on protecting clients from lawyers who are not trained in that state's law. A classic example of this is the exception in most states to allow for the admittance of lawyers upon motion. After a certain number of years of practice, frequently five to seven years, an attorney can be admitted to practice law in another state with-

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32. See MODEL RULES OF PROFESSIONAL CONDUCT (1996); MODEL CODE OF PROFESSIONAL RESPONSIBILITY (1981).

33. See, e.g., MODEL RULES OF PROFESSIONAL CONDUCT Rule 5.5 cmt. (1996); ABA Comm. on Professional Ethics and Grievances, Formal Op. 316 (1967) (stating that lawyers licensed in different jurisdictions may enter into an arrangement for the practice of law).

out taking that state's bar exam.<sup>34</sup> Curiously, the state may require the applying lawyer to take and pass an ethics exam, but only the national standard multi-state professional responsibility exam (MPRE), not one that focuses on the state's particular disciplinary quirks.<sup>35</sup> Usually, the attorney has already taken the MPRE in his or her home state. Thus, in New York, a lawyer admitted on motion might not be tested on the Model Code of Professional Responsibility, even if he or she is from a state where the Model Rules of Professional Conduct apply.<sup>36</sup>

a. *Federal Rule of Appellate Procedure*

Out-of-state attorneys may also compete with in-state attorneys in federal appellate courts. Under the Federal Rules of Appellate Procedure (FRAP), rule 46, any attorney admitted to practice in any state can be admitted to any federal appellate court.<sup>37</sup> Thus, an attorney from Guam can be admitted in the Second Circuit, but an attorney licensed in New York State who has not made three appellate arguments or argued six substantive state motions cannot be admitted to the Second Circuit.<sup>38</sup> Second Circuit Local Rule 46(e) provides that a law student can appear for an indigent person if supervised by an attorney admitted to the Second Circuit bar.<sup>39</sup> After graduation, but before bar results are received, a former law student can appear before the Second Circuit, provided the student is sitting for any state bar within the Second Circuit.<sup>40</sup> None of these rules contain restrictions prohibiting attorneys who are not licensed in New York from arguing New York law. Consequently, attorneys who have been tested in New York State law are not permitted to appear before the Second Circuit, but out-of-state law students without any experience in New York State law can appear, if they are representing indigent clients.<sup>41</sup> At the same time, experienced lawyers from anywhere in the United States can argue New York State law before the Second Circuit.

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34. See N.Y. CT. APP. R. 520.10 (1998).

35. See N.Y. CT. APP. R. 520.8 (1998).

36. See N.Y. CT. APP. R. 520.9 (1998).

37. See FED. R. APP. P. 46.

38. See 2ND CIR. R. 46(e).

39. See *id.*

40. See *id.*

41. See *id.*

i. *Birbower, Montalbano, Condon & Frank, P.C. v. The Superior Court of Santa Clara County*<sup>42</sup>

This case epitomizes the inherent contradictions in trying to apply geographical restrictions formulated in the nineteenth century, when communications were carried by horses, to the modern age of phones, faxes, e-mail and extranets. In this case, Birbower, Montalbano, a New York law firm, was retained to handle a software dispute for Esq. Business Services (EBS), a company whose headquarters were in California.<sup>43</sup> EBS decided not to pay for Birbower, Montalbano's services and claimed that they did not owe any money to Birbower, Montalbano because the attorneys were not licensed in the state of California.<sup>44</sup> The California Supreme Court agreed, holding that Birbower, Montalbano could collect their fees for work done outside the state of California, but not for work done within California's borders.<sup>45</sup> Thus, it did not matter whether the work Birbower, Montalbano did involved California law. It only mattered where they were physically located while doing their work. Such distinctions make little sense in a world where the Internet has made geography irrelevant. With the use of readily available technology, lawyers can practice California law by appearing in the state through video-conferencing, without every being physically present in California.

4. *Non-Legal Associated Businesses*

Lawyers are limited, not only by geographical boundaries, but also by the types of services their firms can provide. Unlike other businesses and professions, lawyers are not permitted to affiliate with non-lawyers in most jurisdictions.<sup>46</sup> Lawyers cannot split fees with non-lawyers, nor can they form a partnership to practice law with non-lawyers.<sup>47</sup> However, there is a major jurisdictional exception to this rule. The Model Code of Professional Responsibility allows lawyers in one state to form part-

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42. 949 P.2d 1 (Cal. 1998), *cert. denied* \_\_ U.S. \_\_, No. 97-1798, 1998 WL 248367 (U.S. Cal. Oct. 5, 1998).

