

EMBRACING DISRUPTION: HOW TECHNOLOGICAL CHANGE
IN THE DELIVERY OF LEGAL SERVICES CAN IMPROVE
ACCESS TO JUSTICE

*Raymond H. Brescia**
*Walter McCarthy***
*Ashley McDonald****
*Kellan Potts*****
*Cassandra Rivais******

I. INTRODUCTION

Change has come to the legal profession. Technology has supercharged the ability of lawyers to conduct lightning-fast legal research; engage in e-discovery; bend time and space by communicating with clients, colleagues, and adversaries scattered throughout the world; and draft hundreds if not thousands of documents with a few key strokes. But just as technology has made lawyering easier, it has also made it easier to provide services that look a lot like lawyering. And the provision of legal services is becoming commodified: carried out by lawyers and nonlawyers alike in a way that is far less expensive than the traditional, “bespoke” model of lawyering.

In the words of Clayton Christensen, the legal profession is in the midst of a disruption: a monumental, transformative shift in shape and focus that will change the practice of law forever. Some lament this phenomenon. Some worry that it signals the end of big law and

* Associate Professor of Law and Director, Government Law Center, Albany Law School. B.A., Fordham University; J.D., Yale Law School. The authors would like to thank those Albany Law School faculty who participated in a workshop discussion of an earlier draft, including Dean Alicia Ouellette and Professors Melissa Breger, Christine Sgarlata Chung, Stephen Clark, Joseph Connors, Stephen Gottlieb, Robert Heverly, Deborah Kearns, Mary Lynch, Nancy Maurer, Connie Mayer, and Sarah Rogerson. John Mayer, Mark O'Brien, and David S. Udell also gave thoughtful comments on previous drafts. All errors and omissions are those of the authors, however, particularly Raymond H. Brescia.

** B.A., University of New Hampshire, 2012; J.D. Candidate, Albany Law School, 2016.

*** B.A., University at Albany, 2013; J.D. Candidate, Albany Law School, 2016.

**** B.A., Binghamton University, 2012; J.D. Candidate, Albany Law School, 2016.

***** B.A., University at Buffalo, 2013; J.D. Candidate, Albany Law School, 2016; M.S. Candidate, Alden March Bioethics Institute of Albany Medical College, 2016.

that it will have ripple effects throughout the legal industry; that it means there will be fewer lawyers and fewer law schools and that the transformation of lawyering will harm the ability of all lawyers to earn a living—not just those in large, white-shoe firms, but also those practicing in small towns and rural America. Others claim that the new modes of providing legal services—websites, mobile applications, do-it-yourself programs—threaten the consumer, who may receive services at a discounted price, yet those services may be of such low quality that they might end up causing more harm than good.¹ Some, like Richard Susskind, embrace this disruption and believe the changes in the legal profession will mean a different role for lawyers in the future.² Many assess the impact of these disruptions on the delivery of services to wealthier clients and corporations, who, in many instances, are the only ones able to afford lawyers in the U.S. legal market in the first place.

But if Christensen’s “Innovator’s Dilemma” theory of business disruption is to be believed, true change in the market for the provision of legal services will not come from those serving wealthier clients. Instead, disruption in the legal field will come from those serving individuals of lower income who do not require the type of representation that has become the norm in the celebrated halls of the largest, wealthiest law firms. True disruption is likely to come from those serving the “lower end” of the market: the solo practitioners, legal services lawyers, and “low bono” providers of legal services. It is innovation in these corners of the market where pathbreaking disruption will take place, mostly out of necessity. What is more, it is the low-end of the market that is actually quite robust—that is, there is a desperate need for legal services, just an inability to pay for them.

If disruption is indeed coming to the legal services market, and few can doubt that it is, technological innovation, one of the main drivers of this disruption, can serve to widen access to justice in communities desperate for legal assistance—low- to moderate-income communities, the working poor, and the middle class. Christensen’s theories of disruption, which will be discussed here, posit that disruptive innovation does not start at the high-end of the

¹ See *infra* Part IV.D.

² RICHARD SUSSKIND, *THE END OF LAWYERS? RETHINKING THE NATURE OF LEGAL SERVICES* 1 (2008); see also John O. McGinnis & Russell G. Pearce, Colloquium *The Great Disruption: How Machine Intelligence will Transform the Role of Lawyers in the Delivery of Legal Services*, 82 *FORDHAM L. REV.* 3041, 3043 (2014) (predicting that disruption in the legal profession will bring about an “age of unparalleled innovation in legal services”).

market, but rather typically enters the low end and filters its way up, changing the way a particular market segment operates.³ Most who have bemoaned the disruption occurring in the legal market have pointed out that lawyers for wealthier clients are seeing their profits diminish and their clients demanding more efficient, less expensive services. What we hope to do here is identify ways that disruption can occur in the provision of legal services to improve access to justice, particularly for low- and moderate-income individuals and families. If Christensen's theories about disruption are to be believed, it is here where true disruption of the legal services profession will occur. Given the need in these communities for affordable legal services, perhaps disruption in this market has its benefits; at a minimum, it offers a way to improve access to justice for communities and individuals underserved by the present—and expensive—modes of delivering legal services in the United States.

To explore these issues, this paper proceeds as follows. In Part II, we will discuss Clayton Christensen's theories of business disruption with particular emphasis on service economy fields, like legal services. In Part III, we will provide an overview of some of the disruptions currently taking place in the legal profession. We will also assess how the machinery for monitoring the unauthorized practice of law has responded to some of the more popular entities that have broken into the legal services market and are providing such services at a rate that is a fraction of what the typical lawyer would charge. In Part IV, we will look at ways that technological change can improve access to justice for low- and moderate-income communities and explore one manifestation of this phenomenon, namely, a web-based interface for individuals facing a mortgage foreclosure. We will also look at some areas for concern should technological innovations begin to address the justice gap.

II. THE INNOVATOR'S DILEMMA: DISRUPTIVE INNOVATION

A. *The Innovator's Dilemma: The Theory*

Why do successful companies fail to stay atop their industries when confronted with technological, market, and social change? And to what extent can the legal profession learn from the ways

³ *Disruptive Innovation*, CLAYTON CHRISTENSEN, <http://www.claytonchristensen.com/key-concepts/> (last visited Feb. 13, 2015).

companies in a range of sectors confront, or are confronted by, innovation and technological change? The first of these questions opens Clayton Christensen's seminal book on innovation, *The Innovator's Dilemma*.⁴ Published in 1997, the book expanded and refined Christensen's original notion of "disruptive technologies" first released nationally in his *Harvard Business Review* article, *Disruptive Technologies: Catching the Wave*.⁵ *The Innovator's Dilemma* has received global praise and notoriety for its revolutionary analysis of business management and technology. In 2011, *The Economist* proclaimed the book one of the six most influential business books of all time.⁶ *Forbes Magazine* has touted Christensen as "one of the most influential business theorists of the last 50 years."⁷ What is more, his paradigm, the innovator's dilemma, is useful for assessing the impact of innovation across sectors where technological change manifests itself in similar ways, including financial consulting, emerging markets, media, education, health care, and the legal market.⁸ More importantly perhaps, Christensen's theory offers potential responses and solutions to sectors experiencing technological change.⁹

In explaining his ideas, Christensen simplifies his theory as "statements of causality," which he explains as an "understanding of what causes what and why,"¹⁰ or as Christensen transposes into a logic format: expressions of "if . . . then"—if this scenario, then this result.¹¹ Christensen compares his classroom approach at the Harvard Business School to the application of a pair of glasses; his students would learn the concepts, then apply these studies like a new pair of "lenses" helping to focus their examination of

⁴ CLAYTON M. CHRISTENSEN, *THE INNOVATOR'S DILEMMA: WHEN NEW TECHNOLOGIES CAUSE GREAT FIRMS TO FAIL* (1997).

⁵ Joseph L. Bower & Clayton M. Christensen, *Disruptive Technologies: Catching the Wave*, HARV. BUS. REV., Jan.–Feb. 1995, at 45–48.

⁶ See *Business Books: Aiming High*, ECONOMIST, July 2, 2011, at 18; *Biography*, CLAYTON CHRISTENSEN, <http://www.claytonchristensen.com/biography/> (last visited Feb. 13, 2015).

⁷ David Whelan, *Clayton Christensen: The Survivor*, FORBES, Mar. 14, 2011, at 72.

⁸ See, e.g., Clayton M. Christensen et al., *Consulting on the Cusp of Disruption*, HARV. BUS. REV., Oct. 2013, at 108 ("[W]e have been studying the professional services, especially consulting and law, through the lens of these theories to understand how they are changing and why. . . . We have come to the conclusion that the same forces that disrupted so many businesses, from steel to publishing, are starting to reshape the world of consulting.").

⁹ See *id.* at 114 (providing six elements that are necessary for an established business to succeed in "self disruption").

¹⁰ *How Will You Measure Your Life? Clayton Christensen at TEDx Boston*, TEDX (July 18, 2012), <http://tedxtalks.ted.com/search/?search=how+will+you+measure+your+life>.

¹¹ IMD Bus. School, *Clay Christensen Talks About the Innovator's Dilemma at IMD*, YOUTUBE (May 10, 2013), <http://www.youtube.com/watch?v=JKH-Nak9nK4>.

companies, firms, countries, their own life objectives, and why certain propensities lead to particular results.¹² Similar to Christensen's classroom, this discussion will focus on first understanding disruptive innovation foundationally, then applying these statements of causality to examine contemporary developments and patterns in the legal services industry.

The term disruptive innovation "describes a process by which a product or service takes root initially in simple applications at the bottom of a market and then relentlessly moves up market, eventually displacing established competitors."¹³ Paramount to this theory is the relationship between the two core terms: "sustaining innovations" and "disruptive innovations."¹⁴ Because Christensen's theories have been disseminated globally, the definitions of these terms sometimes become muddled. As a result, perhaps the best, most precise definitions of these terms come directly from Christensen himself.

A sustaining innovation is the process through which good products become great products.¹⁵ Companies pursue intuitive strategies that helped them succeed previously, refining their products using technological advances and research to respond to the demands of their most sophisticated customers at the top-end of the market.¹⁶ Fueled by a desire to achieve the greatest profitability through sales to wealthier consumers because these companies "tend to innovate faster than their customers' needs evolve, most organizations eventually end up producing products or services that are actually too sophisticated, too expensive, and too complicated for many customers in their market."¹⁷ The production of these sustaining technologies creates a gap in the consumer market because middle- and low-end consumers have either little desire for, access to, or the ability to use these products.¹⁸ The void generated by sustaining innovations inevitably propels the development of what Christensen calls disruptive innovations.¹⁹

In contrast, disruptive innovation "transforms a product that historically was so expensive and complicated that only a few people

¹² *How Will You Measure Your Life?* Clayton Christensen at TEDx Boston, *supra* note 10.

¹³ *Disruptive Innovation*, *supra* note 3.

¹⁴ *Id.*

¹⁵ Bower & Christensen, *supra* note 5, at 45.

¹⁶ *Disruptive Innovation*, *supra* note 3.

¹⁷ *See id.*

¹⁸ *See id.*

¹⁹ *See id.*; *Disruptive Innovation Explained*, HARV. BUS. REV. (Mar. 6, 2012), <https://hbr.org/2012/03/disruptive-innovation-explaine.html>.

with a lot of money and a lot of skill have access to it. Disruptive innovation makes it so much more affordable and accessible that a much larger population have access to it.”²⁰

When describing disruptive innovation, Christiansen emphasizes that the

[c]haracteristics of disruptive businesses, at least in their initial stages, can include: lower gross margins, smaller target markets, and simpler products and services that may not appear as attractive as existing solutions when compared against traditional performance metrics. Because these lower tiers of the market offer lower gross margins, they are unattractive to [incumbent] firms moving upward in the market, creating space at the bottom of the market for new disruptive competitors to emerge.²¹

After finding their place in the market, disruptive innovations improve rapidly until they reach a level of quality where, compared to the incumbents’ products, the disruptive product is the best product for a majority of the consumer market’s needs.²² Figures 1 and 2 in the Appendix depict the arc of innovation by illustrating Christiansen’s statements of causality and comparing the performance of disruptive and sustaining innovations over time.²³

While the distinction between sustaining and disruptive innovation might appear self-evident, the lines between these concepts can blur when they are applied in practice. An example of this phenomenon is reflected in the debate over whether or not charter schools are considered a sustaining or disruptive innovation with respect to the public school system. Chester E. Finn, Jr., a senior fellow at Stanford University’s Hoover Institution and former U.S. assistant secretary of education, is convinced that charter schools are disrupting the public school system, arguing that charter schools

could turn out to be as disruptive, and ultimately as devastating, to traditional education systems as those crummy little Sony radios turned out to be to the vacuum-tube behemoths and as Honda was to Detroit. These [charter] upstarts may not put the [public school] districts out of business but they’re definitely capturing market

²⁰ *Disruptive Innovation Explained*, *supra* note 19.

²¹ *Disruptive Innovation*, *supra* note 3.

²² Mike Masnik, *Implementing New Ideas Quickly*, YOUTUBE (Nov. 16, 2009), <https://www.youtube.com/watch?v=Q1vw23YHFds>.

²³ See *infra* Appendix Figures 1–2.

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In Christensen's book on public education, *Disrupting Class: How Disruptive Innovation Will Change the Way the World Learns*,²⁵ his initial inclination was similar to Mr. Finn's assessment.²⁶ After a more in-depth analysis, Christensen decided otherwise, determining that the intent of charter schools is merely to "do a better job educating the same students" as public schools.²⁷ But we can turn to other examples of disruptive innovation to understand the concept and consider the extent to which disruption is coming to the legal industry.

Since the release of *The Innovator's Dilemma*, global popularity of the paradigm has led to countless applications explaining the dissolution of companies and the evolution of industries. One prominent example is Netflix's disruption of movie rental companies such as Blockbuster.²⁸ The example is so common that several authors have made the term "Netflix" into a verb:²⁹ "to cause disruption or turmoil to an existing business model."³⁰

The video rental market, which coincidentally disrupted several other entertainment industry sectors, began with the expansion of the VHS player in the mid-1980s.³¹ Blockbuster, established in 1985, utilized an inventive approach to movie rental, enabling consumers to avoid the high costs of movie theaters and other entertainment media by allowing customers to watch popular films from the comfort of their own home.³² The business model, spurred by the insight that movie rentals were impulse purchases, required a high number of physical store fronts, over five thousand at Blockbuster's peak, in "highly-visible, high-traffic," and convenient

²⁴ Abraham M. Lackman, *The Collapse of Catholic School Enrollment: The Unintended Consequence of the Charter School Movement*, 6 ALB. GOV'T L. REV. 1, 9–10 (2013) (alterations in original) (quoting Chester E. Finn, Jr., *Disruptive Innovation and Independent Public Schools*, THOMAS B. FORDHAM INST. (June 20, 2012), <http://edexcellence.net/commentary/education-gadfly-weekly/2012/june-21/disruptive-innovation-and-independent-public-schools.html>).

²⁵ CLAYTON M. CHRISTENSEN ET AL., *DISRUPTING CLASS: HOW INNOVATION WILL CHANGE THE WAY THE WORLD LEARNS* (2008).

²⁶ *Lackman*, *supra* note 24, at 9.

²⁷ *Id.*

²⁸ Saul Kaplan, *How Not to Get "Netflixed,"* FORTUNE (Oct. 11, 2011), <http://fortune.com/2011/10/11/how-not-to-get-netflixed/>.

²⁹ *See, e.g.*, Kevin Harrington, *Is Your Company About to Get Netflixed?*, FORBES (Oct. 15, 2013) <http://www.forbes.com/sites/kevinharrington/2013/10/15/is-your-company-about-to-get-netflixed/>; Kaplan, *supra* note 28.

³⁰ Kaplan, *supra* note 28.

³¹ Lauren Fraser et al., *Netflix: Disrupting Blockbuster* (Nov. 9, 2009) (unpublished manuscript).

³² *Id.*

locations.³³ Retail locations were strategically selected according to consumer data and proximity of competitors.³⁴ Blockbuster offered an unparalleled service, “proclaim[ing] that 70% of the U.S. population live[d] within a 10 minute drive of a Blockbuster.”³⁵

Movie rental fees generally hovered around four dollars per movie, much more affordable and attractive than the cost of seeing films in theaters.³⁶ On top of rental costs, Blockbuster also charged additional fees for late returns and sold items such as candy, soda, popcorn, and used movies.³⁷ These late fees, which provided a substantial source of Blockbuster’s revenue and accounted for over \$600 million—or ten percent—of their profits in 2004, were critical to the success of the Blockbuster model.³⁸ Each Blockbuster outlet stocked only a limited number of movies, so the imposition of late fees attempted to compel consumers to return rentals so that each store could maintain a healthy inventory that would, in turn, increase customer satisfaction by reducing out-of-stock titles.³⁹ While the late fee served a vital purpose, these charges ultimately inspired the entrepreneur who eventually usurped Blockbuster’s empire.⁴⁰

In 1997, Reed Hastings discovered an overdue rental copy of “Apollo 13” wedged in his closet.⁴¹ Upon returning the rental, Blockbuster assessed a forty dollar late fee.⁴² After begrudgingly paying the exorbitant fee, Hastings began considering more user-friendly alternatives to the traditional movie rental service.⁴³ His abstract ideas eventually materialized into the company Netflix, which incorporated a business model that surpassed Blockbuster’s conventional “brick-and-mortar” retail stores, utilizing the U.S. Postal Service, and later a streaming, online service, to offer direct home delivery of DVDs and on-demand videos.⁴⁴ Netflix also revolutionized the pricing system of movie rentals by offering a flat-fee, subscription service offering rentals without late fees, due

³³ *Id.*

³⁴ Willy Shih et al., *Netflix 2* (Harvard Bus. Sch. Case Study, No. 9-607-139, 2009).

³⁵ *Id.*

³⁶ *Id.*

³⁷ Fraser et al., *supra* note 31.

³⁸ Shih et al., *supra* note 34, at 2.

³⁹ *Id.*

⁴⁰ Fraser et al., *supra* note 31.

⁴¹ Shih et al., *supra* note 34, at 1.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.* at 3; Kaplan, *supra* note 28.

dates, or shipping and handling fees.⁴⁵ Netflix also employed a centralized system of distribution, which allowed it to respond quickly to fluctuations in demand and carry a broader variety of titles, all while maintaining an overall inventory much smaller than Blockbuster's.⁴⁶ Hastings's description of Netflix's initial goals exemplifies the perspective of many disruptive innovators: "We were targeting people who just bought DVD players. . . . We didn't have too much competition. The market was underserved, and stores didn't carry a wide selection of DVDs at the time."⁴⁷

In 1999, only five percent of American households had DVD players; that number would rapidly increase, influenced by companies like Netflix and major retailers selling DVDs.⁴⁸

Blockbuster's response to Netflix is consistent with Christensen's theories regarding the incumbent's typical reaction to disruptive innovations. In May 2002, a Blockbuster spokesperson addressed Netflix, declaring: "Obviously, we pay attention to any way people are getting home entertainment. We always look at all those things. We have not seen a business model that's financially viable long-term in this arena. Online rental services are 'serving a niche market.'"⁴⁹

In 2002, Netflix's "niche market" had one million subscribers; by 2010, that number grew to over fourteen million.⁵⁰ Blockbuster lacked the foresight to anticipate Netflix's disruptive capability. Instead of adapting by innovating, Blockbuster naively followed its traditional model that had made the company initially successful; the "brick-and-mortar" retail provider of movie rentals.⁵¹

Blockbuster underestimated the disruptive capacity of Netflix until it was too late. When Blockbuster finally reacted to the emergence of this disruptive market actor, the incumbent's traditional approach proved too constraining to permit it to innovate in response to the Netflix disruption.⁵² Consumer demand had evolved beyond Blockbuster's limited business model. As a result, Netflix has completely disrupted the movie rental industry; Blockbuster, once a national icon, filed for bankruptcy in 2010.⁵³

⁴⁵ Shih et al., *supra* note 34, at 4–5.

⁴⁶ Fraser et al., *supra* note 31.

⁴⁷ Shih et al., *supra* note 34, at 3.

⁴⁸ *Id.* at 4.

⁴⁹ *Id.* at 9.

⁵⁰ Kaplan, *supra* note 28.

