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Personal Plight Legal Practice and Tomorrow's Lawyers

By Noel Semple¹

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

This essay considers another source of opportunity for tomorrow's lawyers. It argues that *personal plight legal practice* is to some extent sheltered from the off-shoring and computerization threats, and therefore offers relatively strong career prospects for those embarking upon legal careers. Personal plight lawyers help individuals and small businesses involved in disputes with state bodies, with corporations, and with other individuals.⁶ Plaintiff-side personal injury law, criminal defence law, and family law are among the largest personal plight practice areas, but the field includes many other niches such as estate law, class actions, and immigration law.⁷

Compared to other lawyers, most personal plight legal practitioners spend a high proportion of their time doing things that are very difficult to off-shore or computerize.⁸ Legally inexperienced clients and the small size of the average personal plight file help this work resist commodification and decomposition, and suggest an enduring need for a local human touch. Tomorrow's lawyers should think seriously about career opportunities in

¹ Assistant Professor, University of Windsor Faculty of Law.

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

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

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

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

⁶ See Part II, *infra* for the origin and definition of this term.

⁷ *Id.*

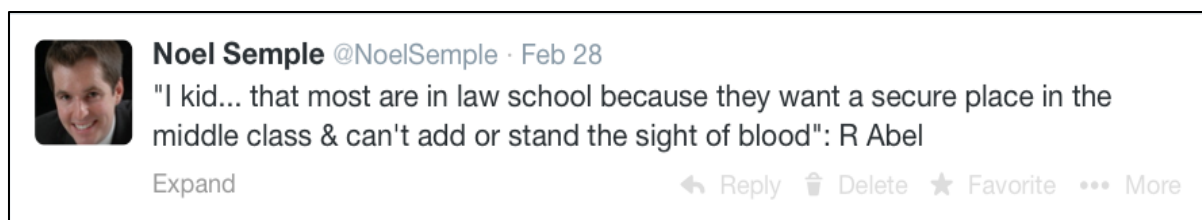
⁸ Part III, *infra*.

these fields, which offer good prospects to both "do well" and "do good." Legal educators and regulators have an important role to play in fostering successful personal plight legal practice, in order to enhance both career prospects for tomorrow's lawyers and access to justice for tomorrow's clients.

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

I. Financial Insecurity for Tomorrow's Lawyers

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



JurisDebtor's pessimism is shared by many American and Canadian law students and new lawyers today, especially those from lower-ranked law schools.¹¹ In addition to increasing law school tuition and the resulting student debt, this pessimism is borne of a sense that job prospects for new lawyers are not what they used to be. Indeed, American corporate demand for lawyers fell dramatically in 2008,¹² and has failed to track the

⁹ RICHARD L. ABEL, *LAWYERS IN THE DOCK: LEARNING FROM ATTORNEY DISCIPLINARY PROCEEDINGS* 492 (2008).

¹⁰ The Twitter profile for @JurisDebtis, who responded to the author's tweet, provides a profile link to a "scamblog" entitled *Law School Lemmings* (available at <https://twitter.com/search?q=%40JurisDebtis&src=typd>)

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

¹² Adam S. Cohen, *Is There a 'Lawyer Bubble'?* (Time.com, May 7, 2013), <http://ideas.time.com/2013/05/07/is-there-a-lawyer-bubble/> (last visited May 23, 2014).

subsequent economic recovery. While the general unemployment rate in the United States peaked at 10% in October 2009 and has subsequently fallen to 6.7%,¹³ the unemployment rate for new graduates of American law schools has increased in each year since 2008.¹⁴ Nine months after graduation, the unemployment rate of the class of 2013 was 11.2%, up from 10.6% in the previous year.¹⁵ Only about 56% of new graduates are in the most coveted law jobs – full-time positions for which passage of the bar exam is required.¹⁶ This bad news has filtered down to prospective law students, who have responded by deciding not to apply. There were only 59,400 applications to American law schools in 2013 entry, down from the 2004 peak of over 100,000 applications.¹⁷

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

¹³ Bureau of Labour Statistics (United States Department of Labor), *Labor Force Statistics from the Current Population Survey: Unemployment Rate*, <http://data.bls.gov/timeseries/LNS14000000> (last visited May 23, 2014).