43. *See id.* at 3.

44. *See id.* at 4.

45. *See id.*

46. *See* Model Rules of Professional Conduct Rule 5.4 (1996).

47. *See id.*

nerships with lawyers licensed in other states.<sup>48</sup> Lawyers are masters of working within in the rules to accomplish what they want, and the issue of affiliation with non-lawyers is no exception. Some examples include:

a. *Haldor Investment Advisors L.P.*<sup>49</sup>

This partnership provides investment consulting services and includes lawyers from the large Boston firm of Hale & Dorr.

b. *LeBoeuf Lamb Computing Technologies*<sup>50</sup>

This firm provides a variety of legal and technological services, including the upcoming mega-litigation associated with the Year 2000 software problems.

B. *Competition from other professions*

1. *Present prohibitions*

a. *Forming a Partnership with a Non-Lawyer:*  
*DR 3-103*

New York, like most states, prohibits attorneys from practicing law with non-lawyers.<sup>51</sup> However, New York lawyers can form a partnership with lawyers not licensed in New York State.<sup>52</sup> They can even practice law with attorneys licensed in Sweden. However, New York lawyers are not allowed to form partnerships with licensed patent agents, real estate brokers, divorce mediators or accountants, but they can share profits with non-lawyers in a retirement plan.<sup>53</sup>

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48. See MODEL CODE OF PROFESSIONAL RESPONSIBILITY DR 2-102(D) (1981) (noting that a partnership may only be formed among lawyers licensed in different jurisdictions where all enumerations of the members and associates of the firm make clear that all members and associates of the firm are not licensed to practice in all listed jurisdictions).

49. *Haldor Investment Advisors L.P.* (visited Oct. 24, 1998) <<http://www.haledorr.com/info/haldor/haldor.html>>.

50. *LeBoeuf Computing Technologies* (visited Oct. 24, 1998) <<http://www.lctkey.com>>.

51. See MODEL CODE OF PROFESSIONAL RESPONSIBILITY DR 3-103(A) (1981).

52. See N.Y. COMP. CODES R. & REGS. tit. 22 § 1200.7 (1992).

53. See MODEL CODE OF PROFESSIONAL RESPONSIBILITY DR-3-102(A)(3) (1981).



b. *District of Columbia – Lawyers can Form Partnerships with Non-Lawyers*

The District of Columbia takes an approach much more in tune with the multi-faceted nature of modern business and non-commercial problems. Washington, D.C. acknowledges that the best way to provide client services may require the services of many professions, and therefore allows D.C. lawyers to form partnerships with non-lawyers.<sup>54</sup> In Washington, D.C., clients can receive integrated services tailored to their problems from one firm. Non-lawyer professionals need not feel like hired help. If their efforts improve and expand the firm, they can be awarded with higher compensation and equity in the firm. However, Washington, D.C. regulates these relationships closely. Combined professional firms, particularly the lawyers in such firms, must be careful because the Washington, D.C. Rules of Professional Conduct, Rule 5.4(b), require that:

- (1) The partnership or organization has as its sole purpose providing legal services to clients;
- (2) All persons having such managerial authority or holding a financial interest undertake to abide by these rules of professional conduct;
- (3) The lawyers who have a financial interest or managerial authority or holding a financial interest undertake to be responsible for the nonlawyer participants to the same extent as if nonlawyer participants were lawyers under rule 5.1;
- (4) The foregoing conditions are set forth in writing.<sup>55</sup>

Rule 5.4(b)(1) is especially problematic because nonlawyer professionals will be providing professional services of the type for which they are trained. The restriction in rule 5.4(b)(2) could be seen as an advantage to mixed professional firms because other professional ethical requirements are often less restrictive than the Rules of Professional Conduct.

2. *Examples of Other Competitors*

Many other professions and businesses are encroaching into the traditional areas of legal practice. Corporate downsiz-

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54. See WASHINGTON, D.C. RULES OF PROFESSIONAL CONDUCT Rule 5.4(b) (1997).