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*; see also *infra* Appendix Figure 3 (illustrating Blockbuster's and Netflix's movie

Blockbuster's product, logo, and business were once national symbols. Within the span of a decade, Blockbuster went from being a successful top competitor, with a lock on the movie rental industry, to bankruptcy.⁵⁴ While this case study exemplifies the disruptive innovation model, this pattern is not unique to Blockbuster or even the movie rental industry.⁵⁵ Blockbuster is simply an example of how successful companies, businesses, firms, and industries are susceptible to displacement by the forces of disruption.⁵⁶ The list included in Figure 4 of the Appendix includes similar examples of companies, industries, and institutions that have been adversely affected by the forces of disruption and the innovations responsible.⁵⁷ These examples are a mere sample of the countless industries and markets influenced by disruptive innovation.

B. Applying the Theory of the Innovator's Dilemma to the Legal Services Sector

While the innovator's dilemma paradigm initially focused on the disruption of specific business markets,⁵⁸ analysts have used it to assess change in fields such as health care,⁵⁹ education,⁶⁰ consulting,⁶¹ and legal services.⁶² While some skeptics will decry this popularity as kitsch,⁶³ Christensen appears to have identified one of the impacts of innovation on business. Moreover, since the release of *The Innovator's Dilemma*, hundreds of authors have attempted to apply the theory to many business sectors.⁶⁴ Some

rental revenues between 2004 and 2010).

⁵⁴ Kaplan, *supra* note 28.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ See *infra* Appendix Figure 4.

⁵⁸ See *Christensen Institute*, CLAYTON CHRISTENSEN, <http://www.claytonchristensen.com/id-eas-in-action/christensen-institute/> (last visited Feb. 13, 2015).

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ Christensen et al., *supra* note 8.

⁶² Robert Ambrogi, *At Harvard Law, Talk of Disruptive Innovation*, L. TECH. NEWS (Mar. 7, 2014), available at LEXIS, Law Technology News File.

⁶³ Matthew Yglesias, *Stop "Disrupting" Everything: How a Once-Useful Concept Turned into a Meaningless Buzzword*, SLATE (May 1, 2013), http://www.slate.com/articles/business/moneybox/2013/05/disrupting_disruption_a_once_useful_concept_has_become_a_lame_catchphrase.html.

⁶⁴ See, e.g., GEORGETOWN LAW, CTR. FOR THE STUDY OF THE LEGAL PROFESSION & THOMSON REUTERS, PEER MONITOR, 2014 REPORT ON THE STATE OF THE LEGAL MARKET 13 (2014) [hereinafter GEORGETOWN LAW & THOMAS REUTERS], available at https://peermonitor.thomsonreuters.com/wp-content/uploads/2014/01/2014_PM_GT_Report.pdf (noting the

commentators have applied the theory to the legal services industry, providing a broad spectrum of analysis.⁶⁵ One of the more illuminating reads on the topic generally is the article, *Consulting from the Cusp of Disruption*, coauthored by Christensen himself. While the article studies the consulting industry, the content provides considerable insight into the disruption of the legal services industry as well.⁶⁶ As a prelude to the discussion, the article begins by discussing two factors, opacity and agility, that have made consulting industries, like legal services, immune to disruption.⁶⁷ Traditional manufacturing companies produce tangible goods the relative success of which is easily quantified, while the goods produced by law firms lack this transparency.⁶⁸ “It’s incredibly difficult for clients to judge a [law firm’s] performance in advance, because they are usually hiring the firm for specialized knowledge and capability that they themselves lack.”⁶⁹

Even after a firm is hired and produces work product, external factors preclude meaningful assessment of the job completed.⁷⁰ Because clients lack both the requisite knowledge and a sophisticated understanding of the law, law firms are not hired based on measurable results but instead by reliance on “brand, reputation, and ‘social proof’—that is, the professionals’ educational pedigrees, eloquence, and demeanor”⁷¹ This opacity has helped

inevitability of disruptive innovation within the legal field); Lesley H. Curtis & Kevin A. Schulman, *Overregulation of Health Care: Musings on Disruptive Innovation Theory*, 69 LAW & CONTEMP. PROBS. 195, 201 (2006) (discussing how disruptive innovation has affected the healthcare industry); Jon M. Garon, *Mortgaging the Meme: Financing and Managing Disruptive Innovation*, 10 NW. J. TECH. & INTELL. PROP. 441, ¶¶ 5–16 (2012) (providing an overview of profound disruptive innovation); Lackman, *supra* note 24, at 9–10 (arguing that charter schools have disrupted Catholic education); Fred von Lohmann, *Fair Use as Innovation Policy*, 23 BERKELEY TECH. L.J. 829, 850–51 (2008) (discussing how copyright laws can protect companies from disruptive innovation); Jordan Furlong, *What Disruption Really Means*, LAW21 (Apr. 8, 2013), <http://www.law21.ca/2013/04/what-disruption-really-means/> (discussing the difficulties traditional law firms face when dealing with disruptive innovation and providing two instances where law firms have welcomed innovative change); John Rider, *Disruptive Innovation and the Law*, COGNITION LLP (Mar. 23, 2014), <http://www.cognitionllp.com/disruptive-innovation-and-the-law/> (highlighting that law firms have resisted innovations and have maintained traditional structures which have existed for decades).

⁶⁵ GEORGETOWN LAW & THOMAS REUTERS, *supra* note 64, at 13; Furlong, *supra* note 64; Rider, *supra* note 64.

⁶⁶ Christensen et al., *supra* note 8, at 109–10.

⁶⁷ *Id.* at 108.

⁶⁸ *See id.* at 108–09.

⁶⁹ *Id.* at 108.

⁷⁰ *Id.*

⁷¹ *Id.* at 108–09.

insulate top-tier law firms from the effects of disruption.⁷² This point is emphasized by Bob Marin, the general counsel of Panasonic North America: “The legal market has historically lacked transparency, making it difficult for us to deviate from using incumbent, brand-name law firms.”⁷³

One of the first blows to the opacity of law firms came with the expansion of the role of corporate general counsel at General Electric, which significantly decreased the corporation’s dependency on top-tier law firms.⁷⁴ The second was the release of the “Am Law 100 [(*The American Lawyer*)] ranking of firms by financial performance.” This “gave clients their first hint of the true costs and value of the services they were buying, along with a real basis for comparison among the top firms.”⁷⁵

The first development, corporate general counsel, provided an in-house alternative to outside—and expensive—legal services. While the services offered by general counsel may be limited in scope and complexity, by disaggregating the litigation process, for example, general counsel is able to assist in lowering cost and increasing quality of services produced.⁷⁶ The release of the Am Law 100 rankings provided corporations with a quantitative means of assessing law firms. Instead of relying on reputation and pedigree, corporate clients could now point to specific data to negotiate costs and pricing schemes.⁷⁷

Finally, the authors address “new competitors such as Axiom and Lawyers on Demand, which reduce costs and increase efficiency through technology, streamlined workflow, and alternative staffing models.”⁷⁸ These companies employ unorthodox models to help large corporations lower legal costs. Instead of employing a single firm to work on the entire project, corporations can now “unbundle” services to “right source” work to specialized firms that concentrate on specific components of the legal services continuum, such as large-scale document review in the context of litigation.⁷⁹

⁷² *Id.* at 109.

⁷³ *Id.* (internal quotation marks omitted).

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.* at 110. In addition, new products and services are utilizing machine learning to make production and processing of contracts, legal forms and pleadings easier and more efficient to manage. In turn, this saves lawyer time and reduces client costs. EBrevia is a recent example of this type of innovative company that is serving the legal services industry by utilizing technology to “bend the cost curve” of legal services. See EBREVIA, <http://ebrevia>

As described above, *Consulting from the Cusp of Disruption* includes an analysis of how consulting work, like the provision of legal services, is being disrupted. The discussion is limited to addressing only its effects on top-tier law firms, however.⁸⁰ While Christensen's theory is not without its critics,⁸¹ the narrow focus in the legal services field to the impact of disruptive innovation on the high-end firms misses the mark and fails to apply the theory itself in a way that Christensen would have us believe it otherwise operates. But Christensen is not alone; he is not the only commentator to focus on how technology and other changes in the legal profession are affecting the large law firm model.⁸²

By Christensen's own words, the innovator's dilemma results in innovation first affecting the lower end of the market and eventually working its way throughout a market segment to the higher end.⁸³ Indeed, if Christensen's theory is to be believed, true disruptive innovation first finds its way into the lower end of the market, where incumbents do not direct their attention, and eventually finds its way up into a broader market segment.⁸⁴ When it does so, it displaces incumbents because it offers a less expensive product or service that is more in line with the needs of consumers.⁸⁵ If this is the true arc of disruptive innovation, then we should not begin any assessment of disruption in the legal field by simply asking whether it is affecting Big Law. Rather we should look for the ways that disruption is coming, or could come, to the lower segments of the market because that is where true disruptive innovation begins and takes hold. Before we assess the extent to which disruption is occurring in the lower end of the legal services market, we will first explore the contours of disruption in the legal profession. The following discussion describes some recent innovations in the delivery of legal services and reviews their potential impact on the legal profession.

.com/ (last visited Feb. 13, 2015).

⁸⁰ See *Id.* at 109–10 (“Emerging law firms are innovating quickly to take business away from white-shoe firms.”).

⁸¹ See, e.g., Jill Lepore, *The Disruption Machine: What the Gospel of Innovation Gets Wrong*, THE NEW YORKER, June 23, 2014, at 30.

⁸² See, e.g., SUSSKIND, *supra* note 2, at 1 (assessing the role of technological and other changes on law firm practice); Larry E. Ribstein, *The Death of Big Law*, 2010 WIS. L. REV. 749, 751–52 (discussing the economic viability of big law).

⁸³ See Bower & Christensen, *supra* note 5, at 45.

⁸⁴ See *id.*

⁸⁵ See *id.* at 45–46 (describing how at first Sony's transistor radios were unattractive to mainstream customers due to their inferior sound quality, yet their smaller size and portability created a new market for their use).

III. THE PAST AND PRESENT OF DISRUPTION OF THE PROVISION OF LEGAL SERVICES

A. *Disruption Before the Internet*

Although the idea of disruptive *technologies* may be new to the legal field, the field has seen a number of disruptive approaches in the past fifty years. One of the first disruptions to the legal field was the appearance of self-help legal guides,⁸⁶ and one of the earliest examples of this was a how-to manual published in 1965 by Norman F. Dacey, entitled *How to Avoid Probate*.⁸⁷ He showed “how trusts could be set up to avoid the delays and expense of probate and how to establish estates without using attorneys.”⁸⁸ Although Dacey was not a lawyer, he was able to overcome allegations that this writing constituted the unauthorized practice of law.⁸⁹ As of 1990, this book had sold more than fifteen million copies.⁹⁰ Dacey continued creating self-help legal guides including, *What’s Wrong With Your Life Insurance* and *Dacey on Mutual Funds*.⁹¹ His first probate book is still available for purchase on Amazon⁹² and Barnes & Noble.⁹³

These legal guides are still produced today, in several different forms, including informational books used for educating the public on general issues of law and how-to manuals that provide advice on legal issues. One current example of the latter is Nolo’s book, *101 Law Forms for Personal Use*.⁹⁴ It advertises that it offers advice on personal transactions, such as selling a vehicle and renting a home as well as providing a form will, a power of attorney form, promissory notes for lending and borrowing money, and contracts for home repair remodeling.⁹⁵

⁸⁶ Ray Worthy Campbell, *Rethinking Regulation and Innovation in the U.S. Legal Services Market*, 9 N.Y.U. J.L. & BUS. 1, 39 (2012).

⁸⁷ See Richard D. Lyons, *Norman Dacey, 85; Advised His Readers to Avoid Probate*, N.Y. TIMES, Mar. 19, 1994, at 52.

⁸⁸ *Norman F. Dacey Wrote Book on Ways to Avoid Probate*, L.A. TIMES, Mar. 21, 1994, at A16.

⁸⁹ Lyons, *supra* note 87, at 52.

⁹⁰ See *How to Avoid Probate!*, AMAZON, <http://www.amazon.com/How-avoid-probate-Norman-Dacey/dp/0020081812> (last visited Feb. 13, 2015).

⁹¹ Lyons, *supra* note 87, at 52.

⁹² *How to Avoid Probate!*, *supra* note 90.

⁹³ *How to Avoid Probate!*, BARNES & NOBLE, <http://www.barnesandnoble.com/w/how-to-avoid-probate-norman-f-dacey/1000260337?ean=9780062731883> (last visited Feb. 13, 2015).

⁹⁴ NOLO, 101 LAW FORMS FOR PERSONAL USE (9th ed. 2013).

⁹⁵ *101 Law Forms for Personal Use*, NOLO, <http://www.nolo.com/products/101-law-forms-for-personal-use-spot.html> (last visited Feb. 13, 2015).

In addition to private companies and individual authors offering these do-it-yourself guides for profit, many nonprofit organizations also distribute so-called know-your-rights guides as well.⁹⁶ These guides serve as tools to educate someone not versed in the law about his or her rights in a particular field of the law, free of charge.⁹⁷ The American Bar Association offers a video guide for people held in immigration detention facilities, educating them on how the judicial process works and what to expect in the courtroom.⁹⁸ The Government Accountability Project has know-your-rights campaigns focusing on Gulf Coast workers and those in the banking industry.⁹⁹ It views these campaigns as a way to “rais[e] public awareness of your rights so that people who want to speak out can do so safely and effectively.”¹⁰⁰ The National Lawyers Guild also offers a know-your-rights guide in English and Spanish that is available for download from the internet, free of charge.¹⁰¹

B. Web-Based Disruptions

Many nonprofits are making their guides available online as the internet has gradually come into wide public use over the last twenty years. As it has, it has changed virtually all aspects of contemporary life. And the internet, if it does anything, makes information available to the consumer, a facet of the medium that is ripe for legal disruption.¹⁰²

The internet has already made legal work more efficient by making online legal research possible through websites such as LexisNexis, Westlaw, and Bloomberg.¹⁰³ LexisNexis first began its

⁹⁶ See, e.g., *Know Your Rights*, NAT'L RIGHT TO WORK LEGAL DEF. FOUND., INC., <http://www.nrtw.org/know-your-rights> (last visited Feb. 13, 2015).

⁹⁷ For example, the National Right to Work Legal Defense Foundation's guide is designed to assist employees who claim their civil rights have been violated by a union. See *id.*

⁹⁸ *Know Your Rights*, A.B.A. (Nov. 21, 2011), http://www.americanbar.org/news/abanews/aba-news-archives/2013/08/know_your_rights.html. The video is available for free streaming in English, Spanish, and French on the American Bar Association website and available for purchase from their web store. *Id.*

⁹⁹ *Know Your Rights Campaign*, GOV'T ACCOUNTABILITY PROJECT, <http://gaproject.nonprofitsoapbox.com/action-center/know-your-rights-campaign> (last visited Feb. 13, 2015).

¹⁰⁰ *Id.*

¹⁰¹ *Know Your Rights*, NAT'L LAW. GUILD, <https://www.nlg.org/resource/know-your-rights> (last visited Feb. 13, 2015).

¹⁰² See Brandon Schwarzentraub, *Electronic Wills & the Internet: Is LegalZoom Involved in the Unauthorized Practice of Law or is Their Success Simply Ruffling the Legal Profession's Feathers?*, 5 EST. PLAN. & COMMUNITY PROP. L.J. 1, 1 (2013).

¹⁰³ See Campbell, *supra* note 86, at 8 (analyzing the development of online legal research as a sustaining innovation); BLOOMBERG BNA, <http://www.bna.com/bloomberglaw/> (last visited Feb. 13, 2015); LEXISNEXIS, www.lexisnexis.com (last visited Feb. 13, 2015);

work in data collection in the 1960s but did not become a web-based service until 1997.¹⁰⁴ Once the KeyCite system went online, it revolutionized legal research, allowing lawyers to research more efficiently.¹⁰⁵ LexisNexis and Westlaw continue to compete as they have for the last forty years.¹⁰⁶ They also continue to improve their services through more recent innovations, such as the creation of WestlawNext in 2010¹⁰⁷ and Lexis Advance in 2012,¹⁰⁸ both of which included plain language search capabilities to legal research.¹⁰⁹ Both services offer a cite-checking system as well,¹¹⁰ which, before the internet, was laborious, time-consuming, and often left the researcher wondering when he or she could feel satisfied that the search was complete. Taking legal research mobile, WestlawNext access is also offered through an application for smartphones operating on the Android and iOS systems.¹¹¹ Even Google has gotten into the act, creating a database called GoogleScholar that can assist with secondary legal research.¹¹² Lawyers have embraced online research; as a result, these services are classified as sustaining disruptions.

In recent years, however, some enterprising individuals and companies have developed legal websites for consumers. These websites often contain similar features, each of which holds out the promise of disruption. These features include the following: lawyer directories, legal encyclopedias, legal forms (including automated documentation of these forms), and legal advice. Each of these types of services will be described in turn below. Although these websites are still growing in size and reach, this analysis will focus on six online services and one national franchise, We The People.

WESTLAW, www.westlaw.com (last visited Feb. 13, 2015).

¹⁰⁴ *About LexisNexis*, LEXISNEXIS, <http://www.lexisnexis.com/en-us/about-us/about-us.page> (last visited Feb. 13, 2015).

¹⁰⁵ See CHRISTINA L. KUNZ ET AL., *THE PROCESS OF LEGAL RESEARCH: AUTHORITIES AND OPTIONS* 90–94 (8th ed. 2012) (discussing key number system and its development).

¹⁰⁶ *Id.* at 97.

¹⁰⁷ *Better Legal Connections—Our Legacy of Innovation*, THE KNOWLEDGE EFFECT: THOMSON REUTERS, <http://blog.thomsonreuters.com/index.php/better-legal-connections-our-legacy-of-innovation/> (last visited Feb. 13, 2015).

¹⁰⁸ *New Release of Lexis Advance Significantly Expands Content Breadth and Functionality*, LEXISNEXIS (July 19, 2012), <http://www.lexisnexis.com/en-us/about-us/media/press-release.page?id=1342553191855280>.

¹⁰⁹ KUNZ ET AL., *supra* note 105, at 98.

¹¹⁰ *Id.* at 110. Westlaw's citing system is referred to as KeyCite and LexisNexis's as Shepard's. *Id.*

¹¹¹ *Mobile Legal Research*, THOMSON REUTERS, <http://legalsolutions.thomsonreuters.com/law-products/westlaw-legal-research#mobile> (last visited Feb. 13, 2015).

¹¹² KUNZ ET AL., *supra* note 105, at 122.

Some of these sites offer one of the features listed above, while others offer the full range. Some of the websites that will be discussed in these pages include Nolo,¹¹³ JustAnswer,¹¹⁴ RocketLawyer,¹¹⁵ Lawyers.com,¹¹⁶ LegalZoom,¹¹⁷ and MyAttorneyHome.com.¹¹⁸

1. Lawyer Directories

A lawyer directory is a catalog of lawyer profiles and contact information.¹¹⁹ This service helps connect consumers to lawyers who specialize in a particular field of law.¹²⁰ It functions like an online phone book. Of the various types of lawyer directories, some versions offer a means of direct communication with the lawyers found in the system.¹²¹ Other versions engage in matchmaking directly, connecting clients to lawyers instead of letting the client browse through a directory.¹²² Some of these websites even offer a

¹¹³ Nolo is the company that best illustrates how these disruptive technologies have transformed with advances in technology. The company began offering paper legal guides for consumers in 1971 and has expanded its service to offer do-it-yourself software products. *About Us*, NOLO, <http://www.nolo.com/about.html> (last visited Feb. 13, 2015). Nolo offers software products such as Quicken Willmaker, Quicken Legal Business Pro, Nolo Digital Forms, and electronic products such as e-books. *See Legal Forms and Online Documents, Books, & Software*, NOLO, <http://www.nolo.com/products/> (last visited Feb. 13, 2015). Nolo became one of the first legal websites as well. Nolo joined the online service with creation of ExpertHubOne in 2008 for small firms and solo practitioners while still offering its software products. *About Us, supra*. Nolo is predominantly known for its Quicken software products. *See, e.g., Quicken WillMaker Plus 2015*, NOLO, <http://www.nolo.com/products/quicken-willmaker-plus-wqp.html> (last visited Feb. 13, 2015) (advertising Quicken WillMaker Plus as Nolo's bestseller).

¹¹⁴ JUST ANSWER, <http://www.justanswer.com/> (last visited Feb. 13, 2015).

¹¹⁵ ROCKETLAWYER, <http://www.rocketlawyer.com/> (last visited Feb. 13, 2015). RocketLawyer was created by attorney Charley Moore with the goal of providing simple and affordable legal services to more people. *See About Us*, ROCKETLAWYER, <http://www.rocketlawyer.com/about-us.rl> (last visited Feb. 13, 2015). Its catch phrase is "everything you need to make it legal." *RocketLawyer*, FACEBOOK, <http://www.facebook.com/RocketLawyer/info> (last visited Feb. 13, 2015). The website "combine[s] free legal documents and free legal information with access to affordable representation by licensed attorneys." *About Us, supra*.