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

¹⁵ AMERICAN BAR ASSOCIATION, 2013 LAW GRADUATE EMPLOYMENT DATA (2014), available at http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/2013_law_graduate_employment_data.authcheckdam.pdf. Many of those who are employed would probably consider themselves underemployed.

¹⁶ Mark Hansen, *Job market for would-be lawyers is even bleaker than it looks, analysis says* (*ABA Journal*, Apr 1, 2013), http://www.abajournal.com/news/article/job_market_for_would-be_lawyers_is_bleaker_than_it_looks_analysis_says/ (last visited May 23, 2014) and Jerry Organ, *Is the Employment Market for Law Graduates Going to be Improving?* (*The Legal Whiteboard*, March 1, 2014), <http://lawprofessors.typepad.com/legalwhiteboard/2014/03/is-the-employment-market-for-law-graduates-going-to-be-improving.html> (last visited May 23, 2014). Recruitment of new lawyers by large American law firms has also remained flat for five years in a row: National Association for Law Placement, *Entry-level Law Firm Recruiting Remains Mostly Flat* (*February 19, 2014*), http://www.nalp.org/march14_perspectives_pressrel (last visited May 23, 2014).

¹⁷ Law School Admissions Council, *End of Year Summary*, <http://www.lsac.org/lisacresources/data/lisac-volume-summary> (last visited May 23, 2014).

¹⁸ LAW SOCIETY OF UPPER CANADA, PLACEMENT REPORT: 2013 LICENSING PROCESS (2013), available at <http://www.lsuc.on.ca/WorkArea/DownloadAsset.aspx?id=2147495643>.

¹⁹ Alec Scott, *After Heenan Blaikie, is it all over for Big Law?* (*The Globe and Mail*, Mar. 27, 2014), <http://www.theglobeandmail.com/report-on-business/rob-magazine/after-heenan-blaikie-is-it-all-over-for-big-law/article17692894/#dashboard/follows/> (last visited May 23, 2014).

²⁰ Ultra Vires Staff, *Bay Street Hiring was a Bloodbath this Year* (*November 27, 2013*), (2013); Ultra Vires Staff, *Hiring Falls to Historic Lows: Lowest Recruitment Numbers Since 2003* (*Ultra Vires*, November 28, 2012),

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

Among the largest law firms, demand for domestic entry-level lawyers eroded before the recession, and has failed to keep pace with the recovery. This suggests to many that the problems are to some extent permanent as opposed to cyclical.²⁵ Commentators such as Susskind, McGinnis & Pearce, and Henderson have identified two developments that undermine long-term demand for developed-country lawyers.²⁶ The first is off-shoring; the second is computerization. These are disruptive innovations, fundamentally unlike sustaining innovations of the past.²⁷ Instead of making it easier or more profitable for lawyers to practice, they change the entire structure of the market and create space for new competitors at the expense of incumbents.²⁸

<http://ultravires.ca/2012/11/hiring-falls-to-historic-lows-lowest-recruitment-numbers-since-2003/> (last visited May 23, 2014).

²¹ William D. Henderson, *Sea Change in the Legal Market* (August 2013 — *NALP Bulletin*), <http://www.jdsupra.com/legalnews/sea-change-90478/> (last visited May 23, 2014).

²² William D. Henderson, *A Blueprint for Change*, 40 PEPPERDINE LAW REVIEW 461, 462 (2013b)[hereinafter Henderson, *Blueprint for Change*].

²³ William D. Henderson & Rachel M. Zahorsky, *Law Job Stagnation May Have Started Before the Recession— And It May Be a Sign of Lasting Change* (*A.B.A. Journal*, July 2011 Issue), http://www.abajournal.com/magazine/article/paradigm_shift/ (last visited May 23, 2014).

²⁴ *Id.*

²⁵ William D. Henderson, *Letting Go of Old Ideas*, MICH. L. REV 101, 106 (2014) [hereinafter Henderson, *Letting Go of Old Ideas*]. For a contrary view, see Rene Reich-Graefe, *Keep Calm and Carry On*, 27 GEO. J. LEGAL ETHICS 55 (2014); Edward Rubin, *The Future and Legal Education: Are Law Schools Failing and, If So, How?*, 39 LAW & SOCIAL INQUIRY 499 (2014).