55. *Id.*

ing of the 1980s and 1990s has created a huge growth in consultant firms. Human resource consultants provide a variety of services, many of which are also provided by employment lawyers. At the same time, professions that have traditionally provided similar services are finding greater competition within their profession, and are expanding their legal related services.

a. *In-House Counsel*

In-house counsel have traditionally been allowed to "associate" with non-lawyers and even participate in Employment Stock Ownership Plans (ESOP) with non-lawyers. During the 1980s, the number of in-house counsel grew rapidly as corporations believed that it was cheaper to hire attorneys full time, rather than pay the same attorneys high hourly rates at a private firm. In the recession associated with the 1986 Tax Reform Act, many corporations cut all departments, including the newly expanded legal departments. In-house counsel offices are once again expanding, though not at such a high rate. Internet technology in the form of intranets is being exploited by many progressive legal departments at firms such as General Electric, Bell Atlantic, Mobil, and other high tech firms. Law firms have traditionally been late adopters of technology. For example, some major firms still use DOS as their desktop operating system and early versions of Netware to run their Local Area Network (LAN). It will be interesting to see how intranets effect the business world's preference for in-house and outside counsel. Intranets can result in disintermediation, the elimination of human intermediaries, so attorneys whose primary function is to simply process information may well find that part of their job eliminated. Maximizing the usefulness of intranets requires intimate knowledge of the business, its processes and personnel, and will result in the rise of the technology adept in-house attorney. At the same time private law firms and non-lawyer consultants will be able to develop sophisticated, but more generic websites. Only a few law firms are presently promoting their intranet expertise. Many major law firms are working with their large clients to develop sophisticated extranets.

### b. *Accounting Firms*

Accounting firms are probably the greatest single threat to major corporate law firms. The Big Six accounting firms generate revenues measured in billions of dollars, far beyond the largest law firms. In fact, compared to the huge and almost fully consolidated accounting and consulting mega-firms, law firms look like a cottage industry. In countries that do not prohibit lawyers from forming partnerships with accountants to practice law, mega-accounting firms are buying law firms. These same firms have disavowed acquiring law firms in the United States, but in jurisdictions such as Washington, D.C., such an acquisition could look increasingly enticing, particularly in areas such as lobbying. Accounting firms are also expanding their legal related services to corporations and law firms. For example, prior to its merger with PriceWaterhouse, Coopers & Lybrand described their Litigation and Claims Services on their website as follows:

The Litigation and Claims Services group help[s] in the resolution of complex business disputes. Frequently, neither the law firm, in-house counsel, nor the client has the required specialties to address all the specific issues involved in obtaining favorable resolution. It is difficult for a law firm to maintain the staff with the depth and breadth of expertise to evaluate all the business aspects of each case. It is not easy for the client to stretch its resources to support the lawsuit while running the business. There is a need for the objective view of an unbiased expert.<sup>56</sup>

The PriceWaterhouse-Coopers website now has a page on Dispute Analysis and Investigations,<sup>57</sup> listing many services that overlap with work done by lawyers. In some cases, these services appear to reach directly into areas traditionally done by lawyers, as illustrated by their description of Antitrust services, which states: "We provide analyses of both liability and damages issues relating to competition, pricing, and

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56. *Coopers & Lybrand L.L.P. - FAS* (visited March 11, 1998) <<http://www.colybrand.com/fas/faswww0.html>>.

57. *See PricewaterhouseCoopers: Global: Home* (visited Oct. 24, 1998) <<http://www.pwcglobal.com>>.

benchmarks.”<sup>58</sup> Interestingly, the text that follows lists eight different types of professionals that work together to provide these services, but does not mention their in-house attorneys.

*c. Investment Banking firms*

Investment banking firms have traditionally competed with law firms in many transactional areas such as mergers and acquisitions, loan syndication, municipal and corporate financing and business consulting. As many of their traditional services are squeezed by the disintermediation caused by technological advances, you can expect additional efforts to expand the range of service capabilities.

*d. Consultants*

Traditionally a consultant was a corporate employee that was between jobs. However, the rise of the virtual corporation, modeled on many of the software development projects in Silicon Valley, has created a continuing need for consultants/independent contractors/temporary employees. Microsoft, for example, employs a huge number of independent contractors.<sup>59</sup> Corporate downsizing that occurred in the late 1980s and early 1990 left a large number of people trained in the use of technology without jobs. Many of these people created their own consulting businesses, an area that the United States Department of Labor has characterized as one of the fastest growing.<sup>60</sup> Many consultants serve in quasi-legal positions as contract administrators, government liaisons, regulatory affairs managers, tax accountants, environmental compliance officers, Equal Employment Opportunity Commission (EEOC) enforcement managers and other positions that deal with the mass of federal, state and local regulations and laws. These consultants, both within and outside the company, are providing guidance on a

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58. *PwC Service Overview* (visited Oct. 24, 1998) <<http://www.pwcglobal.com/extweb/ncovrvw.nsf/docidserv/B98A48DC089DE9E68525662D00577545?opendocument>>.