¹¹⁶ LAWYERS.COM, <http://www.lawyers.com/> (last visited Feb. 13, 2015).

¹¹⁷ LEGALZOOM, <https://www.legalzoom.com/> (last visited Feb. 13, 2015). It was created in 2000 by attorneys Brian Liu, Brian Lee, Robert Shapiro, and Eddie Hartman (who possessed a background in computer science). *About Us*, LEGALZOOM, <http://www.legalzoom.com/about-us> (last visited Feb. 13, 2015); *Management Team*, LEGALZOOM, <https://www.legalzoom.com/about-us/management-team> (last visited Feb. 13, 2015).

¹¹⁸ MYATTORNEYHOME, <http://www.myattorneyhome.com/> (last visited Feb. 13, 2015).

¹¹⁹ *See* Linda Morton, *Finding a Suitable Lawyer: Why Consumers Can't Always Get What They Want and What the Legal Profession Should Do About It*, 25 U.C. DAVIS L. REV. 283, 299 (1992).

¹²⁰ *See id.*

¹²¹ For example, *see* MYATTORNEYHOME, *supra* note 118.

¹²² *See TakeLegalAdvice.com*, STARTUPS (Nov. 25, 2013), <http://startups.co.uk/takelegaladvi>

means through which consumers can assess the reputation of a particular lawyer through online customer reviews.¹²³

The more notable of these websites, such as Nolo, LegalZoom, and FindLaw, offer online attorney directories and referral services.¹²⁴ The American Bar Association has a similar service.¹²⁵ In addition to the online directories and referral services, the more established of these websites have additional features unique to them. MyAttorneyHome.com has a free case evaluation form designed to connect the consumer to a lawyer if immediate assistance is desired.¹²⁶ TakeLegalAdvice.com includes ratings from past clients on firms and a matching system to pair firms and clients.¹²⁷ LegalZoom has its own bullpen of lawyers, called the “legal plan attorneys,” to whom it refers its end users.¹²⁸

2. Legal Encyclopedias

Generally, a legal encyclopedia provides brief summaries of specific legal topics and terms.¹²⁹ The websites discussed above also provide access to information about legal issues, explanations about basic legal concepts, and advice about when to hire a lawyer.¹³⁰ Some have a legal glossary with legal definitions and a section with answers to frequently asked questions about the law.¹³¹ The major distinction between the online legal encyclopedias in this study when compared to the traditional legal encyclopedia is the intended audience for each. A traditional legal encyclopedia¹³² is written for lawyers to use as a legal research tool while the online legal encyclopedia is typically meant for consumers who are not versed in the law.¹³³ The difference in intended audience often changes the

ce-com/.

¹²³ SUSSKIND, *supra* note 2, at 112.

¹²⁴ Jennifer Schiff, *Get Basic Legal Help Without a Lawyer*, SMALL BUS. COMPUTING.COM (Jan. 11, 2007), <http://www.smallbusinesscomputing.com/buyersguide/article.php/3653421/Get-Basic-Legal-Help-without-a-Lawyer.htm>.

¹²⁵ *Id.*

¹²⁶ *Legal Questions? Find Answers Here!*, MYATTORNEYHOME, <http://www.myattorneyhome.com/> (last visited Feb. 13, 2015).

¹²⁷ Delia Venables, *TakeLegalAdvice*, INFOLAW (Mar. 2010), <http://www.infolaw.co.uk/newsletter/2010/03/takelegaladvice/>.

¹²⁸ *Find an Attorney You Can Trust at a Truly Affordable Price*, LEGALZOOM, <http://www.legalzoom.com/attorneys-lawyers/legal-plans> (last visited Feb. 13, 2015).

¹²⁹ See William A. Hilyerd, *Using the Law Library: A Guide for Educators Part IV: Secondary Sources to the Rescue*, 34 J.L. & EDUC. 273, 279 (2005).

¹³⁰ See, e.g., MYATTORNEYHOME, *supra* note 118.

¹³¹ See, e.g., *id.*

¹³² One example would be American Jurisprudence.

¹³³ See, e.g., MYATTORNEYHOME, *supra* note 118.

content and depth of detail available through these sites. This online information is provided free of charge to the browser, while lawyers often have to pay for access to such online legal information through LexisNexis and Westlaw.¹³⁴

The lay person now has a wealth of legal information available to him or her as the legal profession's one-on-one advice model has slowly evolved, through the innovation of the internet, into what Kobayashi and Ribstein have called a "legal information market."¹³⁵ The legal information market is "the transmission of information about the law through sale in a general market rather than through advice."¹³⁶ Such information helps the consumer make an educated decision as to which legal services to purchase or even gives him or her the option of trying to navigate the system without counsel. Armed with this information, the traditional asymmetry between a lawyer and client, where the lawyer would know more than the client, slowly erodes.¹³⁷ In addition, the availability of this information on the internet free of cost hinders lawyers' ability to charge high prices for it.¹³⁸ The availability of relevant legal information has been particularly helpful for those involved in business who can now research the basics about contract law before consulting a lawyer.¹³⁹

MyAttorneyHome.com is one website that attempts to help consumers address legal problems through the dissemination of information,¹⁴⁰ while Lawyers.com is for individuals and small businesses, offered by Martindale-Hubbell.¹⁴¹ The latter is designed to serve as a starting point for a consumer first confronting a legal issue as a tool to choose the right lawyer and become more educated about the legal issue in question.¹⁴² Nolo has a different approach. Through its network of subsidiary websites, it has made a range of information available to customers.¹⁴³ This network contains legal

¹³⁴ KUNZ ET AL., *supra* note 105, at 97.

¹³⁵ Bruce H. Kobayashi & Larry E. Ribstein, *Law's Information Revolution*, 53 ARIZ. L. REV. 1169, 1173 (2011).

¹³⁶ *Id.*

¹³⁷ *Id.* at 1197–98.

¹³⁸ SUSSKIND, *supra* note 2, at 123.

¹³⁹ Schiff, *supra* note 124.

¹⁴⁰ MYATTORNEYHOME, *supra* note 118. Its catch phrase is "Your Home for Legal Solutions." *Id.*

¹⁴¹ LAWYERS.COM, *supra* note 116. The website's main page is organized by either finding a lawyer by location or by area of law and has the option of finding legal information by topic. *Id.* Its catch phrase is: "Your Legal Solution Starts Here." *Id.*

¹⁴² *Id.*

¹⁴³ Nolo owns a number of subsidiaries, including Nolo.com, AllLaw.com and Divorcenet.com. *About Us*, *supra* note 113.

news and blogs as additional sources through which consumers can become educated about the law.¹⁴⁴

3. Automated Documentation

Automated documentation works by requiring the consumer to fill out a questionnaire about his or her legal situation.¹⁴⁵ Based upon the answers the consumer has provided, the program automatically generates a document that purports to address the consumer's legal issues.¹⁴⁶ The program stores standardized text to insert into the document if the consumer chooses a particular answer.¹⁴⁷ Automated systems have now progressed to the point that they no longer simply create legal documents for clients. Such approaches now have the potential to create legal arguments based on predictive tools about a particular type of case.¹⁴⁸ RocketLawyer and LegalZoom are two services in this discussion that offer the ability to create and generate automated, completed forms.¹⁴⁹

Automated documentation is perhaps the most disruptive technology within the legal industry today.¹⁵⁰ Typically, “[d]ocuments assembled by computer without human interaction fit neatly into the disruptive innovation model,” but it could just as easily serve as an example of a sustaining technology as its use increases.¹⁵¹ Lawyers spend hours creating legal forms for clients, charging by the hour, and now clients have the option to avoid that cost and do much of the preliminary work, or even the ultimate work, themselves.¹⁵² Lawyers, on the other hand, have been reluctant to adopt this technology, partly because of the cost of developing such systems on their own and out of fear that

¹⁴⁴ *Id.*

¹⁴⁵ See, e.g., *LexisNexis Automated Forms*, LEXISNEXIS, <http://www.lexisnexis.com/en-us/products/automated-forms.page> (last visited Feb. 13, 2015); *Quicken WillMaker Plus*, TOP TEN REVIEWS, <http://wills-software-review.toptenreviews.com/quicken-willmaker-plus-review.html> (last visited Feb. 13, 2015).

¹⁴⁶ For example, Nolo's Quicken WillMaker Plus allows users to create wills, health care directives, and power of attorney documents. *Quicken WillMaker Plus*, *supra* note 145.

¹⁴⁷ SUSSKIND, *supra* note 2, at 101.

¹⁴⁸ See Johnathan Jenkins, Note, *What Can Information Technology Do for You?*, 21 HARV. J.L. & TECH. 589, 597–600 (2008); Kobayashi & Ribstein, *supra* note 135, at 1199–1204 (explaining how computer algorithms could potentially be used to predict legal implications of specific sets of facts).

¹⁴⁹ *How It Works*, LEGALZOOM, <https://www.legalzoom.com/about-us/how-it-works> (last visited Feb. 13, 2015); *What We Do*, ROCKET LAWYER, <http://www.rocketlawyer.com/what-we-do.rl> (last visited Feb. 13, 2015).

¹⁵⁰ SUSSKIND, *supra* note 2, at 101–02.

¹⁵¹ Campbell, *supra* note 86, at 55, 62.

¹⁵² SUSSKIND, *supra* note 2, at 101–02.

automated, commercial systems might contain legal errors that will ultimately result in a charge of malpractice against the attorney using them.¹⁵³ At the same time, it has become commonplace for individuals in business to take advantage of some of these services.¹⁵⁴

Despite the apparent reluctance of lawyers to rely on these systems, automated document generators have the potential for sustaining the practice of law by assisting lawyers dealing with massive workloads.¹⁵⁵ Microsoft in-house counsel has already embraced automated document assembly for company agreements in various languages.¹⁵⁶ This service first became popular in estate planning, particularly for the creation of wills,¹⁵⁷ because it reduced the cost from hundreds of dollars to as low as sixty-nine dollars per will.¹⁵⁸ The website Weagree.com provides automated contracts using web-based templates and questionnaires, as does the software ContractExpress DealBuilder.¹⁵⁹

One entity that offered these types of services that has not fared well is We the People (WTP). WTP is a “legal document preparation service for people who need legal documents without having to pay an attorney.”¹⁶⁰ It only provides the automated documentation service, out of the five services mentioned in this section. As Campbell described the service: “We The People sells legal forms to consumers from franchised storefront offices. . . . [It] only sells forms, and . . . provide[s] no assistance beyond clerical help.”¹⁶¹ The company filed for Chapter 11 Bankruptcy on February 18, 2010, as a result of poor management and consumer class action suits.¹⁶²

At its height, WTP was a national franchise with one thousand offices throughout thirty states.¹⁶³ Richard Granat, CEO of MyLawyer.com, described the flaw in WTP’s system as the following:

Customers [of We the People] would complete a paper questionnaire and submit it to the store owner with full or

¹⁵³ *Id.* at 102.

¹⁵⁴ *Id.*

¹⁵⁵ *See* Jenkins, *supra* note 148, at 591.

¹⁵⁶ SUSSKIND, *supra* note 2, at 104.

¹⁵⁷ Schwarzentraub, *supra* note 102, at 3.

¹⁵⁸ *Id.* at 3–4.

¹⁵⁹ Kobayashi & Ribstein, *supra* note 135, at 1194.

¹⁶⁰ WE THE PEOPLE, <http://www.wethepeoplemdr.com/#> (last visited Feb. 13, 2015).

¹⁶¹ Campbell, *supra* note 86, at 46.

¹⁶² Richard Acello, *We the Pauper*, A.B.A. J., May 2010, at 24, 24.

¹⁶³ *Id.*

partial payment . . . [t]he store owner would fax the questionnaire to a central processing center where a paralegal or nonlawyer would input the data from the questionnaire into a desktop document assembly program, which would create the document ready for return to the customer.¹⁶⁴

He further stated: “Because there is so much friction in this system, the price per document was very high” due to the costs of moving the paper through these several steps.¹⁶⁵ Since the practices of current services seem to permit document assembly without all of these steps or interventions by personnel in the process, it is unclear whether internet-based services will face the problems WTP faced.

While online entities may avoid the costs associated with WTP’s business model, what may threaten the online services are legal challenges. Granat has warned that LegalZoom might be the next company after WTP to face existential threats because it must defend against lawsuits due to the products from its automated documentation system.¹⁶⁶ What these lawsuits reveal is that this commodification of legal services—the one-size-fits-all approach in automated documentation—is not always effective, as will be discussed shortly. For example, LegalZoom does not include a community property agreement in the creation of a will that would be necessary to avoid probate in many jurisdictions.¹⁶⁷ That site, according to its marketing materials, is an “online service that help[s] people create their own legal documents” for legal matters such as “creat[ing] a last will, incorporat[ing] a business, [or] trademark[ing] a name.”¹⁶⁸ Yet it also advertises that it is a “personalized, affordable legal protection” service.¹⁶⁹

There is a difference, however, between providing the blank form for the clients to purchase and the automated creation of the form.¹⁷⁰ Providers of blank forms argue that “they simply are

¹⁶⁴ *Id.* at 25 (first alteration in original) (internal quotation marks omitted).

¹⁶⁵ *Id.* (internal quotation marks omitted).

¹⁶⁶ *Id.*

¹⁶⁷ Schwarzentraub, *supra* note 102, at 7.

¹⁶⁸ *About Us*, *supra* note 117.

¹⁶⁹ Dane S. Ciolino, *Is LegalZoom Engaged in the Unauthorized Practice of Law in Louisiana?*, LA. LEGAL ETHICS (Nov. 8, 2013), <http://lalegaethics.org/web-based-legal-service-providers-engaged-unauthorized-practice-law/>. As of February 2015, LegalZoom has stopped advertising “personalized, affordable legal services.” See *About Us*, *supra* note 117.

¹⁷⁰ Catherine J. Lanctot, *Scriveners in Cyberspace: Online Document Preparation and the Unauthorized Practice of Law*, 30 HOFSTRA L. REV. 811, 815 (2002).

selling information to consumers.”¹⁷¹ Some firms sell blank templates for certain types of contracts.¹⁷² Most states allow the preparation of blank, standardized legal forms by nonlawyers so long as they do not include advice about what information should be on the forms.¹⁷³ Similarly, automated document creation is allowed in Texas as long as the entity offering such a service provides a disclaimer that such services cannot substitute for those an attorney might provide.¹⁷⁴ Once again, as Richard Granat has stated: “We think that consumers are intelligent enough to know the difference between purchasing legal forms off the Internet and entering into a lawyer-client relationship with an attorney.”¹⁷⁵ We will return to these issues shortly.

4. Legal Advice

The term “legal advice” is sometimes defined as the assessment of the client’s situation and application of the relevant legal issues to it.¹⁷⁶ Each state has its own definition of what constitutes the provision of legal advice.¹⁷⁷ For purposes of this discussion, in the context of legal information websites, the rendering of legal advice refers to offering a response to a legal question through a dialogue box contained on a website. Through this feature, the consumer only needs to type a legal question into a dialogue box and an answer will appear, usually accompanied by a request that the consumer pay a fee. This type of service functions similarly to a consultation meeting except the client does not have to leave the convenience of his or her home. Some law firm websites also offer this type of feature.¹⁷⁸ From the consumers’ perspective, these online guidance services might displace lawyers, making them

¹⁷¹ *Id.* at 820. For example, websites such as National Court Documents, US Legal Forms, Legal Forms, Form Preparation Services, and Docupronet provide legal forms. *Id.* at 819 n.34.

¹⁷² Kobayashi and Ribstein, *supra* note 135, at 1193.

¹⁷³ Lanctot, *supra* note 170, at 829–30.

¹⁷⁴ Schwarzentraub, *supra* note 102, at 5.

¹⁷⁵ *Id.* at 6–7 (internal quotation marks omitted).

¹⁷⁶ See *Legal Advice Law & Legal Definition*, USLEGAL, <http://definitions.uslegal.com/l/legal-advice/> (last visited Feb. 13, 2015).

¹⁷⁷ See AM. BAR ASS’N., STATE DEFINITIONS OF THE PRACTICE OF LAW, available at http://www.americanbar.org/content/dam/aba/migrated/cpr/model-def/model_def_statutes.aut_hcheckdam.pdf (listing each state’s definition and applicable rules regarding the practice of law).

¹⁷⁸ See, e.g., *Welcome to Tully Rinckey PLLC*, TULLY RINCKEY PLLC, <http://www.tullylegal.com/> (last visited Feb. 13, 2015).

disruptive in the legal market.¹⁷⁹ For example, this feature could appear as a hotlink like on MyAttorneyHome.com.¹⁸⁰

A good example of this feature is the service provided by JustAnswer.com, created in 2003.¹⁸¹ JustAnswer is a website designed to provide a professional answer to a question in nine seconds, but it has no disclaimer related to the provision of legal services on the homepage.¹⁸² Its catch phrase is, “Ask a Question, Get an Answer ASAP!”¹⁸³ Despite the absence of a legal disclaimer—one that would say the provision of these answers does not create an attorney-client relationship and does not constitute the rendering of legal services—attorneys are the first professional “experts” listed on the site, followed by mechanics, doctors and nurses, veterinarians, electricians and plumbers, experts in computer science and education, and additional categories that provide advice on relationships, parenting, firearms, and more.¹⁸⁴ MyAttorneyHome.com also has a dialogue box to ask questions, at the bottom of its main page with a red button saying “Get Help Now.”¹⁸⁵ MyAttorneyHome.com’s dialogue box allows the consumer to select a legal topic and describe one’s case, but it also asks the consumer to disclose if an attorney is already helping him or her with the legal problem.¹⁸⁶

5. Reputation Website Model

Legal reputation websites are another form of legal websites designed to help consumers shop for a lawyer by assessing each lawyer’s reputation as revealed by customer comments posted on the site. This model offers the consumer the ability to compare prices and services and to see reviews from past consumers.¹⁸⁷ These services create the potential for better-informed consumers.¹⁸⁸ Richard Susskind argues that the legal profession would benefit from such price comparison systems or even

¹⁷⁹ SUSSKIND, *supra* note 2, at 122.

¹⁸⁰ MYATTORNEYHOME, *supra* note 118.

¹⁸¹ JUST ANSWER, *supra* note 114.

¹⁸² *See id.*

¹⁸³ *Id.*

¹⁸⁴ *Id.*

¹⁸⁵ MYATTORNEYHOME, *supra* note 118.

¹⁸⁶ *Id.*

¹⁸⁷ *See, e.g., Review a Lawyer*, AVVO, <http://www.avvo.com/review-your-lawyer> (last visited Feb. 13, 2015).

¹⁸⁸ *See* SUSSKIND, *supra* note 2, at 108.

reputation systems.¹⁸⁹ LinkedIn already offers an “endorsing” system that could work to build the reputation of the professional.¹⁹⁰ Comparison systems help provide information to consumers so that they can make an educated purchase of services.¹⁹¹ Another approach to comparison shopping was the site Shpoonkle, where a consumer had the option to post a legal question and lawyers would bid over the opportunity to serve the client.¹⁹² Through such systems even those customers who do not read the legal disclaimers will have access to information about the reputation of the bidding attorney.

C. Future Disruptive Technologies: Mobile Applications

Another emerging technology in the legal field is applications, also known as “apps,” on smartphones. The first smartphone was created in 1992,¹⁹³ but it was not until the development of the iPhone in 2007 when apps became popular and ubiquitous.¹⁹⁴ The iPhone now dominates the smartphone market.¹⁹⁵ As apps become more popular, it is more likely those that offer consumers legal guidance will soon become the next app to download. According to one study, eighty-three percent of adults in America have cell phones.¹⁹⁶ People already have the option to file their taxes using an app,¹⁹⁷ as well as submitting an insurance claim with their insurance provider’s app.¹⁹⁸ To date, there are several apps

¹⁸⁹ *Id.* at 109.

¹⁹⁰ LINKEDIN, https://www.linkedin.com/about-us?trk=hb_ft_about%20www.linkedin.com (last visited Feb. 13, 2015).

¹⁹¹ See SUSSKIND, *supra* note 2, at 110 (suggesting that the traditional method of choosing legal representation results in consumers who lack information).

¹⁹² Kobayashi & Ribstein, *supra* note 135, at 1197. Shpoonkle is no longer a functioning website.

¹⁹³ *The First Smartphone*, IT LOG (June 25, 2009), <http://itlog.net/content/the-first-smartphone>.

¹⁹⁴ Gerard Goggin, *Ubiquitous Apps: Politics of Openness in Global Mobile Cultures*, 22 DIGITAL CREATIVITY 148, 150–51 (2011).