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

²⁷ McGinnis & Pearce, *supra* note 3.

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

1. Off-shoring

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

2. Computerization

The second threat is *computerization*, also known as computerization.³² Intelligent machines replace legal workers and facilitate commodification, in which legal services are provided with decreasing quantities of lawyer labor.³³ The print journalism industry has been profoundly disrupted by information technology, and John McGinnis and Russell Pearce argue that a similar development is imminent for law.³⁴

In document-heavy litigation, for example, e-discovery software already allows disclosure requirements to be fulfilled by one lawyer overseeing an automated process, rather than a large team of associates sifting through boxes of paper.³⁵ This is an example of the "one-to-many modes of legal problem solving" that Henderson sees increasingly replacing traditional "one-to-one artisan lawyering."³⁶ Another example is quantitative

²⁹ Regarding the off-shoring threat to North American lawyers, see Ray Worthy Campbell, *Rethinking Regulation And Innovation In The U.S. Legal Services Market*, 9 NEW YORK UNIVERSITY JOURNAL OF LAW & BUSINESS 1, 41 (2012) and JORDAN FURLONG, *THE NEW WORLD OF LEGAL WORK: THE CHANGING RULES OF THE 21ST CENTURY* 38 (2014), available at http://www.lod.co.uk/media/pdfs/The_New_World_Of_Legal_Digital_Download.pdf.

³⁰ Henderson and Zahorsky, *supra* note 23.

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

³² SUSSKIND, *supra* note 2 at 37; JORDAN FURLONG, *THE NEW WORLD OF LEGAL WORK: THE CHANGING RULES OF THE 21ST CENTURY* 45 (2014), available at http://www.lod.co.uk/media/pdfs/The_New_World_Of_Legal_Digital_Download.pdf.

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

³⁴ McGinnis & Pearce, *supra* note 3.

³⁵ McGinnis & Pearce, *supra* note 3, at 3047-8.

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

legal prediction, in which computers forecast likely case outcomes using inductive reasoning and large databases of prior outcomes.³⁷

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

3. Decomposition

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

Thus, off-shoring and computerization are more serious threats to junior lawyers than to senior ones. To the extent that young lawyers' work is more routine, it is more readily replaced by these processes. The disproportionate competitive threat to newer lawyers may underlie the reportedly increasing perception among corporate clients that junior lawyers' work is no longer worth the price that firms have traditionally charged for it.⁴² Off-shoring and computerization are entrenched and accelerating phenomena, that are already having significant impact on the legal services marketplace.⁴³ Tomorrow's lawyers must understand what these trends mean for their career prospects, and regulators, law schools, and other professional groups must respond. Understanding the differential impact of the trends on different parts of the legal services marketplace is key.

³⁷ Katz, *supra* note 33.

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

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

⁴⁰ Susskind, *supra* note 2 at 29/180.

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

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

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

II. A Map of the Bar

John Heinz and Edward Laumann introduced the phrase "personal plight" in a 1978 article as a way to characterize a certain type of legal practice.⁴⁴ After interviewing 777 Chicago-area lawyers, Heinz and Laumann found that the profession was divided into two "hemispheres" based on clientele. Lawyers tended to have *either* (i) large corporate and government agencies as clients, or else (ii) individuals and small businesses as clients.⁴⁵ The average lawyer was unlikely in the 1970s to draw clients from both groups,⁴⁶ and is even less likely to do so today.⁴⁷

Heinz and Laumann subdivided their personal client hemisphere into "personal business" and "personal plight" groups.⁴⁸ The personal *business* group includes legal services related to financial transactions, such as drafting or probating a will, arranging the transfer of residential real estate, or buying or selling a small business. In the personal *plight* group, they placed criminal defence, plaintiff-side personal injury, and divorce practice.⁴⁹ These three practice areas have two things in common: (i) the presence of a dispute or adverse interests in each file,⁵⁰ and (ii) the fact that the clients are individuals.