59. See *Vizcaino v. Microsoft Corp.* 1998 WL 122084 (W.D. Wash. Feb. 13, 1998).

60. See Jeffrey Gruenert, *Management Analysis and Consultants* (visited Oct. 24, 1998) <<http://stats/bls.gov/oco/ocos19.htm>>.

variety of matters, matters on which lawyers could provide legal advice.

e. *Other Licensed Professions*

Consultants are not the only group that is using its knowledge of the law to provide guidance. Every profession has individuals who deal with the legal aspects of their profession and provide services in legal situations, whether in litigation, contract negotiation or regulatory compliance. In the nursing field, for example, there is an entire e-mail list on the topic of Legal Nurse Consulting.<sup>61</sup>

IV. Some Suggestions for Practicing Law in the Internet Age

A. *How to Handle a More Efficient Practice*

The technology paradox of more expenses to install technology, which results in lower billable hours, is not really a paradox. If law firms do not invest in technology, they will be left behind. Clients demand e-mail, and the universal TCP/IP Internet protocol allows computer networks to easily interface with a client's computer network. Clients will know much more about what firms are doing and firms will have the ability to learn much more about what their clients want to do. Efficiencies lead to lower costs per service and competition will quickly result in lower revenues from each service. Firms have two options: provide more services to increase revenues from each matter or use the lower services costs to attract more clients.

1. *Enhance your Services*

Simply knowing what a client wants to do allows a firm to enhance its services and to provide its clients with what they need immediately. Computers, not lawyers, should process information. Things such as organizing a corporate subsidiary are relatively easy to automate; yet many firms are still getting letters or faxes from clients and marking up prior documentation by hand. Enhancements need not be limited to only automating paper processes. Re-engineering processes to take

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61. See *AALNC Links* (visited Oct. 24, 1998) <<http://www.aalnc.org/other.htm>>.

advantage of new technologies is even more cost effective than simply automating a manual process. In addition, technology gives each firm the ability to provide new and different services to clients, such as the Daily Deregulation Newservice and the On-line Discussion Group at Deregulation.com.<sup>62</sup>

— *Enhancements Favor Larger Firms with a Greater Variety of Specialties*

Automation has tremendous economies of scale but comes with significant up-front cost. Creating sophisticated systems for only 10 or 20 transactions a year rarely makes sense, so such service enhancements favor larger law firms that regularly perform the same service. The Internet greatly lowers communications and integration expenses of such systems, resulting in a huge number of opportunities to automate, re-engineer and dis-intermediate such processes.

2. *More Clients*

The other way to maintain profitability is to charge less, but get enough new clients to make up for the reduction in revenues from charging lower fees. Legal services are hard for clients to evaluate, so simply reducing prices while maintaining or enhancing services will not necessarily get the firm large numbers of new clients. Many clients may well assume that high cost services provided by inefficient low-tech firms deliver high values. One way to explain how technology enhances services is to use the firm's website. For example, Womble Carlyle Sandridge Rice, PLLC, posted an article on its website from *AmLaw Tech*, highlighting the firm's technical expertise.<sup>63</sup> This website also gives the firm the ability to reach more potential clients to tell them about this message.

— *Favors Boutique Approach*

Smaller firms that can deliver specialized services will be able to compete against larger firms if their technology is comparable, because their overhead costs should be lower. In many

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62. See *Deregulation.com - Homepage* (visited Oct. 24, 1998) <<http://www.deregulation.com>>.

63. See *Womble Carlyle Sandridge & Rice* (visited Oct. 24, 1998) <<http://www.wcsr.com/BrkNws/BrkNwHub.htm>>.

cases, boutique firms will do substantially better than larger firms, particularly if their intimate knowledge of the area and efficient use of technology allows them to deliver services at substantially lower costs than less efficient firms with higher overhead.

3. *Have to Market Better – Legal Marketing Association*<sup>64</sup>

All law firms are going to see greater competition as other businesses and professions engage in a variety of “legal” work and clients have more knowledge of law firm costs and efficiencies. Insurance companies have been so good at squeezing costs from law firms that, on average, the billable hours paid to law firms have sunk dramatically. Even at such low hourly rates, many firms are still profitable.

B. *Competition*

Lawyers are competing with one arm tied behind their backs. Ethical restrictions that were designed in a different era to prevent lawyers from the unseemly competition for business now keep law firms practicing as a cottage industry, providing handcrafted solutions at high hourly rates.