¹⁹⁵ Ryan W. Neal, *Apple iPhone to iPhone 6: The 7-Year Evolution of A Game-Changing Smartphone*, INT’L BUS. TIMES (Jan. 9, 2014), <http://www.ibtimes.com/apple-iphone-iphone-6-7-year-evolution-game-changing-smartphone-photos-1533776>.

¹⁹⁶ Laura E. Gomez-Martin, *Smartphone Usage and the Need for Consumer Privacy Laws*, 12 U. PITT. J. TECH. L. & POL’Y 2, ¶ 3 (2012).

¹⁹⁷ See, e.g., Blake Ellis, *7 Best Apps for Filing Taxes*, CNN MONEY, http://money.cnn.com/galleries/2011/pf/1102/gallery.tax_smartphone_apps/index.html (last updated Feb. 10, 2011).

¹⁹⁸ One example would be the “Arc Legal Assistance Claims” app, which “allows you to complete and submit a claim form under your Arc Legal Assistance Legal Expenses Insurance policy.” *Arc Legal Assistance Claims Application*, ITUNES, <https://itunes.apple.com/us/app/arc-legal-assistance-claims/id421388700?mt=8> (last visited Feb. 13, 2015).

available to the public that address legal issues.¹⁹⁹ For example, the Legal and Copyright for Small Businesses Toolkit provides business owners information about legal issues small businesses face.²⁰⁰ Another example is the Legal Buddy app.²⁰¹ The Apple iPhone application store describes the app as “a quick reference from an experienced former state prosecutor, now turned defense attorney, on your rights when facing criminal or traffic violations.”²⁰² It was created by the law office of Lenny Kagan in 2012.²⁰³ Figures 5 and 6 in the Appendix illustrate elements of the Legal Buddy App.²⁰⁴

In the next section, we will look at one of the main issues implicated by these disruptive innovations: whether they cross the line into the unauthorized practice of law. There are other concerns as well, namely the consumer protection issues these approaches raise. For example, to what extent is there quality control over the services rendered? Who is responsible if an individual uses information gleaned from one of these sites and it turns out to be faulty? Understandably, it may give consumers pause to hear stories of individuals receiving fake legal advice over the internet.²⁰⁵ When such stories surface, they are often the product of a combination of “consumer ignorance and gullibility” as well as consumer desperation for legal services.²⁰⁶

While a full discussion of the consumer protection issues implicated by such online services is beyond the scope of this article, preliminary analysis of the consumer protection questions seems to

¹⁹⁹ See, e.g., *Apps*, WINDOWS PHONE, <http://www.windowsphone.com/en-us/store/top-free-apps/legal-issues/legalissues> (last visited Feb. 13, 2015) (listing several apps under the category “legal issues”).

²⁰⁰ *Legal and Copyright Small Business Toolkit*, iTUNES, <https://itunes.apple.com/us/app/legal-copyright-small-business/id496937612?mt=8> (last visited Feb. 13, 2015).

²⁰¹ LEGAL BUDDY, <http://www.legal-buddy.com/2013/> (last visited Feb. 13, 2015). For Albany County in New York, the app has the following selections: Accident (accident, leaving the scene: no witness, leaving the scene: witness), Criminal Law (assault with a vehicle, drug possession, gun possession, minor in possession), DWI/DUL, Traffic Tickets, Bail Bonds (AboutBail contact), and SR-22 which pops up with a link that says “call to advertise!” Availability of public advertising may discredit such an app and make it become similar to a source like Wiki.

²⁰² *Legal Buddy*, iTUNES, <https://itunes.apple.com/us/app/legal-buddy/id495971752?mt=8> (last visited Feb. 13, 2015).

²⁰³ See LEGAL BUDDY, *supra* note 201; see also *Legal Buddy*, *supra* note 202.

²⁰⁴ See *infra* Appendix Figures 5–6.

²⁰⁵ See Michael Lewis, *Faking It*, N.Y. TIMES MAG., July 15, 2001, at 32 (discussing the story of a 15-year old boy who was giving legal advice over the internet); see also *Beware of Fake “Legal Aid” Services*, LEGAL SERVICES NORTHERN CAL. (April 2004), <http://slh.lsn.net/files/2011/05/fake-legal-aid1.pdf> (warning elderly consumers of fraudulent providers of legal services).

²⁰⁶ See Lanctot, *supra* note 170, at 820.

suggest that these online services are providing, to a degree, an important and valuable service to consumers. When Consumer Reports analyzed the services of LegalZoom, RocketLawyer, and Nolo to those of a lawyer, it stated that the services were “no match for a pro.”²⁰⁷ However, Consumer Reports further stated that these services are “generally better than drafting the documents yourself without legal training or not having them at all.”²⁰⁸ They are good for simple needs but may not be “specific enough” and could cause “an unintended result.”²⁰⁹ The review preferred RocketLawyer and LegalZoom over Nolo.²¹⁰ Even the Federal Trade Commission believes that the competition that these websites provide is better for consumers and has therefore hesitated to describe the services offered by these sites as the unauthorized practice of law.²¹¹ And there is the “access to justice” conundrum: the provision of these services, whether they are legal services per se, or not, are arguably better than no services at all.²¹² And millions of Americans face the prospect of dealing with a legal problem, should they even know one exists, without the assistance of a lawyer.²¹³ We will return to these questions in Part IV.

Although the consumer protection issues are important, and lurking underneath questions about the unauthorized practice of law are always concerns about consumer protection, we will now turn specifically to the unauthorized practice of law issue; that is, do the services these sites provide constitute the unlawful unauthorized practice of law? Many of the sites described above have faced unauthorized practice of law challenges. It is to the outcomes of those challenges that we now turn.

²⁰⁷ *Legal DIY Websites No Match for a Pro*, CONSUMER REP., Sept. 2012, at 13.

²⁰⁸ *Id.*

²⁰⁹ *Id.*

²¹⁰ *Id.*

²¹¹ Schwarzentraub, *supra* note 102, at 8.

²¹² See Michael J. Wolf, *Collaborative Technology Improves Access to Justice*, 15 N.Y.U. J. LEGIS. & PUB. POL'Y 759, 784 (2012) (discussing how online legal services are a “promising way” for low-income people in need of legal service to have access to the justice system); Lindsey Schindler, Comment, *Skirting the Ethical Line: The Quandary of Online Legal Forms*, 16 CHAP. L. REV. 185, 191 (2012) (suggesting that a will prepared by LegalZoom is better than no will at all); see also Deborah L. Rhode & Lucy Buford Ricca, *Protecting the Profession or the Public? Rethinking Unauthorized-Practice Enforcement*, 82 FORDHAM L. REV. 2587, 2596 (2014) (noting that people are desperate for legal help and are turning to online legal services regardless of whether the site is legal or not).

²¹³ LEGAL SERVS. CORP., DOCUMENTING THE JUSTICE GAP IN AMERICA: THE CURRENT UNMET CIVIL LEGAL NEEDS OF LOW-INCOME AMERICANS 25 (2009).

D. Ethical Considerations Regarding Innovations in the Legal Services Sector

The high cost of legal services effectively prices legal assistance out of the reach of many Americans, primarily those of low and middle income, some of whom earn too much to qualify for free legal assistance.²¹⁴ For those who do qualify, all too often the need far exceeds the availability of such assistance.²¹⁵ But the cost of legal services also frustrates small businesses and wealthier individuals who do not wish to pay going rates for private attorneys.²¹⁶ This “justice gap,” or “market opportunity” as some might say, has led to the proliferation of the websites and other services described above.²¹⁷ The issue that has arisen with respect to these legal websites is that virtually every state has laws against what is called the unauthorized practice of law (UPL).²¹⁸ Claims of UPL constantly hover over these websites and other services, and the threat of civil and criminal charges might chill what could be a viable solution for the “justice gap.”²¹⁹

To determine if there is a way to avoid UPL charges, one would need a working definition of UPL. Every state defines the practice of law differently, and as such the scope of UPL varies.²²⁰ In fact, the American Bar Association’s Model Rules of Professional Conduct avoid addressing this issue by leaving the definitional questions to the states.²²¹ State ethical and criminal codes sometimes leave much to be desired in terms of defining the practice of law and UPL.²²² For example, Indiana defines the

²¹⁴ J.D. Smeallie, *From the BBA President: Connecting Supply with Demand to Fill the Justice Gap*, BOS. B. ASS’N (July 22, 2013), <http://www.bostonbar.org/public-policy/public-policy-archive/2013/07/22/from-bba-president-connecting-supply-with-demand-to-fill-the-justice-gap>.

²¹⁵ See LEGAL SERVS. CORP., *supra* note 213, at 6. Lanctot, *supra* note 170, at 853.

²¹⁶ See Rhode & Buford Ricca, *supra* note 212, at 2597; see also *Rocket Lawyer Survey Reveals Top Issues for Small Businesses Are Legal and Financial, with a Majority Optimistic About Growth in 2012*, ROCKET LAWYER NEWS (Feb. 1, 2012), <https://www.rocketlawyer.com/news/article-SMB-Growth-2012.aspx> (discussing how small business owners describe the hardest part of running their business to include “dealing with” legal problems).

²¹⁷ Rhode & Buford Ricca, *supra* note 212, at 2596; Jennifer Smith, *Law Journal: No-Frill Legal Services Grow*, WALL ST. J., Dec. 3, 2012, at B7.

²¹⁸ See AM. BAR ASS’N., *supra* note 177.

²¹⁹ See Rhode & Buford Ricca, *supra* note 212, at 2597–98 (discussing penalties for UPL violators).

²²⁰ See AM. BAR ASS’N., *supra* note 177 (detailing each states definition of the practice of law); Deborah L. Rhode, *Policing the Professional Monopoly: A Constitutional and Empirical Analysis of Unauthorized Practice Prohibitions*, 34 STAN. L. REV. 1, 45–46 (1981).

²²¹ Rhode & Buford Ricca, *supra* note 212, at 2588.

²²² See *id.*

practice of law as “to carry on the business of an attorney at law.”²²³ A review of state provisions reveals some themes however. Generally speaking, UPL consists of either nonlawyers offering personalized legal assistance or attorneys admitted to practice in one jurisdiction attempting to practice in another.²²⁴

Turning to the disruptions described above, even though the current changes in the legal field exist primarily on the relatively modern innovation of the internet, claims of commercial unauthorized practice of law through the provision of low-cost legal advice to consumers have existed for at least five decades.²²⁵ In *New York Lawyers’ Ass’n v. Dacey*, the New York bar sought an injunction against the publication of *How to Avoid Probate*.²²⁶ This 1965 book also contained blank forms readers could copy and file in court.²²⁷ While the trial court and the midlevel appellate courts both granted the injunction,²²⁸ the state’s highest court, the Court of Appeals, reversed those lower court rulings²²⁹ and adopted the dissenting opinion of the lower appellate court that held that the publication of books that help individuals do their own legal research did not constitute UPL because “[e]very individual has a right to represent himself if he chooses to do so, and . . . to rely completely and unquestioningly upon a mass-printed form.”²³⁰ The Court of Appeals, in adopting the lower court’s dissenting opinion in *Dacey*, further held that such publications were covered under the First Amendment.²³¹ The *Dacey* decision is often cited in UPL rulings and by numerous legal advice publications.²³² It is now emerging as precedent as both state and federal courts assess the validity of websites that provide litigants with many online forms and explanations of the law.²³³

²²³ AM. BAR ASS’N., *supra* note 177, at 10 (quoting *Fink v. Peden*, 17 N.E.2d 95, 96 (Ind. 1938)).

²²⁴ MODEL RULES OF PROF’L CONDUCT r. 5.5 (2014); Gerard J. Clark, *Internet Wars: The Bar Against the Websites*, 13 J. HIGH TECH. L. 247, 275–76 (2013).

²²⁵ See, e.g., N.Y. Cnty. Lawyers’ Ass’n v. *Dacey*, 283 N.Y.S.2d 984, 987 (App. Div.), *rev’d*, 234 N.E.2d 459 (N.Y. 1967); see also *Lanctot*, *supra* note 170, at 828–36 (discussing various unauthorized practice of law challenges in the 1970s and beyond).

²²⁶ *Dacey*, 283 N.Y.S.2d at 987.

²²⁷ *Id.* at 989.

²²⁸ *Id.* at 987.

²²⁹ N.Y. Cnty Lawyers’ Ass’n v. *Dacey*, 234 N.E.2d 459, 423 (N.Y. 1967).

²³⁰ *Dacey*, 283 N.Y.S.2d at 999 (Stevens, J., dissenting).

²³¹ *Id.* at 1000.

²³² See *Lanctot*, *supra* note 170, at 823–37 (discussing the effect of *Dacey* and its progeny).

²³³ For examples of websites in which the courts themselves provided forms and/or explanations of the law see *Case & Legal Resources*, MASS. CT. SYS., <http://www.mass.gov/courts/case-legal-res/> (last visited Feb. 13, 2015); *Court Forms*, MASS. CT. SYS., <http://www.mass.g>

After *Dacey*, the Unauthorized Practice of Law Committee in Texas, a group of six lawyers and three nonlawyers appointed by the Texas Supreme Court to monitor the unauthorized practice of law in the state, brought an action in Texas federal court against Parsons Technology, Inc., the maker, at the time, of such computer programs as Quicken Family Lawyer (QFL) and Turbo Tax.²³⁴ The district court, interpreting the Texas UPL statute, found that the defendant's product, QFL, fell "within the range of conduct that Texas courts have determined to be the unauthorized practice of law."²³⁵ The court found that the program "purports to select the appropriate health care document for an individual based upon the state in which she lives."²³⁶ The court concluded that QFL went "beyond merely instructing someone how to fill in a blank form."²³⁷ This is what got Parsons into trouble. Ultimately, the court found that "[w]hile no single one of QFL's acts, in and of itself, may constitute the practice of law, taken as a whole, Parsons, through QFL, has gone beyond publishing a sample form book with instructions, and has ventured into the unauthorized practice of law."²³⁸ The district court ultimately granted the plaintiff-committee's request for summary judgment.²³⁹ While this ruling could have imposed a serious barrier to Parsons's business model, during the pendency of the appeal, the Texas legislature stepped in and passed legislation amending Texas's UPL statute, essentially excluding Parsons's products from charges of UPL.²⁴⁰ The legislation permitted the sale of computer software geared towards preparing legal documents, provided it contained disclaimers that the service was not the practice of law and did not run afoul of the state's UPL protections.²⁴¹

Despite the actions of the Texas legislature with respect to Parsons's activities in the state, courts, bar associations, and

ov/courts/forms/ (last visited Feb. 13, 2015); *Representing Yourself in Federal Court (Pro Se)*, U.S. DISTRICT CT. S. DISTRICT N.Y., http://www.nysd.uscourts.gov/courtrules_prose.php (last visited Feb. 13, 2015).

²³⁴ *Unauthorized Practice of Law Comm. v. Parsons Tech., Inc.*, No. Civ.A. 3:97CV-2859H, 1999 WL 47235, at *1 (N.D. Tex. Jan. 22, 1999), *vacated per curiam*, 179 F.3d 956 (5th Cir. 1999).

²³⁵ *Id.* at *6.

²³⁶ *Id.*

²³⁷ *Id.*

²³⁸ *Id.*

²³⁹ *Id.* at *11.

²⁴⁰ *See Unauthorized Practice of Law Comm. v. Parsons Tech., Inc.*, 179 F.3d 956, 956 (5th Cir. 1999) (*per curiam*).

²⁴¹ *Id.*; *see* TEX. GOV'T CODE ANN. § 81.101(c) (West 2013).

disciplinary bodies in seven states have labeled the services many of these companies, such as LegalZoom, provide as constituting UPL.²⁴² LegalZoom has drawn much of the attention of the legal community, with a range of cases filed against that company from California to North Carolina.²⁴³ While courts in several states have decided against LegalZoom, these courts do not always agree on the reason as to why the company has engaged in UPL.²⁴⁴ Furthermore, the outcomes of these decisions range from the requirement that LegalZoom remove certain claims and statements from the website, to such extremes where courts have ruled that the company may not offer services within the jurisdiction altogether.²⁴⁵ One of the issues courts have found with companies such as LegalZoom is the language used on their websites; many claim the services provided are just as good as those provided by a licensed attorney and that these systems were “experts” in the field of law claimed.²⁴⁶

One of the more recent cases against LegalZoom is *Janson v. LegalZoom, Inc.*, a class-action lawsuit filed in Missouri federal court in which the plaintiffs claimed that LegalZoom engaged in UPL.²⁴⁷ The Missouri UPL statute states that “[n]o person shall engage in the practice of law or do law business.”²⁴⁸ The definition of “law business” includes “the advising or counseling for a valuable consideration of any person . . . as to any secular law or the drawing . . . of any paper, document or instrument affecting or relating to secular rights or the doing of any act . . . to secure for any person . . . any property or property rights whatsoever.”²⁴⁹ LegalZoom’s attorneys argued that its service was simply a “do-it-yourself” service like that approved in *Dacey*.²⁵⁰ The Missouri district court disagreed, noting that LegalZoom did more than just provide documents to its customers.²⁵¹ The court found that the service

²⁴² Schwarzentraub, *supra* note 102, at 5–13.

²⁴³ See Catherine J. Lancot, *Does LegalZoom Have First Amendment Rights?: Some Thoughts About Freedom of Speech and the Unauthorized Practice of Law*, 20 TEMP. POL. & CIV. RTS. L. REV. 255, 258–62 (2011).

²⁴⁴ See *id.* at 258–61.

²⁴⁵ See Clark, *supra* note 224, at 256–86 (detailing the cases involving LegalZoom among the several states).

²⁴⁶ See *Janson v. LegalZoom.com, Inc.*, 802 F. Supp. 2d 1053, 1063 (W.D. Mo. 2011) (discussing how LegalZoom’s use of certain language on its website suggests that its services are the equivalent of an attorney).

²⁴⁷ *Id.* at 1057–58.

²⁴⁸ MO. ANN. STAT. § 484.020.1 (West 2014).

²⁴⁹ *Id.* at § 484.010.2.

²⁵⁰ *Janson*, 803 F. Supp. 2d at 1065.

²⁵¹ See *id.* (noting that it was the preparation of legal documents and not simply the

included having non-attorney employees check for completeness, spelling, grammatical errors, and consistency in the documents prepared through the site, and that the software programming selected the appropriate form based on information provided by the customer.²⁵² The court decided there was little difference between what LegalZoom did and what a lawyer in Missouri would do.²⁵³

The case was subsequently settled and LegalZoom was required to remove certain phrases from its website, such as “we will take care of the rest,” and to change some of its premium services.²⁵⁴ For example, the court required the company to employ attorneys licensed in Missouri to supply all premium services.²⁵⁵ In a poetic twist, the settlement amount was six million dollars, up to thirty percent of which was directed towards attorney’s fees.²⁵⁶ While LegalZoom suffered a monetary and operational setback in Missouri, the company, and others like it, have encountered much stiffer resistance in other states.²⁵⁷

In *Webster v. LegalZoom*²⁵⁸ an appellate court affirmed the class action settlement agreement overseen by the Los Angeles Superior Court resulting in a \$2.2 million payment to plaintiffs against LegalZoom in a suit alleging UPL.²⁵⁹ The Court of Appeals for the Ninth Circuit held that the services provided through Ziinet Bankruptcy Engine constituted UPL because of statements and claims made on that company’s website.²⁶⁰

The state bar in Pennsylvania has issued an opinion stating that offering or providing legal document preparation services that go beyond the supply of preprinted forms selected by the consumer constitutes UPL.²⁶¹ Similarly, the Connecticut Unauthorized Practice of Law Committee found that LegalZoom and We the People both engaged in UPL.²⁶² A court in Ohio has ruled

provision of blank forms that distinguishes this case from *Dacey*).

²⁵² *Id.* at 1055–56.

²⁵³ *Id.* at 1065.

²⁵⁴ *Plaintiffs’ Suggestions in Support of Preliminary Approval of Class Action Settlement Agreement* at 5–7, *Janson v. LegalZoom*, 802 F. Supp. 2d 1053 (W.D. Mo. 2011) (No. 2:10-CV-04018-NKL).

²⁵⁵ *Id.*

²⁵⁶ *Id.* at 3, 8.

²⁵⁷ See *Lancot*, *supra* note 243, at 258–59.

²⁵⁸ *Webster v. LegalZoom*, No. B240129, 2014 Cal. App. LEXIS 6972 (Cal. Ct. App. Oct. 1, 2014).

²⁵⁹ *Id.* at *7, *17; see also *Class Action Settlement Agreement* at 18, *Webster v. LegalZoom.com, Inc.*, No. BC438637 (Cal. June 29, 2011).