1. *Adopt the D.C. Model for Partnering with Non-Lawyers*

Lawyers work for corporations, accounting firms, management consultants, investment bankers, and practically every large organization, while law firms have very limited numbers of non-lawyers working with them. The best and brightest non-lawyer professionals will always be in an uncomfortable position in a law firm where they have no chance to share in the increased value of the firm or manage attorneys. The D.C. model, allowing non-lawyers to become partners with lawyers, should be considered in every jurisdiction.<sup>65</sup> Otherwise, lawyers risk becoming a niche profession out-competed by organizations with greater financial resources, better technology, better cross profession teamwork leading to a total solution of the client's

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64. *Legal Marketing Association* (visited Oct. 24, 1998) <<http://www.legalmarketing.org>>.

65. See WASHINGTON, D.C. RULES OF PROFESSIONAL CONDUCT Rule 5.4 (1997).

problem. At the end of the day, clients are not interested in legal services. They are interested in having their problems solved, and will go to whichever profession or organization can most effectively do so. The Internet means that all types of professions can deliver services around the world at low costs, just as Ernst & Young LLP has done with their consulting service,<sup>66</sup> which is targeted at non-Fortune 1000 firms.

## *2. Electronic Document Preparation*

Lawyers are only allowed to provide one type of representation: labor intensive, personal, individualized services that take into account every fact known or discoverable by the lawyer. This idealized form of personal service is often unnecessary, and given an option, many clients would prefer a cheaper alternative, even if it means greater risks of overlooking or ignoring certain issues. On-line document preparation can be handled in such a manner that results in a final product that is indistinguishable from a contract prepared by an experienced attorney. Often the cost for an attorney to prepare an individualized contract is greater than the individual wishes to pay for the size of the transaction. For many types of services, the client will forego legal services of any type due to the cost. Clients should be given the choice in business dealing as to whether such document preparation should be done individually by hand or by various services, which may or may not be assisted by an attorney. Such services should be required to provide detailed information about the services, so that the consumer can make an informed decision as how individualized the legal services should be.

## *3. Have a National License After 5-7 Years - Start by Extending Reciprocity*

Restricting lawyers to practice in one state for what has become a national and international practice is an idea whose time has passed. Lawyers who have proven themselves competent to practice law for a period of years should not have to worry about whether they can visit their clients' out-of-state of

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66. See Ernie. *Your online business consultant from Ernst & Young* (visited Oct. 24, 1998) <<http://ernie.ey.com>>.



fices. An intermediate step to a national license would be to provide a reciprocity license among all the states that presently provide reciprocal admittance on motion.

#### V. Conclusion - Future is Challenging, but Lawyers are Well Trained for This

Dramatic changes are taking place in the practice of law. While we have outlined a number of challenges to the traditional practice of law, lawyers have several natural advantages and abilities to turn new technology to their advantage.

##### A. *Lawyers are Used to Changing Situations*

With the possible exception of microprocessor speeds, few things change more frequently than federal and state laws. Lawyers are used to dealing with frequent changes and rapidly adapt their practices to benefit their clients. The rapid changes in Internet technology will not overwhelm most lawyers. The real challenge will occur when other professions have established significant revenue streams from their new business models and lawyers and their associations decide that these new businesses have crossed over into the practice of law.

##### B. *Very Few People will go to Court Without a Lawyer*

Lawyers have a monopoly in litigation and will for the foreseeable future. Even in areas like mediation and arbitration, most people will prefer to have a lawyer as their representative.

##### C. *Unauthorized Practice is Much Easier to Monitor*

Not only does the Internet allow non-lawyers to market their legal related services to a nationwide audience, it makes it easy for anyone with an Internet connection to monitor what non-lawyers are doing. At the present time regulators have generally been reluctant to try to apply rules designed for older forms of media to new media ways of communication. Attorneys General and disciplinary commissions will find that when they do decide to move aggressively against organizations that are clearly injurious to clients, accessing the offending material will not be difficult.

D. *Lawyers Frequently Work Remotely*

Lawyers, as service providers, have often traveled to distant clients' offices or courthouses. While there, they have often continued to work on other matters. In their offices, they frequently deal with clients across the United States and the world. Telecommuting may hurt the sale of blue pinstripe suits, but it will not be a significant change for many lawyers who have been working remotely for years.

E. *Team Approach is Practice as Usual for Lawyers*

Lawyers are well suited to the virtual team approach of the modern corporation. Teams composed of fellow employees at multiple locations, in-house consultants, special experts and outside vendors is just another day at the office, at the courthouse, on the road or at the beach for today's lawyer.