²⁶⁰ *Frankfort Digital Servs. v. Kistler*, 477 F.3d 1117, 1126 (9th Cir. 2007).

²⁶¹ Pa. Bar Ass’n Unauthorized Practice of Law Comm., Formal Op. 2010-01 (2010).

²⁶² Conn. Bar Ass’n Unauthorized Practice of Law Comm., Informal Op. 2008-01 (2008).

specifically against software that prepares legal forms.²⁶³ Although some bar associations allege, and courts have found, that these companies are engaged in UPL, it is typically expected that the companies will bring their practices into conformity with state rules; few argue that these companies should be banned altogether from serving consumers in the respective states.²⁶⁴

Disciplinary bodies in Alabama and North Carolina, however, have sought stiffer penalties. North Carolina has banned LegalZoom from selling its services within the state in the absence of appropriate legal safeguards,²⁶⁵ and a county bar association in Alabama sought to do the same.²⁶⁶ Most of these claims have focused on the concerns that services offered by LegalZoom constitute UPL under the laws of each state.²⁶⁷

Another concern having to do with the services provided by legal information companies is the degree to which they are providing, or not providing, competent and effective services. There is little dispute that the services provided by these disruptive companies are less than what an attorney might provide. Some might argue that this limited form of representation is permissible under the rules of ethics. Rule 1.2(c) of the American Bar Association Model Rule of Professional Conduct states that “[a] lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.”²⁶⁸

One component of the reasonableness requirement with respect to the provision of limited representation is that the attorney must judge whether the client receiving such limited services is capable of completing the necessary tasks suggested by the legal advice given.²⁶⁹ The consent component of limited representation also requires that the attorney make sure the limited-services client knows the scope of the services he or she is receiving.²⁷⁰ Such a

²⁶³ Ohio State Bar Ass’n. v. Cohen, 836 N.E.2d 1219, 1219–20 (2005).

²⁶⁴ See Clark, *supra* note 224, at 264–67, 277, 281–282, 292–296 (discussing instances where courts or bar associations have proscribed changes needed for the service to comply with UPL laws and emphasized support for the continued use and expansion of internet legal services).

²⁶⁵ Letter from Anthony S. di Santi, Chair, N.C. State Bar Authorized Practice Comm., to Charles E. Rampenthal, LegalZoom.com, Inc. (May 5, 2008).

²⁶⁶ Rachel M. Zahorsky, *Alabama Bar Group Files Suit to Ban LegalZoom*, A.B.A. J. (July 15, 2011), http://www.abajournal.com/news/article/alabama_lawyer_group_files_suit_to_ban_legalzoom/.

²⁶⁷ See, e.g., Clark, *supra* note 224, at 258, 272, 277–79; Zahorsky, *supra* note 266; Letter from Anthony S. di Santi to Charles E. Rampenthal, *supra* note 265.

²⁶⁸ MODEL RULES OF PROF’L CONDUCT r. 1.2(c) (2011).

²⁶⁹ See *id.* at r. 1.2(c) cmt. 7.

²⁷⁰ *Id.* at r. 1.2(c) cmt. 6.

client must also understand the risks of facing his or her legal issues without the assistance of a full-service attorney.²⁷¹ The Model Rules also require an attorney to assess whether a limited-service client, or really any client, has the capacity to understand the complexity of his or her legal issue and its implications.²⁷² The outcome of this assessment sometimes results in a finding of diminished capacity, which imposes additional, special protections.²⁷³ Since these components of limited representation would seem to require an in-person meeting for an attorney to make the assessments appropriate under the Model Rules of Professional Conduct and their state corollaries and obtain the appropriate consent to the limited representation, it is hard to argue that online services can satisfy the requirements of the rules that authorize limited representation. It is clear that most of these legal services have no such process for such meetings.²⁷⁴ To the extent these companies are providing limited representation to thousands of customers without ever having met them and without obtaining the requisite consent to that limited representation, the business model of these disruptive companies would seem to run the risk of violating the ethics rules because of the method by which they offer their services—impersonally, through websites. Of course, if these sites are not engaged in the practice of law, those rules do not apply.

Another issue that arises with these online services is the volume of clients they serve and the extent to which they can provide competent services to each of their clients. For example, one of these disruptive companies, LegalShield, employs forty-five attorneys, through the firm of Parker Stanbury LLP, and proudly claims to serve 170,000 clients in California.²⁷⁵ Even if this service can avoid the claims of non-attorney representation, the forty-five attorneys of Parker Stanbury LLP average 3778 clients each. These attorneys must be hard pressed to serve each of these clients competently if, once again, they are in fact engaged in the practice of law. At the time of this writing, there have been several complaints regarding attorney competence lodged against LegalShield,²⁷⁶ despite the competency standards in place.²⁷⁷

²⁷¹ *See id.* at r. 1.2(c).

²⁷² *Id.* at r. 1.14(a).

²⁷³ *Id.* at r. 1.14(b).

²⁷⁴ *See supra* Part III.B.

²⁷⁵ *LegalShield Services*, PARKER STANBURY LLP, <http://www.parkstan.com/pre.html> (last visited Feb. 13, 2015); *Our Attorneys*, PARKER STANBURY LLP, <http://www.parkstan.com/atty.html> (last visited Feb. 13, 2015).

²⁷⁶ *BBB Business Review: LegalShield*, BBB, <http://www.bbb.org/oklahoma-city/business-re>

E. Technological Innovation and the Justice Gap

While many of the new and innovative legal services websites have faced some UPL charges across the U.S.,²⁷⁸ there are exceptions to UPL rules; ones that act in such a way that permit technological innovation in the legal field to help close the justice gap. Generally speaking, the type of services offered by companies that offer know-your-rights guides and assistance through standardized forms will typically be found exempt from charges of UPL.²⁷⁹ The first requirement when seeking exemption from UPL charges, which is common in many cases, is that the service can offer no personalized advice to individuals.²⁸⁰ When faced with these questions, courts typically have held that when nonprofits do not offer such advice, they escape UPL charges.²⁸¹ As described above, in *Dacey*, in order for there to be UPL the provider of services must form a personal relationship with the client and render legal services to him or her.²⁸² Under the ABA's Model Code of Professional Responsibility "[t]he essence of the professional judgment of the lawyer is his educated ability to relate the general body and philosophy of law to a specific legal problem of a client."²⁸³ Thus, in order for there to be the practice of law, an individual engaged in the practice of law must offer specific advice, must give it to a specific person, and that advice must pertain to that individual's unique legal problem.²⁸⁴

views/legal-services-plans/legalshield-in-ada-ok-9000434 (last visited Feb. 13, 2015).

²⁷⁷ See *LegalShield Service Standards*, PARKER STANBURY LLP, <http://www.parkstan.com/service.html> (last visited Feb. 13, 2015).

²⁷⁸ See *supra* Part III.D.

²⁷⁹ See Patricia Jean Lamkin, Annotation, *Sale of Books or Forms Designed to Enable Laymen to Achieve Legal Results Without Assistance of Attorney as Unauthorized Practice of Law*, 71 A.L.R.3d 1000, 1003 (2014). For cases that expressly or impliedly support the view that the sale of standardized legal forms, without more, does not constitute the unauthorized practice of law, see *People ex rel. Attorney Gen. v. Bennett*, 74 P.2d 671, 672–73 (Colo. 1937); *Fla. Bar v. Stupica*, 300 So. 2d 683, 687 (Fla. 1974); *Fla. Bar v. Am. Legal & Bus. Forms, Inc.*, 274 So. 2d 225, 227 (Fla. 1973); *N.Y. Cnty. Lawyers' Ass'n v. Dacey*, 234 N.E.2d 459, 459 (N.Y. 1967); *State v. Winder*, 348 N.Y.S.2d 270, 271–72 (N.Y. App. Div. 1973); *Or. State Bar v. Gilchrist*, 538 P.2d 913, 919 (Or. 1975); *Shortz v. Yetter*, 38 Pa. D. & C. 291, 300 (C.P. 1940).

²⁸⁰ See *Stupica*, 300 So. 2d at 687; *Am. Legal & Bus. Forms, Inc.*, 274 So. 2d at 228.

²⁸¹ James E. Cabral et al., *Using Technology to Enhance Access to Justice*, 26 HARV. J.L. & TECH. 241, 318 n.377 (2012).

²⁸² See *N.Y. Cnty. Lawyers' Ass'n v. Dacey*, 283 N.Y.S.2d 984, 998 (App. Div.), *rev'd*, 234 N.E.2d 459 (N.Y. 1967).

²⁸³ MODEL CODE OF PROF'L RESPONSIBILITY EC 3-5 (1982); see also Derek A. Denckla, *Nonlawyers and the Unauthorized Practice of Law: An Overview of the Legal and Ethical Parameters*, 67 FORDHAM L. REV. 2581, 2586–87 (1999) (attempting to define UPL).

²⁸⁴ *Am. Legal & Bus. Forms, Inc.*, 274 So. 2d at 288 (citing *Fla. Bar v. Sperry*, 140 So. 2d

With an understanding of the contours of UPL and how UPL statutes might relate to disruptive innovation in the legal sector, we turn now to the question of the role technology can play in closing the justice gap and improving access to justice for low- and moderate-income individuals, families, and communities.

IV. DISRUPTIVE TECHNOLOGY AND ACCESS TO JUSTICE

The “Great Recession” of 2008 increased the need for legal services for low- and moderate-income individuals.²⁸⁵ As the need increased through the throes of the economic downturn, already strapped programs could not provide legal services to all those who qualified for assistance, and a large number of individuals across the United States faced evictions, debt collection actions, bankruptcies and foreclosures, all without the benefit of legal representation.²⁸⁶ Given the number of attorneys admitted to the bar each year and the number of applicants applying to and graduating from law schools around the country it is hard to believe that individuals have trouble accessing a lawyer.²⁸⁷ Yet, one estimate of the justice gap in New York State alone concluded that “2.3 million people are unrepresented in civil proceedings annually.”²⁸⁸ In this Part, we will address the numbers behind the justice gap and discuss recent technological innovations that can help improve access to justice for low- and moderate-income communities.

A. *Income-Based Justice*

It is “estimated that more than four-fifths of the individual legal needs of the poor and a majority of the needs of middle-income Americans remain unmet.”²⁸⁹ In addition, many individuals are unaware that they even have a legal problem.²⁹⁰ According to one study, “about a quarter of middle-income individuals and between a

587, 591 (Fla. 1962)).

²⁸⁵ See Natalie Gomez-Velez, *Structured Discrete Task Representation to Bridge the Justice Gap: CUNY Law School's Launchpad For Justice in Partnership with Courts and Communities*, 16 CUNY L. REV. 21, 21–22 (2012).

²⁸⁶ See *id.* at 21–22.

²⁸⁷ See James R. Silkenat, *Trouble in Paradox: Our Nation's Unmet Legal Needs and Unemployed Young Lawyer*, N.Y. ST. B. ASS'N J., Sept. 2013, at 55.

²⁸⁸ *Id.*

²⁸⁹ Deborah L. Rhode, *Access to Justice: An Agenda for Legal Education and Research*, 62 J. LEGAL EDUC. 531, 531 (2013).

²⁹⁰ See DEBORAH L. RHODE, ACCESS TO JUSTICE 79–80 (2004).

fifth to half of low-income individuals did nothing in the United States [to resolve their legal problems], compared with 5 percent to 18 percent in most other countries.”²⁹¹ While low-income families typically encounter two to three legal problems a year, only one-fifth of these problems involve the assistance of counsel.²⁹² Furthermore, “half of those who seek assistance at federally funded [legal services] offices are turned away.”²⁹³ According to a survey conducted by the American Bar Association’s Consortium on Legal Services, “two-thirds of the civil legal needs of moderate-income consumers were not taken to lawyers or the justice system” for assistance.²⁹⁴ State surveys have revealed similar results. In Maryland, nearly three-quarters of middle-income citizens do not contact a lawyer when confronted with a legal problem.²⁹⁵ Many Americans ignore their legal problems for a range of reasons (e.g., the inability to recognize that their legal matters are significant or beyond their ability to handle without legal representation).²⁹⁶

The U.S. Legal Services Corporation (LSC) continues to take efforts to close the justice gap.²⁹⁷ However, according to a breakdown of LSC appropriations from 1976 to 2012, the funds appropriated to the organization have significantly declined in constant dollars in recent years.²⁹⁸

For example, appropriations in 2012 dollars decreased \$64,463,000 from the previous year.²⁹⁹ Data collected from 2012 suggests that funding for legal services generally totaled \$1,293,742,000 in 2011, but the majority of this (\$989,785,000) did not include funding from LSC.³⁰⁰ Comparing this to 2010, where the civil legal assistance system was funded at \$1.5 billion, nearly

²⁹¹ Rhode, *supra* note 289, at 534.

²⁹² *Id.*

²⁹³ *Id.*

²⁹⁴ RHODE, *supra* note 290, at 79.

²⁹⁵ *Id.*

²⁹⁶ *Id.* at 79–80.

²⁹⁷ See LEGAL SERVS. CORP., STRATEGIC PLAN 2012–2016, at 2–3 (2012), available at http://www.lsc.gov/sites/default/files/LSC/lscgov4/LSC_Strategic_Plan_2012-2016--Adopted_Oct_2012.pdf.

²⁹⁸ See LEGAL SERVS. CORP., 2012 FACT BOOK 3 (2012), available at http://www.lsc.gov/sites/lsc.gov/files/LSC/lscgov4/AnnualReports/2012_Fact%20Book_FINALforWEB.pdf. For a complete breakdown of LSC’s funding between 1976 and 2012, see *infra* Appendix Figure 7.

²⁹⁹ LEGAL SERVS. CORP., *supra* note 298, at 3. For a breakdown of LSC’s appropriations in both actual and inflation-adjusted 2012 dollars, see *infra* Appendix Figure 8.

³⁰⁰ AM. BAR ASS’N., CIVIL LEGAL AID FUNDING BY SOURCE (2013), available at http://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/l_s_sclaid_atj_legal_aid_funding_source.authcheckdam.pdf (noting that LSC funding accounted for \$303,957,000, which was only twenty-three percent of total funding). For a full breakdown of funding for legal services in 2012, see *infra* Appendix Figure 9.

\$450,000,000 came from LSC and other federal sources.³⁰¹

According to the LSC, “less than one in five low-income persons get the legal assistance they need.”³⁰² Thus, to sufficiently fund legal services to meet the need of all those eligible, the LSC finds that “the federal share [of legal services funding] must grow to be five times greater than it is now, or \$1.6 billion.”³⁰³ Furthermore, because of a lack of resources, “almost one million cases . . . per year are currently being rejected [from legal services offices across the country],” the LSC argues, “because programs lack sufficient resources to handle them.”³⁰⁴ These one million cases do not include people who do not seek legal assistance, making the number of low-income people facing a legal problem without a lawyer even larger.³⁰⁵

Two state studies conducted in 2007 by Hawaii calculated the percentage of low-income people whose legal needs were actually met in the state. The first concluded that 14.68% of legal needs were being met by existing legal services providers, while the second study found thirty-one percent.³⁰⁶ By averaging these estimated figures together it demonstrates that nearly one-fifth of low-income Hawaiians’ legal needs are met.³⁰⁷ While the LSC refers to several national studies that find that “about 80 percent of low-income residents’ legal needs are unmet,”³⁰⁸ studies in Washington D.C. estimate that this figure is as high as ninety percent.³⁰⁹ Still, with the help of legal services, 809,830 cases were closed by organizations receiving LSC funding in 2012.³¹⁰ This funding provides one attorney for every 6415 low-income persons eligible to receive representation under LSC guidelines, which typically limits assistance to those at or below 125% of the federal poverty line.³¹¹ And the gap between the number of lawyers and their prospective

³⁰¹ See LEGAL SERVS. CORP., *supra* note 298, at 3.

³⁰² LEGAL SERVS. CORP., DOCUMENTING THE JUSTICE GAP IN AMERICA: THE CURRENT UNMET CIVIL LEGAL NEEDS OF LOW-INCOME AMERICANS 3 (2009), *available at* http://www.lsc.gov/sites/default/files/LSC/pdfs/documenting_the_justice_gap_in_america_2009.pdf.

³⁰³ *Id.*

³⁰⁴ *Id.* at 9.

³⁰⁵ *Id.*

³⁰⁶ *Id.* app. at A-1.

³⁰⁷ *Id.*

³⁰⁸ *Id.*

³⁰⁹ *Id.*

³¹⁰ LEGAL SERVS. CORP., *supra* note 298, at 1.

³¹¹ CENTER FOR AM. PROGRESS, CLOSING THE JUSTICE GAP: HOW INNOVATION AND EVIDENCE CAN BRING LEGAL SERVICES TO MORE AMERICANS 18 (2011), *available at* http://cdn.americanprogress.org/wp-content/uploads/issues/2011/06/pdf/prose_all.pdf; LEGAL SERVS. CORP., *supra* note 298, at 7.

clients has only widened; cuts in LSC funding meant that in 2011 alone nearly 241 full-time attorney positions were eliminated by LSC funding grantees.³¹² In addition, legal services providers that receive federal funding turn away nearly one million cases a year due to insufficient resources.³¹³

One of the reasons so many low-income people go without representation, and so many middle-income people as well, is clearly the cost of legal services.³¹⁴ According to the Center for American Progress, “[i]n 2009, the national average billing rate for attorneys was \$284 per hour . . . [excluding] court costs and paralegal time.”³¹⁵ At rates such as these, more and more individuals are choosing to represent themselves in litigation.³¹⁶ Self-representation is prevalent in many family law cases today.³¹⁷ In addition, many pro se cases involve “protection orders, landlord-tenant disputes, and probate matters.”³¹⁸ While this trend has encouraged courts to make processes easier to navigate for nonlawyers (e.g., providing simplified forms, publishing information online and in print, and offering trained personnel to provide information to pro se litigants), the litigation process is still challenging for most.³¹⁹ Self-representation is best suited for individuals whose issues are easiest to resolve, and even then it can take a substantial amount of court time to work with pro se litigants, further burdening the courts.³²⁰ In turn, this harms all litigants, both represented and unrepresented alike, because it makes it more difficult for courts to resolve the disputes before them in a timely manner.³²¹ Research suggests that “pro se litigants can cause the court to spend up to four times as much time on a case.”³²² In areas of law predominated by pro se litigants, the problem is compounded.

Another approach to closing the justice gap is the spread of what is becoming known as “unbundled” legal services.³²³ So-called

³¹² LEGAL SERVS. CORP., REPORT OF THE PRO BONO TASK FORCE 2 (2012), *available at* http://www.lsc.gov/sites/default/files/LSC/lscgov4/PBTF_%20Report_FINAL.pdf.

³¹³ CENTER FOR AM. PROGRESS, *supra* note 311, at 9.

³¹⁴ *Id.* at 16.

³¹⁵ *Id.*

³¹⁶ *Id.*

³¹⁷ *Id.* at 15.

³¹⁸ *Id.*

³¹⁹ *Id.* at 17.

³²⁰ *Id.* at 10.

³²¹ *Id.* at 11.

³²² *Id.* at 10.

³²³ Gomez-Velez, *supra* note 285, at 40.

unbundling offers individuals limited representation, often at a substantially reduced cost.³²⁴ In such situations, the attorney and client agree that the lawyer will provide some, but not all, of the work involved in traditional full-service representation.³²⁵ This keeps the cost of providing these services down, whether they are passed on to the client or not. Through such an approach, both attorney and client “agree on the discrete legal tasks to be performed.”³²⁶ Such unbundling involves breaking down what the lawyer puts into these tasks, which can include “telephone or in-person advice, client coaching, assisting clients in negotiations and litigation, document review, pleading preparation or assistance, and even assistance with discovery or limited court appearances.”³²⁷ The American Bar Association identifies thirteen “types of limited scope legal assistance” including centers that provide information, self-help resources and limited advice; hotlines; online information; preparing or reviewing documents and pleadings; and representation, including coaching, in litigation with limited disputes, to name just a few.³²⁸ However, unbundling is not always an option, as it is not ideal in all cases, especially for issues that may be more complex.³²⁹

According to the Maricopa Self-Service Center, unbundled legal services can help reduce the burden on court employees by twenty-five percent and the counsel of an attorney “is often the boost needed” to assist otherwise pro se litigants.³³⁰ As in the technology-enabled context, ethical issues regarding competency and consent arise when there is limited use of an attorney.³³¹

Perhaps the United States will never fully close the justice gap, as it is likely there will always be a number of individuals left without representation. However, investing time, money, and research into new and innovative ways to provide legal aid and representation to low- and middle-income individuals can help bridge the justice gap. The Center for American Progress has developed the “Doing What Works” Project through which it explores the gap between the legal

³²⁴ *Id.*

³²⁵ *Id.*

³²⁶ *Id.*

³²⁷ Bradley A. Vauter, *Unbundling: Filling the Gap*, 79 MICH. B. J. 1688, 1688 (2000).

³²⁸ AM. BAR ASS'N, SECTION ON LITIGATION, HANDBOOK ON LIMITED SCOPE LEGAL ASSISTANCE i (2003), available at: <https://apps.americanbar.org/litigation/taskforces/modest/report.pdf>.

³²⁹ Vauter, *supra* note 327, at 1688.

³³⁰ *Id.* at 1688–89.

³³¹ Gomez-Velez, *supra* note 285, at 27.

needs of low-income people and the capacity of the civil need assistance system to meet those needs.³³² Suggested methods to improve access to justice include the recognition of “Civil *Gideon*” rights, that is, an extension of the right to counsel provided in certain criminal contexts to civil cases where fundamental needs and rights are at stake; “unbundling” and pro se resource centers; increased funding; and greater availability of nonlawyers to help address some legal needs.³³³ In particular, increased participation of nonlawyers may be useful in mediation and family law cases.³³⁴

In 2006, the American Bar Association “adopted a resolution urging governments to provide a right to counsel for low-income individuals in cases where basic human needs—shelter, sustenance, safety, health, or child custody—are at stake.”³³⁵ Following the adoption of this resolution, California created several pilot programs to help close the justice gap.³³⁶

Many states have created their own publicly funded programs to supplement LSC funding in an attempt to close the justice gap and are relying heavily on law graduates and students currently in law school. For example, new service delivery models are emerging, such as Lawyers for America, a nonprofit organization founded by the University of California.³³⁷ The University has instituted a two-year fellowship that includes a “training year” during a law student’s final year of law school and a “service year” for the student’s first year after graduation.³³⁸ Similarly, the University of Miami School of Law’s Legal Corps places recent law graduates in

³³² CENTER FOR AM. PROGRESS, *supra* note 311, at 1. While this left-leaning organization has compiled examples of effective delivery of legal services to low- and moderate-income communities, rigorous study of the justice gap is needed to develop a clear sense of the size of the gap, the types of cases where services are most needed, and the likely cost effectiveness of legal services interventions, like eviction defense to prevent homelessness. The National Center for Access to Justice has begun to compile the best existing research on the justice gap through its “justice index.” See THE JUSTICE INDEX, www.justiceindex.org (last visited Feb. 13, 2015). For more on the need for a more rigorous assessment of the justice gap, see, e.g., REBECCA L. SANDEFUR & AARON C. SMYTH, ACCESS ACROSS AMERICA: FIRST REPORT OF THE CIVIL JUSTICE INFRASTRUCTURE MAPPING PROJECT (2011) available at http://www.americanbarfoundation.org/uploads/cms/documents/access_across_america_first_report_of_the_civil_justice_infrastructure_mapping_project.pdf; Catherine R. Albiston & Rebecca L. Sandefur, Colloquium *Expanding the Empirical Study of Access to Justice*, 2013 WIS. L. REV. 101.

³³³ *Id.* at 112–13.

³³⁴ *Id.* at 113.

³³⁵ *Id.* at 112.

³³⁶ *Id.*

³³⁷ *Lawyers for America*, U.C. HASTINGS C. L., <http://www.uchastings.edu/academics/clinical-programs/lawyers-for-america/index.php> (last visited Feb. 13, 2015).

³³⁸ *Id.*

public sector organizations nationwide.³³⁹ In addition, in the fall of 2013, Arizona State University began a program, supported by its law alumni association, which hires between ten and thirty associates each year in a two- or three-year program where “participants take on both pro bono and moderate-income clients.”³⁴⁰ Another program serving “the unmet legal needs of those with moderate incomes . . . at an affordable cost” is the Chicago Bar Foundation’s Justice Entrepreneurs Project (JEP), where participants operate as their own independent law firms.³⁴¹ The bar foundation provides the seed money and is funded through a combination of grants, donations, and revenue from law schools.³⁴² A participation fee is required during the last twelve months of the eighteen-month program, and the program purchases umbrella insurance for participants.³⁴³ The initiative currently has ten participants and plans to add ten more at six-month intervals for a maximum of thirty participants at a time.³⁴⁴ In addition, JEP includes a twenty-hour-per-week pro bono requirement to be performed within the first six months of the program.³⁴⁵ Lastly, since 2007, the City University of New York has offered “training and technical assistance to public interest attorneys” who “take on pro bono and moderate-income clients.”³⁴⁶ As many as nine participants are in the program at a time.³⁴⁷ They are required to “pay a flat monthly license fee for the space and training while enrolled in the program . . . [and] must also obtain their own malpractice insurance.”³⁴⁸

The American Bar Association also has a range of programs designed to close the justice gap, such as the Young Lawyers Division Career Development Initiative, its New Lawyer Bootcamp, and the Next Steps Challenge Program.³⁴⁹ “[T]he ABA Division for Legal Services has . . . surveyed a number of these programs,” noting that “[s]ince the downturn of the national economy, law firm

³³⁹ *University of Miami Law School Offers Their Grads for Free*, HUFF POST COLLEGE (Oct. 13, 2010), http://www.huffingtonpost.com/2010/10/13/new-postgrad-fellowship-o_n_761130.html.

³⁴⁰ Silkenat, *supra* note 287, at 57.

³⁴¹ *Id.* at 56.

³⁴² *Id.*

³⁴³ *Id.*

³⁴⁴ *Id.* at 56–57.

³⁴⁵ *Id.* at 57.

³⁴⁶ *Id.*

³⁴⁷ *Id.*

³⁴⁸ *Id.* at 56.

³⁴⁹ *Id.* at 57.

incubator and residency programs have emerged” to help increase access to justice for low- and moderate-income individuals.³⁵⁰ However, “[s]ome reputable and successful programs are running into long-term sustainability issues.”³⁵¹ Additional proposals include pro se court reform measures, increased funding and availability for civil legal services programs, and the “eliminati[on of] restrictions on legal services that prohibit engagement in certain classes of impact cases that could foster substantive change more effectively than individual representation alone.”³⁵²

Funding for civil legal services at current levels, even combining federal and state sources, cannot come close to meeting the needs of low- and moderate-income communities for legal representation. Programs across the country have developed innovative service delivery models that can spread resources to the greatest number of recipients possible, yet the justice gap still remains for the overwhelming majority of low-income Americans, and many of moderate income. The advances in communications technology made possible by the invention and spread of the internet, which have challenged traditional notions of legal services, are ripe for exploration as a means of closing the justice gap. As discussed above, ethical considerations that plague some of the for-profit models of web-based legal services delivery are less of a concern in the not-for-profit context, where rules of the legal profession permit the provision of assistance to individuals wishing to represent themselves pro se when that advice is limited to generalized advice designed to facilitate effective self-representation.³⁵³ In the next section, we will explore some attempts to harness technology to expand access to justice.

B. Technological Innovation and the Justice Gap

In early August 2014, the American Bar Association Journal co-sponsored a technology competition entitled “Hackcess to Justice” with Suffolk University Law School.³⁵⁴ The event website described its goals as follows: “[w]e are challenging lawyers, law students[,] developers, coders and others interested in improving access to

³⁵⁰ *Id.* at 56.

³⁵¹ *Id.*

³⁵² Gomez-Velez, *supra* note 285, at 24–25.

³⁵³ See discussion *supra* Part III.D.

³⁵⁴ *Suffolk Law Hosts “Hackcess to Justice” Hackathon*, SUFFOLK U. L. SCH. (July 23, 2014), <http://www.suffolk.edu/law/explore/54604.php#VCMOZRYnKd>.

justice through technology to devise a technology-enabled solution” to address access to justice issues.³⁵⁵ Submissions could have been anything technology enabled.³⁵⁶ The three judges for the event were K. Krasnow Waterman of LawTechIntersect, LLC; Glenn Rawdon, program counsel for the Legal Services Corporation; and attorney Robert Ambrogi, a media and technology professional.³⁵⁷

There were six submissions total: four apps, one website, and one online interactive tool.³⁵⁸ The three winning submissions included, in order of first to third: PaperHealth, *disastr*, and *Due Processr*.³⁵⁹ PaperHealth is an app that creates living wills and healthcare proxies through form automation.³⁶⁰ It was created by William Palin, an attorney from Massachusetts.³⁶¹ Second place was *disastr*, an app that provides news and legal information, including forms, related to natural disasters.³⁶² The app “was created by Matthew Burnett, the director of the Immigration Advocates Network, and Adam Friedl, program and special initiatives manager at Pro Bono Net.”³⁶³ *Due Processr* is an interactive tool for those in Massachusetts to determine their eligibility for free legal services and calculate state prison sentences.³⁶⁴ A three-person team consisting of David Zvenyach, a general counsel in Washington, D.C.; David Colarusso, staff attorney for the Massachusetts Committee for Public Counsel Services; and William Li, a computer science Ph.D student at the Massachusetts Institute of Technology, created this online tool.³⁶⁵

This recent event shows some of the creativity that committed

³⁵⁵ *Hackcess to Justice 2014 Is an Access to Justice Hackathon Presented by the ABA Journal and Partners*, CHALLENGEPOST, <http://hackcesstojustice2014.challengepost.com/> (last visited Feb. 13, 2015).

³⁵⁶ *Id.*

³⁵⁷ *Id.*

³⁵⁸ *Submissions*, CHALLENGEPOST, <http://hackcesstojustice2014.challengepost.com/submissions> (last visited Feb. 13, 2015).

³⁵⁹ *PaperHealth*, CHALLENGEPOST, <http://challengepost.com/software/paperhealth> (last visited Feb. 13, 2015); *Disastr*, CHALLENGEPOST, <http://challengepost.com/software/disastr> (last visited Feb. 13, 2015); *Due Processor*, CHALLENGEPOST, <http://challengepost.com/software/due-processor> (last visited Feb. 13, 2015). All the winning submissions are available for free public use. The three submissions that did not place were the following: *Divorce Decoded*, *Legal Aptitude*, and *ReEntry App*. *Submissions*, *supra* note 358.

³⁶⁰ See *PaperHealth*, *supra* note 359.

³⁶¹ Victor Li, *'Hackcess to Justice' Winners Look to Increase the Reach of Their Apps*, A.B.A. J. (Aug. 25, 2014), http://www.abajournal.com/news/article/hackathon_winners_look_to_increase_the_reach_of_their_apps/.

³⁶² *Id.*

³⁶³ *Id.*

³⁶⁴ *Id.*

³⁶⁵ *Id.*

advocates have brought to bear when exploring ways that technology can help close the justice gap. Yet these types of initiatives have been around since the early days of the internet. One organization that has been at the forefront of these efforts is Pro Bono Net, an organization that has as its mission increasing access to legal services for the poor and unrepresented.³⁶⁶ It pursues this objective in three ways: “(i) [S]upporting the innovative and effective use of technology by the nonprofit legal sector, (ii) increasing participation by volunteers, and (iii) facilitating collaborations among nonprofit legal organizations and advocates working on similar issues or in the same region.”³⁶⁷ Currently, it has regional sites in over twenty states; a national site; and an international site, including resources in regions of Canada.³⁶⁸ The non-profit organization was founded in 1999 through an Open Society Institute grant, and from there it has developed web-based tools connecting pro bono services and legal aid advocates and providing information to consumers.³⁶⁹ It has evolved by garnering a wide range of support, from corporate sponsors and law firms to foundations and nonprofit partners.³⁷⁰ Based out of New York City and San Francisco, Pro Bono Net currently hosts four programs: Probono.net, Pro Bono Manager, LawHelp.org, and LawHelp Interactive.³⁷¹

The first version of Pro Bono Net was launched in March of 1999 in New York City.³⁷² This online resource is a national network for those who are looking to offer pro bono legal services to low-income individuals and families in need of such services.³⁷³ The website is organized by practice area as well as geographic region, allowing advocates to find tools located close to them.³⁷⁴ It encourages teamwork between the range of advocates that use the site and connects them with resource libraries, mentors, and even training events for continuing legal education credit.³⁷⁵ It also has a blog called Connecting Justice Communities for members to post about

³⁶⁶ *Our Mission and Programs*, PROBONO.NET, <http://www.probono.net/about/item.Mission> (last visited Feb. 13, 2015).

³⁶⁷ *Id.*

³⁶⁸ PROBONO.NET, <http://www.probono.net/> (last visited Feb. 13, 2015).

³⁶⁹ *Our Mission and Programs*, *supra* note 366.

³⁷⁰ *Id.*

³⁷¹ *Id.*

³⁷² *Id.*

³⁷³ *See id.*

³⁷⁴ *Id.*

³⁷⁵ *See Pro Bono Calendar*, PROBONO.NET, <http://www.probono.net/calendar/> (last visited Feb. 13, 2015).

access to justice issues.³⁷⁶ There are more than 75,000 members from the public and private sectors affiliated with Pro Bono Net.³⁷⁷

With initial support from the Bill & Melinda Gates Foundation and the Booth Ferris Foundation, Pro Bono Net created a web application, Pro Bono Manager, designed to help law firms more efficiently manage their pro bono programs.³⁷⁸ The web application is a “platform [that] integrates content from the public interest legal community regarding training events, volunteer opportunities and news with powerful reporting, knowledge management and lawyer matching tools that draw on data from the law firm’s internal personnel, billing, time keeping and docketing systems.”³⁷⁹ To date, fifteen international law firms use this tool.³⁸⁰

LawHelp is a collection of websites designed to help low-income individuals find free legal aid locally, get access to social service agencies, and obtain information about court processes and legal rights.³⁸¹ The first site was launched in 2001 in New York City.³⁸² It is now available in all fifty states.³⁸³ The first step to accessing its resources is for the consumer to click the geographic region where he or she resides or needs assistance.³⁸⁴ Then, the individual can choose resources based on the practice area; some examples of such areas include disaster recovery and relief, family and juvenile issues, consumer rights, senior issues, health law and life planning, immigration, worker rights, housing, and public benefits.³⁸⁵ Since its creation, the website was awarded the 2007 Webby Award as Best Law Site.³⁸⁶ More recently, in 2012, through the LSC

³⁷⁶ Jake Hertz, *PBN & JASA Collaborate on Innovative App to Help the Homebound*, CONNECTING JUSTICE COMMUNITIES (Nov. 5, 2014), <http://www.connectingjusticecommunities.com/jasa-and-pbn-team-up-to-relax-in-the-den/2014/11/>.

³⁷⁷ *Our Mission and Programs*, *supra* note 366.

³⁷⁸ *About Us*, PROBONO MANAGER, <http://probonomanager.weebly.com/about-us.html> (last visited Feb. 13, 2015); *Our Mission and Programs*, *supra* note 366. For more information about subscribing to this tool, contact Adam Licht at alicht@probono.net.

³⁷⁹ *Our Mission and Programs*, *supra* note 366.

³⁸⁰ PROBONO MANAGER, <http://probonomanager.weebly.com/> (last visited Feb. 13, 2015).

³⁸¹ *About LawHelp.org*, LAWHELP.ORG, <http://www.lawhelp.org/about-us> (last visited Feb. 13, 2015); *see also* Cabral et al., *supra* note 281, at 246 (“Since 2000, access to legal resources and information specifically targeted to low-income people has grown tremendously. Every state now offers a statewide legal aid website, where legal services providers collaborate with other access to justice organizations to provide a portal for self-help resources and a public entry point for intake and referrals to specific organizations that offer assistance.”).

³⁸² *Our Mission and Programs*, *supra* note 366.

³⁸³ *See Find Help near You Now*, LAWHELP.ORG, <http://www.lawhelp.org/find-help> (last visited Feb. 13, 2015).

³⁸⁴ *See id.*

³⁸⁵ LAWHELPNY.ORG, <http://www.lawhelpny.org/> (last visited Feb. 13, 2015).

³⁸⁶ *About LawHelp.org*, *supra* note 381.

Technology Initiative Grant (TIG) program, LawHelp was able to launch a Spanish version of the site.³⁸⁷ Two screenshots from LawHelpNY.org and LawHelpCA.org, which show how each state version has the same basic layout, are available in the Appendix.³⁸⁸

LawHelp Interactive is an online document assembly tool available in more than half of the states that can be used by self-represented individuals, legal aid advocates, and pro bono lawyers.³⁸⁹ It covers “child support and custody, domestic violence, debt collection, foreclosures, evictions, and divorce.”³⁹⁰ In 2009 alone, the tool generated more than 145,000 forms.³⁹¹ LawHelp Interactive’s forms are designed by local pro bono and legal aid programs by using the HotDocs and A2J Author softwares.³⁹² LSC funded this project along with the State Justice Institute and Montana, New York, and California state courts.³⁹³ In 2010, the College of Law Practice Management awarded Pro Bono Net the InnovAction Award for this tool.³⁹⁴ In addition, New York court systems already support the use of this tool.³⁹⁵

The Center for Computer-Assisted Legal Instruction (CALI), with the assistance of the Illinois Institute of Technology (IIT) and Chicago-Kent College of Law’s Center for Access to Justice & Technology (CAJT), has written and helped distribute software called A2J Author.³⁹⁶ Similar to LawHelp Interactive, the full name of the cloud-based software is Access to Justice Author, and it is designed to help a self-represented party in the process of litigation.³⁹⁷ It is a document assembly tool to assist self-

³⁸⁷ *Id.*; LAWHELP.ORG, <http://espanol.lawhelp.org/> (last visited Feb. 13, 2015).

³⁸⁸ *See infra* Appendix Figures 10–11.

³⁸⁹ *See About LawHelp Interactive*, LAWHELP INTERACTIVE, <https://www.lawhelpinteractive.org/about> (last visited Feb. 13, 2015).

³⁹⁰ *Id.*

³⁹¹ *Id.*

³⁹² *Id.*

³⁹³ *Id.*

³⁹⁴ *2010 InnovAction Award Winners*, C. L. PRAC. MGMT., <http://collegeoflpm.org/innovaction-awards/award-winners/2010-innovation-award-winners/> (last visited Feb. 13, 2015); *see also InnovAction Awards*, C. L. PRAC. MGMT., <http://collegeoflpm.org/innovaction-awards/> (last visited Feb. 13, 2015) (providing additional information about the award application and evaluation process).

³⁹⁵ *LawHelp Interactive Case Study*, PROBONO.NET, http://www.probono.net/library/item.404451-LawHelp_Interactive_Case_Study (last visited Feb. 13, 2015).

³⁹⁶ *A2J Author*, CALI, <http://www.cali.org/content/a2j-author> (last visited Feb. 13, 2015); *Center for Access to Justice & Technology*, IIT CHICAGO-KENT C. L., <http://www.kentlaw.iit.edu/institutes-centers/center-for-access-to-justice-and-technology> (last visited Feb. 13, 2015); *see also* Cabral et al., *supra* note 281, at 251 (describing how A2J Author works).

³⁹⁷ *See Welcome to the A2J Author Community Site*, A2J AUTHOR, <http://www.a2jauthor.org/> (last visited Feb. 13, 2015); *A2J Author*, IIT CHICAGO-KENT C. L., <http://www.kentlaw.iit.edu/>

represented parties to prepare for court.³⁹⁸ Through the A2J Guided Interviews, the A2J Authoring System, and A2J Player, the self-represented individual can create and print court documents.³⁹⁹ To date, the website is still evolving.⁴⁰⁰ CAJT currently manages the software and strives to have student involvement in projects that emanate from it as well, which can include guided interviews as well as court-based initiatives.⁴⁰¹

In late 2013, the LSC issued a report after a national summit that identified five ways to incorporate technology in legal services for Americans.⁴⁰² The LSC website summarized these as the following:

[1.] Creating in each state a unified “legal portal” which directs persons needing legal assistance to the most appropriate form of assistance and guides self-represented litigants through the entire legal process.

[2.] Deploying sophisticated document assembly applications to support the creation of legal documents by service providers and by litigants themselves.

[3.] Taking advantage of mobile technologies to reach more persons more effectively.

[4.] Applying business process/analysis to all access-to-justice activities to make them as efficient as practicable.

[5.] Developing “expert systems” to assist lawyers and other services providers access authoritative knowledge through a computer and apply it to particular factual situations.⁴⁰³

In addition, LSC also offers TIG grants, as mentioned earlier, that help fund projects that increase client access to legal services

edu/institutes-centers/center-for-access-to-justice-and-technology/a2j-author (last visited Feb. 13, 2015).

³⁹⁸ See *Welcome to the A2J Author Community Site*, *supra* note 397.

³⁹⁹ *A2J Author*, *supra* note 396.

⁴⁰⁰ See *Welcome to the A2J Author Community Site*, *supra* note 397.

⁴⁰¹ *Center for Access to Justice & Technology*, *supra* note 396.

⁴⁰² *Summit Report Outlines New Ways Technology Can Expand Access to Justice*, LEGAL SERVICES CORP. (Dec. 30, 2013), <http://www.lsc.gov/media/press-releases/summit-report-outlines-new-ways-technology-can-expand-access-justice>.

⁴⁰³ *Id.*; see also LEGAL SERVS. CORP., REPORT OF THE SUMMIT ON THE USE OF TECHNOLOGY TO EXPAND ACCESS TO JUSTICE 2 (2013), available at http://www.lsc.gov/sites/lsc.gov/files/LSC_Tech%20Summit%20Report_2013.pdf (summarizing the five main components of the implementation strategy); Marilyn Cavicchia, *What Role Can Technology Play in Access to Justice—and Should Bar Foundations Help?*, A.B.A. B. LEADER (Sept.–Oct. 2014), http://www.americanbar.org/publications/bar_leader/2014-15/september-october/what-role-can-technology-play-access-justice-should-bar-foundations-help.html (supporting the beneficial use of portals).

through technology.⁴⁰⁴ LSC held its most recent TIG conference, a national event that focuses on technology in the provision of legal services to low-income individuals and communities, in January 2015.⁴⁰⁵

C. *Technological Innovation to Address the Foreclosure Crisis*

By recent count, roughly one out of six mortgages in the U.S. real estate market is underwater, meaning that the outstanding principal of the mortgage exceeds the value of the underlying property securing the mortgage.⁴⁰⁶ Nationally, there were nearly 52,000 foreclosure auctions scheduled in August 2014 alone, a slight year-over-year increase from the same month in 2013.⁴⁰⁷ A recent collaboration between a legal services provider, a law school, and a school of computer science helps to chart a course for interdisciplinary efforts moving forward that can utilize technology to improve access to justice, in this instance, in response to the ongoing foreclosure crisis.

In 2014, representatives from the Empire Justice Center, a New York-based, not-for-profit legal services provider; Albany Law School;⁴⁰⁸ and students in the Informatics Department at the University at Albany, teamed up to create an interactive, web-based application to assist homeowners facing foreclosure in New York State. In 2010, nearly fifty percent of borrowers in the state faced foreclosure without the assistance of an attorney.⁴⁰⁹ In order to help bridge that justice gap, the Empire Justice Center created a comprehensive foreclosure guide that was made available to homeowners in print form, and as a PDF, downloadable from the Empire Justice website.⁴¹⁰ The team working on the web-based

⁴⁰⁴ *Technology Initiative Grants*, LEGAL SERVICES CORP., <http://tig.lsc.gov/> (last visited Feb. 13, 2015).

⁴⁰⁵ *See 2015 TIG Conference*, LEGAL SERVICES CORP. (Dec. 4, 2014), <http://tig.lsc.gov/2015-tig-conference>.

⁴⁰⁶ *See Negative Equity Causing Housing Gridlock, Even as It Slowly Recedes*, ZILLOW REAL EST. RES. (Aug. 25, 2014), <http://www.zillow.com/research/2014-q2-negative-equity-report-7465/>.

⁴⁰⁷ Les Christie, *First Rise in Foreclosure Auctions in Nearly Four Years*, CNN MONEY (Sept. 11, 2014), http://money.cnn.com/2014/09/11/real_estate/rise-in-foreclosures/.

⁴⁰⁸ One of the coauthors of this piece, Raymond H. Brescia, participated personally in the development of the foreclosure guide, and the descriptions of its creation come from his recollections of the process.

⁴⁰⁹ TASK FORCE TO EXPAND ACCESS TO CIVIL LEGAL SERVS. IN N.Y., REPORT TO THE CHIEF JUDGE OF THE STATE OF NEW YORK 1, 16 (2010), *available at* <http://www.nycourts.gov/ip/access-civil-legal-services/PDF/CLS-TaskForceREPORT.pdf>.

⁴¹⁰ *See About Us*, EMPIRE JUST. CENTER, <http://foreclosureguide.empirejustice.org/aboutus>.

application converted that lengthy and detailed guide into a user-friendly, interactive, web-based application that helps homeowners navigate the foreclosure system.⁴¹¹

Here is an excerpt from the text of the home page of the web-based foreclosure guide:

This guide is designed to empower you with knowledge of the mortgage foreclosure process so you can do your best to prevent the loss of your home through foreclosure. This tool provides you with information about the process and guides you through the steps you must take to defend yourself. Although this guide can help you understand much of the process and the steps you need to take to defend yourself, we recommend finding a housing counselor or lawyer to personally help you and tell you more about your options. There is a link under the “Resources” menu to help you find such assistance. *You do not need to pay someone for these services, as free, high quality housing counseling services are available.* If you use the Resources tab, this will direct you to a credible counselor.⁴¹²

The guide goes on to direct the end user to four different channels: “What is Foreclosure?” (which takes the end user to a page containing answers to frequently asked questions concerning the foreclosure process generally), “At What Stage Am I in the Foreclosure Process?” (which helps the end user identify the procedural posture of his or her foreclosure action via a series of prompts), “Step-by-Step Guidance in the Foreclosure Process” (which provides an overview of tips and advice on how to navigate a foreclosure), and “Resources” (which provides links to an array of different services and information).⁴¹³ Throughout the website are examples of the types of correspondences a homeowner might receive, as well as blank, fillable forms appropriate for use in different stages of the foreclosure process.⁴¹⁴ The goal of this guide is to provide homeowners in New York State with a wealth of knowledge and guidance on how to navigate the foreclosure process.⁴¹⁵ While such guidance is no substitute for an attorney or

html (last visited Feb. 13, 2015); *Foreclosure Guide*, EMPIRE JUST. CENTER, <http://foreclosureguide.empirejustice.org/index.html> (last visited Feb. 13, 2015).

⁴¹¹ See *Foreclosure Guide*, *supra* note 410.

⁴¹² *Id.*

⁴¹³ *Id.*

⁴¹⁴ See, e.g., *90-Day Pre-Foreclosure Notice*, EMPIRE JUST. CENTER, <http://foreclosureguide.empirejustice.org/prefc.html> (last visited Feb. 13, 2015).

⁴¹⁵ See *Foreclosure Guide*, *supra* note 410.

counsel, when the homeowner has none it certainly offers some information and support to help the homeowner avoid the loss of his or her home. One surprising development with the application is not just that homeowners seem to be flocking to it, but housing counselors and attorneys are also accessing it for clear and concise guidance about and information on law and practice in the state.⁴¹⁶

While this foreclosure guide is certainly an example of an effective use of technology to disseminate information and provide some support to homeowners facing foreclosure without the assistance of an attorney or housing counselor, the process by which the guide came about is also instructive and offers a roadmap for future collaborations to improve access to justice through technology.

First, coauthor Raymond H. Brescia discussed the possibility of creating a web-based program with a staff member from the Empire Justice Center, Kirsten Keefe. When Keefe pointed out that the Empire Justice Center had drafted its written foreclosure guide already, it seemed primed as an object to convert into a web-based or mobile program. Brescia then reached out to contacts at the University at Albany about the prospect of identifying faculty and students who might be interested in working on such a project. As it turned out, Eric Steinborn, a faculty member at the time at the University at Albany, was looking for a project for a class he taught in web-based design. He was struggling with creating a problem for the students to solve. He was afraid he was going to have to play the role of “client” for each of his student teams and imagine all of the potential interests and needs of such a client so that the students could design a web-based program to respond to this fictional problem. When the prospect of working with the Empire Justice Center and Albany Law School converting the Empire Justice Center’s foreclosure guide into an application arose, Steinborn jumped at the chance.

As the semester unfolded, law students, staff at the Empire Justice Center, other legal services providers, and several homeowners who had faced foreclosure attended the class and discussed the foreclosure guide, the law of foreclosure, and the most effective way to present this information and organize a web-based version of the guide. The students gathered in teams, and those

⁴¹⁶ See Press Release, Albany Law Sch., Empire Justice Ctr. & Coll. of Computing and Info., Univ. at Albany, New Web-Based Program Offers Homeowners Facing Foreclosure Critical Legal Information for Free (Sept. 17, 2014), <http://www.empirejustice.org/assets/pdf/press-release/press-release-fc-guide.pdf>.

teams worked together to develop the application over the course of the semester, bringing in the “clients”—the homeowners, legal services attorneys, and law students—periodically to provide feedback and offer insights into the progress the students were making on their projects. At the end of the semester, a team of judges, including Brescia and several homeowners, “voted” on the winning team’s design, then went to work to translate the student project into the web-based application available to homeowners, housing counselors, and lawyers today.

Some of the lessons of this process include, first, that interdisciplinary teams are essential to executing such a technology-based project. Lawyers working on their own, without web-programming skills, could never have translated the Empire Justice Center’s written guide to an easy-to-use and widely accessible web-based format. Second, and on the other hand, what lawyers *can* do is provide the content for the website. For a programmer, having the content already developed by a legal professional means that the computer expert can focus on the design and feel of the web interface, as opposed to the information the site will impart. While some knowledge of the content is important, and the students, practitioners, and homeowners worked throughout the semester to educate the computer students about the foreclosure process itself, that content was already there and waiting for the programmers to convert it into an interactive, web-based program. Of course, there were times when the programmers actually took some liberties with the content, changing critical terms and subverting some of the important information contained in the guide. When this happened, they had to be reeled back in by the lawyers. For the most part, though, the process went quite smoothly, and the students appreciated having such rich content to form the basis of their projects.

In the end, this interdisciplinary collaboration is going to help improve access to justice for low- and moderate-income homeowners facing foreclosure in New York State by providing them with easy-to-access information and guidance that will help them face the foreclosure process. As it turns out, though, the application is also being used by housing counselors and lawyers alike, hopefully making their jobs a little easier and enabling them to serve homeowners better.

The project would have not been possible without the interdisciplinary collaboration of lawyers, law students and law faculty, computer science students and faculty, and, perhaps most

importantly, homeowners. The end user voice was so important in this process, not just because the students were able to learn insights from the potential “customers” of their product, but it also humanized their work and allowed them to put a face on their efforts, keeping them motivated, engaged, and inspired.

Collaborations such as these can help bridge the justice gap. The American Bar Association, legal services providers across the country, law schools, consumer advocacy groups, pro bono lawyers, and, last but not least, programmers, need to collaborate in the manner described here to leverage technology to improve access to justice.

D. Some Caveats and Concerns about Technology and the Justice Gap

Apart from raising some of the issues described earlier, like, do such services cross the line into the unauthorized practice of law, or do they provide competent services, concerns which are not unique to delivering services through technology to low- and moderate-income consumers, there are other issues that arise when technology is used to promote access to justice for these consumers.⁴¹⁷ As this article has likely exceeded any length that might be considered reasonable already, the following discussion just begins to plumb the depth of some of these issues.

First and foremost, one must ask the question: are these types of innovations a “substitute” for true access to justice? In many respects, the clear answer is “no.” Services such as the foreclosure application are no substitute for an individual receiving full representation by an attorney that is tailored to his or her needs and through which that individual receives the benefit of the lawyer’s training and experience. Representation by an attorney provides not just competent but zealous services rendered in a way that is unique to the needs of the individual, and those services are backed up by the disciplinary machinery that ensures they are rendered in a way that satisfies the attorney’s ethical obligations to the individual. An app can never substitute for that constellation of services, benefits, accountability, and oversight. Moreover, an app will not empower pro se consumers to take the aggressive steps a lawyer might take against his or her adversaries, the types of steps

⁴¹⁷ For a brief discussion of some of the concerns mentioned here, as well as others, see Cabral et al., *supra* note 281, at 305–09.

and tactics honed by a lawyer over years of practice and experience. For example, in the foreclosure context, the so-called “Robo-Sign Scandal,” in which bank officials fabricated court documents related to foreclosures in the thousands,⁴¹⁸ was not uncovered by one of the millions of American homeowners who have faced foreclosure without a lawyer. Rather, it was an intrepid and experienced lawyer working pro bono in collaboration with a legal services office in Maine whose discovery tactics helped to expose the practices that ultimately led to a multibillion-dollar settlement with five of the nation’s largest banks.⁴¹⁹

But the reality for too many Americans of low and moderate income is that they may never have the benefits of this cluster of protections that comes with full representation by a lawyer. Does the question then become “whether technologically innovative legal assistance is good enough, or better than nothing?”

The answer to this question is subject to debate. The key issue is the quality of the information and guidance imparted through technologically innovative delivery systems. There is certainly the risk that a consumer utilizing such services will be worse off, and not better, than if he or she had never used the services in the first place. If a lay person misinterprets some guidance, or worse, receives bad guidance through one of these outlets, it could leave the client in a worse situation than if he or she had never had such assistance in the first place. While this is an extreme example, individuals have long received terrible advice from tax-protesting hacks: those that believe the federal government is not permitted to collect income taxes. Some poor souls have followed such advice to their great detriment.⁴²⁰

There are several ways to overcome the twin concerns of misinterpretation of information and ensuring quality of information. To overcome misinterpretation, the providers of technology-enabled legal assistance can do at least two things. First, those who would provide information to consumers must

⁴¹⁸ For an overview of the acts that have come to be known as the Robo-Sign Scandal, see Raymond H. Brescia, *Leverage: State Enforcement Actions in the Wake of the Robo-Sign Scandal*, 64 ME. L. REV. 17, 25–27 (2011).

⁴¹⁹ See Nelson D. Schwartz & Shaila Dewan, *\$26 Billion Deal is Said to be Set for Homeowners*, N.Y. TIMES, Feb. 9, 2012, at A1 (describing the settlement); David Streitfeld, *From This House, a National Foreclosure Freeze*, N.Y. TIMES, Oct. 15, 2010, at A1 (describing tactics that uncovered robo-sign practices).

⁴²⁰ It is fitting that one can find information debunking the tax protestor line on the Nolo website. See Stephen Fishman, *Tax Protestors Never Win*, NOLO (Sept. 2012), <http://www.nolo.com/legal-encyclopedia/tax-protesters-never-win.html>.

strive to make it as clear as possible to identify the situations in which consumers can rely on the information they receive, as opposed to situations where they cannot. Queries can help situate the consumer and help him or her understand when certain strategies can be deployed and when they should not be deployed. Service providers can identify complicating factual scenarios that take an individual out of the “commodified” scenario; that is, where the one-size-fits-all approach does not quite match that individual’s situation. Second, if funding allows it, organizations can make interactive resources available for individuals to navigate the online system. For example, the rollout of the Affordable Care Act included provisions for funding for “navigators”: trained individuals who could assist those seeking to apply for health coverage.⁴²¹ With the foreclosure guide, a “Resources” link connects consumers to a tool for finding a housing counselor approved by the U.S. Department of Housing & Urban Development (HUD).⁴²² Housing counselors can serve as a live resource to homeowners and, according to anecdotal information we have received about who is using the guide, they are accessing the guide and using it as a tool to advise consumers on how to navigate the foreclosure process. Of course, the more one moves away from offering information over websites and does one-on-one counseling, the more one is moving closer to dispensing legal advice, which may begin to run afoul of legal ethics guidelines and provisions related to the unauthorized practice of law. As We The People found out as well, the cost structure of providing personal counseling services is very different from a service that offers a static, though interactive, web-based information portal.

In terms of the quality of information, there is reputational risk associated with offering a product or service that is poor, inadequate, or harmful. Organizations that offer sites such as these should make it clear that they are putting the reputation of the organization behind the site. With the foreclosure guide, the logos of the Empire Justice Center, the University at Albany, and Albany Law School are all prominently displayed, and each entity is identified as a sponsor.⁴²³ Disclosure such as this assists the consumer to determine the trustworthiness of the information. Organizations with a strong reputation will strive to ensure that

⁴²¹ 42 U.S.C. § 18031(i) (2010).

⁴²² See *Foreclosure Guide*, *supra* note 410.

⁴²³ *About Us*, *supra* note 410; *Foreclosure Guide*, *supra* note 410.

the information they provide will be of the highest quality, not just because they do not wish to harm the individuals they are setting out to assist, but also because their reputations will be at stake.

Just as nonprofits that deliver know-your-rights information, as opposed to dispensing legal advice or processing forms, have an advantage over for-profit entities that do both of those things, and run the risk of UPL charges, many providers of free legal services have both good reputations in the community and work to cultivate those relationships by inviting local leaders to serve on boards of directors and working with local elected officials to accept referrals through those officials' constituent services departments. Legal services providers have a reputation to maintain and are accountable to the communities in which they operate. Organizations such as these with a reputation to maintain and defend will strive to ensure that information offered through a web-based portal will be current and effective.

In related fields, the so-called "sharing economy" has had to grapple with ensuring the safety and quality of its services through building the reputations of its providers and consumers.⁴²⁴ Companies like Uber, Lyft, and Airbnb are working to strengthen trust among consumers and producers alike by striving not just to create reputational systems that rate both producers and consumers, but, ironically perhaps in the internet age, by attempting to enhance the face-to-face interactions between the provider of the service and the consumer.⁴²⁵ As a sharing economy of sorts, Cassandra Burke Robertson has described the increasing use of Facebook and other social media as a means of promoting access to justice, as consumers are using social media to conduct informal discovery and "crowdsourcing" legal advice from lay advocates on social media sites.⁴²⁶ No doubt, a digital marketplace of legal information is a far cry from the local practitioner who knows his or her community and develops a client base through trust built up over years of ethical, competent, zealous, and effective lawyering in that community. But the legal profession itself is likely a far cry from that ideal already.⁴²⁷ As technology-enabled

⁴²⁴ See Jason Tanz & Jeff Rogers, *From Airbnb to Lyft to Tinder, the Sharing Economy is Rewiring the Way We Interact with Each Other*, WIRED, May 1, 2014, at 96.

⁴²⁵ See *id.*

⁴²⁶ Cassandra Burke Robertson, *The Facebook Disruption: How Social Media May Transform Civil Litigation and Facilitate Access to Justice*, 65 ARK. L. REV. 75, 80–81, 84 (2012).

⁴²⁷ See ANTHONY T. KRONMAN, *THE LOST LAWYER: FAILING IDEALS OF THE LEGAL PROFESSION* 380–81 (1993) (lamenting the demise of the "lawyer-statesman" and recognizing

efforts to improve access to justice roll out, the reputation of those offering such services will likely be put to the test and, hopefully, such reputation will stand or fall on the quality of the product and the effectiveness and salience of the information provided to the consumer.

Putting reputation aside, one might also criticize the one-size-fits-all approach of many of these web-based programs, including the foreclosure guide described above. The designers of these types of initiatives could never anticipate every potential factual scenario that might confront potential end users of the product. At the same time, just as consumers are facing more one-size-fits-all treatment by the institutions with which they come in contact—banks, cell phone companies, employers, credit card companies⁴²⁸—they often face standardized pleadings from creditors. In fact, the Robo-Sign Scandal described above was one example where loan servicers used standardized forms to a fault, often fabricating such documents and mass producing them to generate litigation against homeowners in default on their mortgages.⁴²⁹ While one would not want anyone to emulate the practices of those involved in that scandal, is there some reason why those wishing to assist consumers facing such mass-produced, one-size-fits-all documents cannot respond in kind by using standardized guidance that attempts to counter such mass-produced documents and commodified strategies?

Certainly some degree of triage in sorting cases is appropriate that identifies those who can benefit from standard, commodified services and those whose cases might not fit within the well-worn tracks of typical cases and approaches. Of course, legal services offices have long done this sort of triage and have rejected cases based on procedural posture, complexity, potential conflicts of interest, or other complicating factors.⁴³⁰ With any type of case,

the benefits of practicing in a small town or small city).

⁴²⁸ Take one example, Amazon.com. As of March 2014, Amazon's market share of new book purchases across different market segments was, respectively, forty-one percent of all new book purchases; sixty-five percent of all new, online book purchases; and sixty-seven percent of e-book purchases. Polly Mosendz, *Amazon Has Basically No Competition Among Online Booksellers*, THE WIRE (May 30, 2014), <http://www.thewire.com/business/2014/05/amazon-has-basically-no-competition-among-online-booksellers/371917/>. Despite the

unquestionable trend towards greater standardization in the marketplace, the Supreme Court in *Wal-Mart Stores, Inc. v. Dukes*, found that Wal-Mart, one of the world's largest corporations, had a policy of granting local managers discretion in hiring decisions, which undermined the plaintiffs' efforts to obtain class certification because they did not identify the requisite common questions of law and/or fact required under Rule 23 of the Federal Rules of Civil Procedure. See *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2555–57 (2011).

⁴²⁹ See Brescia, *supra* note 418, at 25–26.

⁴³⁰ See Paul R. Tremblay, *Acting "a Very Moral Type of God": Triage Among Poor Clients*,

there will be those cases that bear characteristics that make them good candidates for a one-size-fits-many approach, even if it does not fit them all.⁴³¹ Since legal services offices are turning down far more individuals and families than they are serving, and, no doubt, are always engaged in some principled basis upon which to accept or reject cases, a sorting approach that attempts to identify those cases that lend themselves well to alternative means of assistance (e.g., web-based interfaces) and rejects them from full representation on that ground—which frees up other cases for representation—seems to be as good an approach as any. In fact, legal services offices likely engage in triage already, which attempts to identify consumers who can likely handle their cases pro se and rejects those consumers on that ground. It would appear logical that a system that has the option of directing those consumers to helpful, web-based information, assuming they have access to the internet, is superior to one where no such options exist.⁴³²

Another subtler critique that has great legitimacy centers around concerns that technology-based efforts to promote greater access to justice will actually harm legal services providers offering full-service representation. This concern is twofold. First, there is concern that such efforts will divert funds from full-service representation. This is certainly happening through, at a minimum, the TIG grants described above.⁴³³ At the same time, it is not clear that, were it not offering TIG grants, the LSC would simply have these funds to distribute to full-service legal services providers to offer more traditional services. Second, there is a concern that some might see the availability of web-based, online

67 FORDHAM L. REV. 2475, 2475–79 (1999) (discussing triage in nonprofit legal services offices).

⁴³¹ One example of such triaging is done across the country in the Volunteer Income Tax Assistance (VITA) clinics, programs that often receive partial funding from the Internal Revenue Service to offer tax filing assistance to help low-income individuals and the working poor who qualify for the Earned Income Tax Credit. See *IRS VITA Grant Program*, INTERNAL REVENUE SERVICE, <http://www.irs.gov/Individuals/IRS-VITA-Grant-Program> (last updated Aug. 7, 2014). Some tax filings are too complicated for such programs, however, and the applicant will be rejected on that ground. For instance one program, the United Way of St. Joseph County in Indiana, advertises the availability of VITA services but makes clear that certain applicants would not qualify for such services; for example, taxpayers with rental income, farm income, or adoption credits. *Volunteer Income Tax Assistance (VITA)*, UNITED WAY ST. JOSEPH'S COUNTY, <http://www.uwsjc.org/our-impact/other-impact-initiatives/vita.html> (last visited Feb. 13, 2015). For information about the VITA program, see *IRS VITA Grant Program*, *supra*.

⁴³² Of course, in such situations, to the extent a legal services office has relevant know-your-rights guides, they are likely to put such informational resources at the disposal of those consumers.

⁴³³ See *supra* text accompanying note 387.

services as a cheaper substitute for full-service representation, lessening the sense of urgency and the sense of need for full funding for full-service representation.

It is difficult to refute such fears, not because they are unassailable but because the funding environment for legal services for low-income people—let alone the middle class—is so challenging right now that any arguments that might undermine efforts to continue support for such funding should give those interested in ensuring access to justice pause, and with good reason. As detailed above, LSC funding has eroded relatively steadily over the last thirty years.⁴³⁴ And any diversion of existing funds from existing programs will only exacerbate that erosion. The arguments in favor of technology-enabled access to justice programming must thread the needle between making arguments that embrace the existing and future disruptions, while not undermining the effort to ensure full access to justice for all Americans in any way.

V. CONCLUSION

If the construct of *The Innovator's Dilemma* holds true, disruption in the legal industry will happen at the margins, in those segments of the legal services market currently priced out of that market or presently woefully underserved by it. Enabled by new delivery systems made possible by technology, lawyers in nonprofits, lawyers offering their services on a pro bono basis or for a modest fee, technologists working with lawyers, and peer-to-peer networks will help to chart a course towards greater access to justice for low- and moderate-income communities. At present, the rules governing the legal profession seem to reveal a preference for delivery systems that offer information to pro se litigants and assist them in charting their own course over those that offer tailored, though commodified, legal advice. While these rules seem to create a barrier to the expansion of for-profit models, the present approach adopted by nonprofit entities does not appear to cross the line that separates merely offering information from providing tailored advice. Thus, the structure of the rules governing the legal profession would seem to create an environment perfect for disruptive innovation, but only true disruptive innovation, the type that caters to the lower end of the market first and eventually works its way up to higher segments of the market.

⁴³⁴ See *supra* text accompanying notes 297–98.

Perhaps over time, once organizations and individuals experiment with and establish successful, effective, and efficient technology-enabled systems that can deliver meaningful access to justice to the lower ends of the market for legal services, these successful experiments might just help to ease the fears that something less than individualized, bespoke service is the only form of legal assistance that can serve the entire market for legal assistance. It is only then that that market will face true disruption.

In *Tomorrow's Lawyers*, Susskind writes as follows:

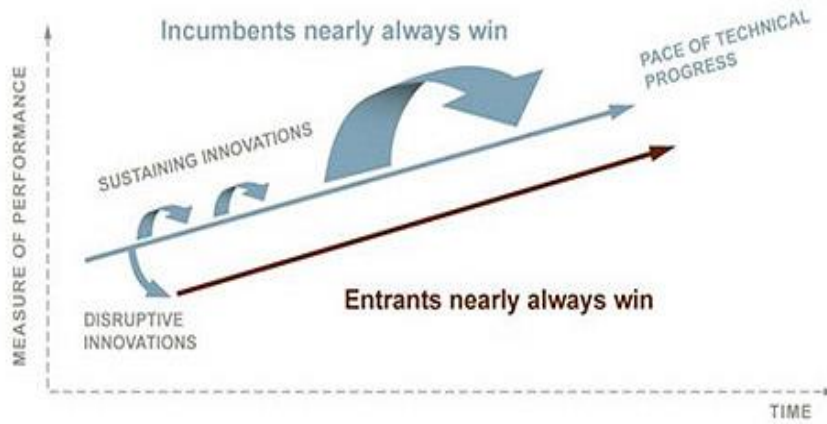
Some of these uses of online legal services will be “disruptive” for traditional law firms But, at the same time, many of these techniques will make the law available to people who would otherwise have no affordable sources of legal help. This I call the realization of the “latent legal market”—those countless occasions in the lives of many people when they need legal help and would benefit from legal help but, until now, they have been unable to secure this assistance (whether to resolve, contain, or avoid problems, or indeed to afford them some benefit). Online legal service, therefore, will liberate the latent legal market.⁴³⁵

Many lament the disruption they see taking place in the legal profession. As we hope we have shown in this article, those interested in improving access to justice in the United States should embrace some aspects of the current and upcoming disruptions to the profession. Today, for the eighty percent of low-income individuals and the fifty percent of moderate-income individuals who face their legal problems without a lawyer, or do not face them at all, this disruption could not come fast enough.

⁴³⁵ RICHARD SUSSKIND, *TOMORROW'S LAWYERS: AN INTRODUCTION TO YOUR FUTURE* 91 (2013).

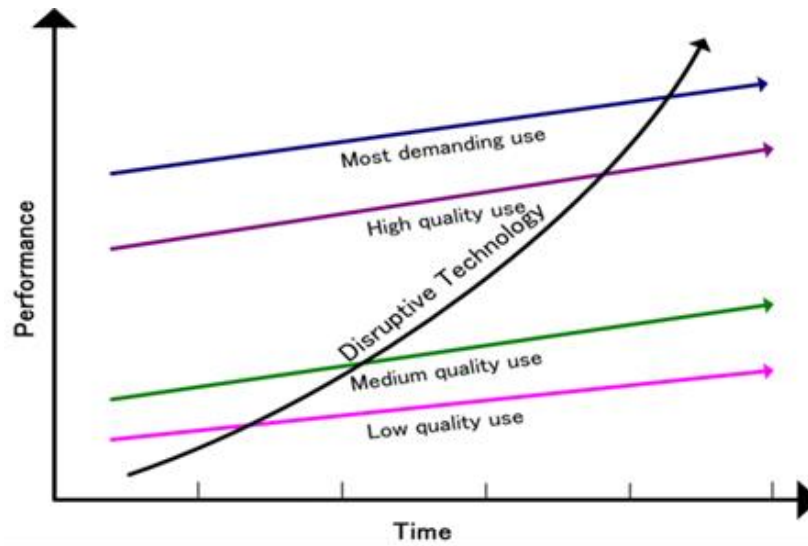
APPENDIX

Figure 1

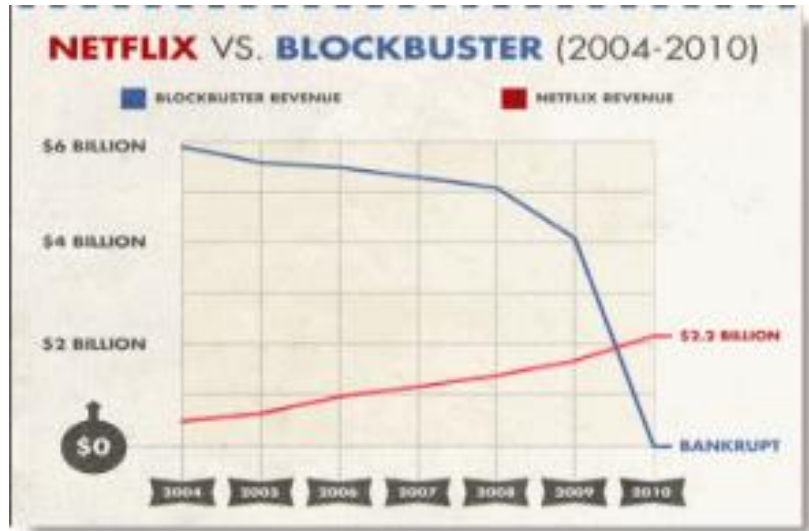


Source: *Disruptive Innovation*, supra note 3.

Figure 2



Source: *Disruptive Innovation*, WIKIPEDIA, http://en.wikipedia.org/wiki/Disruptive_innovation (last visited Feb. 13, 2015).

Figure 3

Source: Dealbook, *Blockbuster's Fall and Netflix's Rise*, *In Pictures*, N.Y. TIMES (Feb. 24, 2011), http://dealbook.nytimes.com/2011/02/24/blockbusters-fall-and-netflixs-rise-in-pictures/?_php=true&_type=blogs&_r=0.

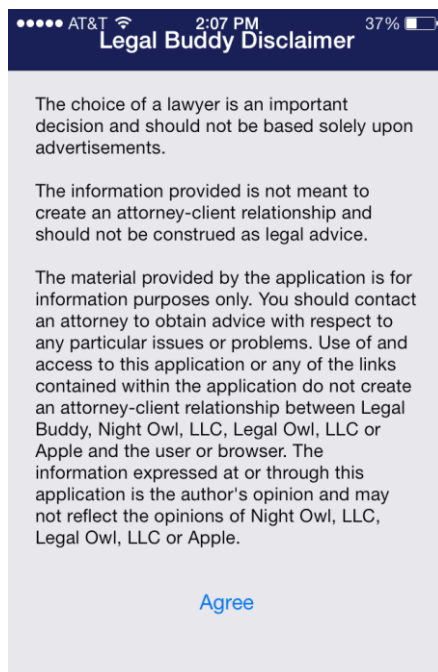
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Figure 4

<u>Disruptor</u>	<u>Disruptee</u>
Community colleges	Four-year college
Retail medical clinics	Traditional doctors' offices
Personal Computers	Mainframe and mini computers
Tablets	Personal Computers
Pandora	Conventional Radio
Toyota	General Motors/Ford
Amazon	Borders
Skype	Wireless Carriers

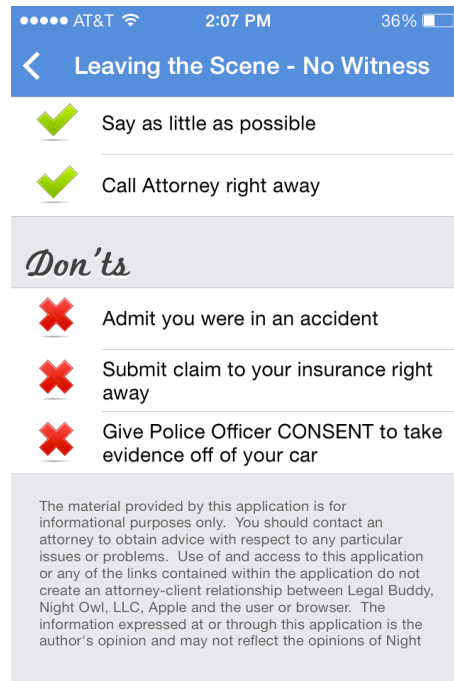
Figure 5

Source: Apple 4S iPhone version of the Legal Buddy app.

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Figure 6

Source: Apple 4S iPhone version of the Legal Buddy app, as appears when used in Albany County, New York.

Figure 7

1976 - 2012 Annual LSC Appropriations ⁵			
Grant Year	Annual LSC Appropriations (\$)	Percentage Change from Prior Year	Annual LSC Appropriations in 2012 Dollars
1976	116,960,000	—	\$471,939,000
1977	125,000,000	6.9%	\$473,585,000
1978	205,000,000	64.0%	\$721,883,000
1979	270,000,000	31.7%	\$853,862,000
1980	300,000,000	11.1%	\$835,900,000
1981	321,300,000	7.1%	\$811,535,000
1982	241,000,000	-25.0%	\$573,390,000
1983	241,000,000	0.0%	\$555,544,000
1984	275,000,000	14.1%	\$607,684,000
1985	305,000,000	10.9%	\$650,801,000
1986	292,363,000	-4.1%	\$612,452,000
1987	305,500,000	4.5%	\$617,438,000
1988	305,500,000	0.0%	\$592,908,000
1989	308,555,000	1.0%	\$571,309,000
1990	316,525,000	2.6%	\$556,023,000
1991	328,182,000	3.7%	\$553,220,000
1992	350,000,000	6.6%	\$572,758,000
1993	357,000,000	2.0%	\$567,232,000
1994	400,000,000	12.0%	\$619,687,000
1995	400,000,000	0.0%	\$602,609,000
1996	278,000,000	-30.5%	\$406,801,000
1997	283,000,000	1.8%	\$404,829,000
1998	283,000,000	0.0%	\$398,620,000
1999	300,000,000	6.0%	\$413,435,000
2000	303,841,000	1.3%	\$405,111,000
2001	329,274,000	8.4%	\$426,874,000
2002	329,300,000	0.0%	\$420,263,000
2003	336,645,488	2.2%	\$420,063,000
2004	335,282,450	-0.4%	\$407,511,000
2005	330,803,705	-1.3%	\$388,892,000
2006	326,577,984	-1.3%	\$371,926,000
2007	348,578,000	6.7%	\$385,987,000
2008	350,490,000	0.5%	\$373,754,000
2009	390,000,000	11.3%	\$417,372,000
2010	420,000,000	7.7%	\$442,223,000
2011	404,100,000	-3.8%	\$412,463,000
2012	348,000,000	-13.9%	\$348,000,000

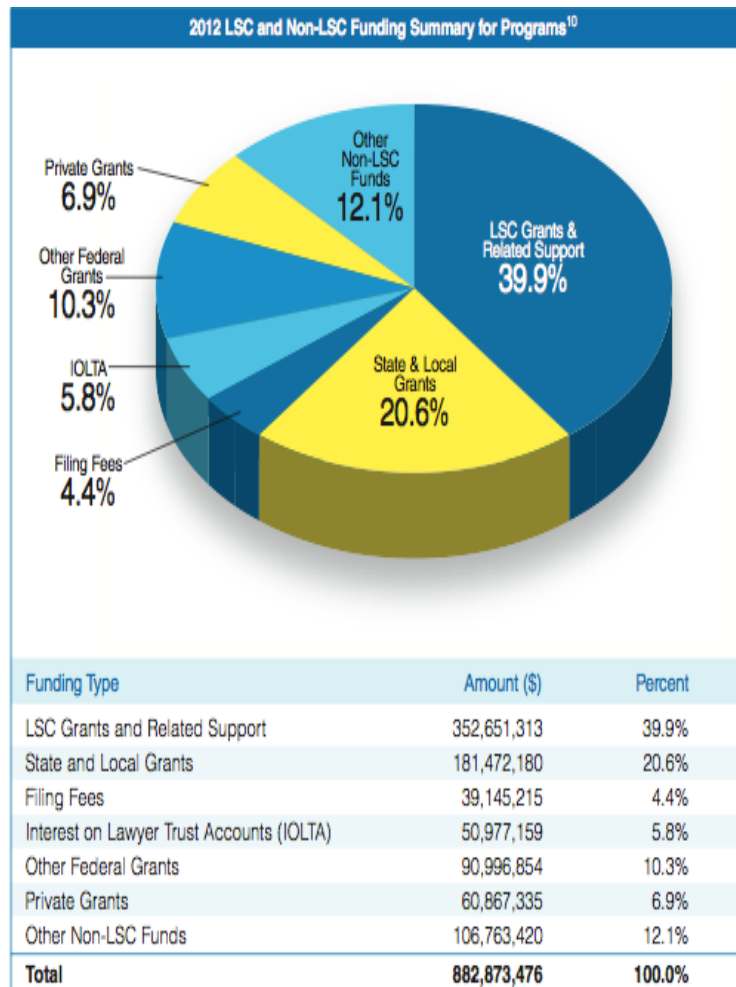
Source: LEGAL SERVS. CORP., *supra* note 298, at 3.

Figure 8



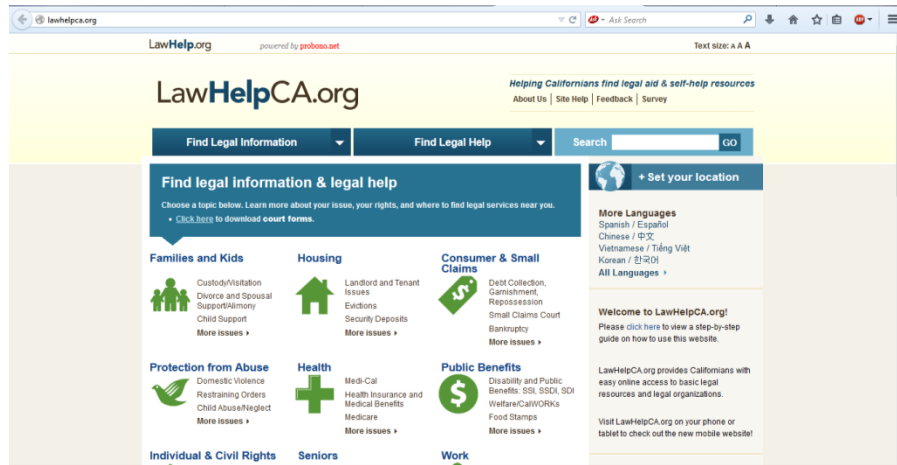
Source: LEGAL SERVS. CORP., *supra* note 298, at 4.

Figure 9



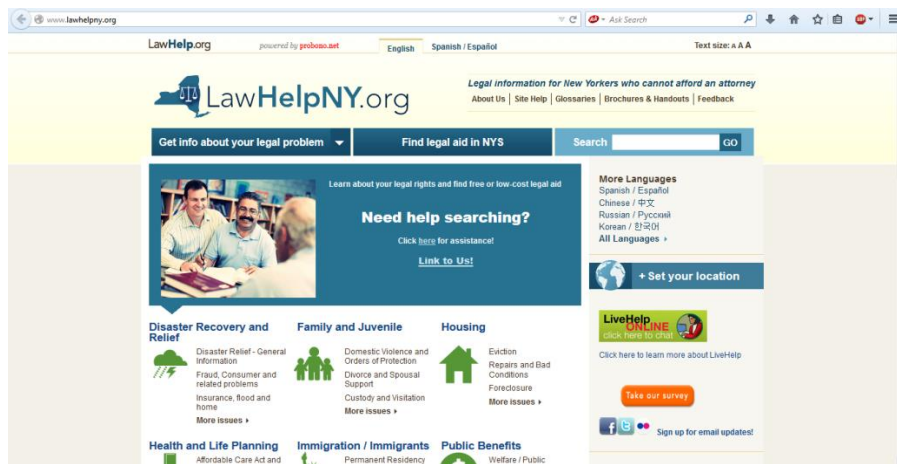
Source: LEGAL SERVS. CORP., *supra* note 298, at 8.

Figure 10



Source: LAWHELPNY.ORG, <http://www.lawhelpny.org/> (last visited Feb. 13, 2015).

Figure 11



Source: LAWHELPCA.ORG, <http://lawhelpca.org/> (last visited Feb. 13, 2015).

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