Personal plight lawyers help people negotiate with and assert legal rights against other individuals, corporations, and state bodies. Contested immigration and personal tax matters, consumer protection law, employee-side employment law and human rights are other examples of personal plight legal practice. Work for small corporate clients embroiled in legal disputes also seems to belong in the personal plight group.⁵¹ If a

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

⁴⁵ HEINZ AND LAUMANN, CHICAGO LAWYERS, *id.* at 34.

⁴⁶ HEINZ AND LAUMANN, CHICAGO LAWYERS, *supra* note 44 at 43.

⁴⁷ JOHN P. HEINZ, et al., URBAN LAWYERS: THE NEW SOCIAL STRUCTURE OF THE BAR (2005) [hereinafter HEINZ ET AL., URBAN LAWYERS]. Regarding the increasing degree of specialism among American lawyers, see RONIT DINOVIETZ, et al., AFTER THE JD II: SECOND RESULTS FROM A NATIONAL STUDY OF LEGAL CAREERS 32 (2009), available at <http://www.americanbarfoundation.org/publications/338> and David B. Wilkins, "Some Realism about legal Realism for Lawyers: Assessing the role of Context in Legal Ethics," in LAWYERS IN PRACTICE: ETHICAL DECISION MAKING IN CONTEXT (Leslie C. Levin & Lynn M. Mather eds., 2012) at 29-30.

⁴⁸ HEINZ AND LAUMANN, *supra* note 44 at 73.

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

⁵⁰ A few files in these practice areas have no outstanding dispute. An example would be the uncontested divorce in which all financial and parenting arrangements have been agreed upon by the parties and the lawyer is only needed to secure the formal divorce order from the court. However the overwhelming majority of effort by lawyers in these practice areas is dedicated to contested matters.

⁵¹ Here the author parts company with Heinz and Laumann. They categorized "general litigation" within the personal business group rather than the personal plight group: HEINZ AND LAUMANN, *supra* note 44 at 73; HEINZ ET AL., URBAN LAWYERS, *supra* note 47 at 35. This term is not defined but it probably refers to disputes experienced by small businesses.

corporation is small enough (e.g. controlled by a single individual or family) that the outcome of a legal dispute will have significant personal ramifications for the corporation's principals, and if those principals are legally inexperienced, then the distinct dynamics of personal plight practice discussed below are likely to be present.

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

the 'personal plight' group includes fields concerned with emotional issues, with personal freedom or liberty, or with personal anguish... the distinguishing characteristic of the 'personal plight' fields is their emotive content.⁵²

For the typical criminal defendant or a personal injury plaintiff -- unlike the large institutional client on the other side -- a case is not 'just another case,' whose ideal resolution is a function of a risk-reward calculation. As will be seen below, this fact helps personal plight legal practice resist both off-shoring and computerization.

III. A Sheltered Field

Personal plight practice is relatively sheltered from the long-term off-shoring and computerization threats to developed country lawyers.⁵³ Compared to the corporate-client hemisphere, and compared to personal business work involving uncontested transactions and planning, personal plight legal practice involves many tasks that off-shore lawyers and computers will have difficulty performing in the foreseeable future. It would be foolhardy to predict that this lawyer work can never be off-shored or computerized. However, it can reasonably be said that during the careers of today's law students, these fields will be better sheltered from the bracing winds of off-shoring and computerization than corporate and personal business work will be. This Part of the essay explains why this is so.

1. The Local Human Touch

Most personal plight legal practice involves a relatively low proportion of document review, drafting, and legal research, and a correspondingly high proportion of client counselling, advocacy and negotiation. This is good news for the lawyers who do this work, because these tasks tend to require a local human touch.⁵⁴ Most courts still require in-

⁵² HEINZ AND LAUMANN, CHICAGO LAWYERS, *supra* note 44 at 72, note 11.

⁵³ Part I, *supra*.

⁵⁴ Richard Susskind and Jordan Furlong, two of the leading prognosticators of the off-shoring and computerization trends, both recognize trial advocacy as one of the lawyer endeavours which is relatively well-positioned: SUSSKIND, *supra* note 2 at Chapter 6; JORDAN FURLONG, THREE WAYS TO COMPETE IN THE COMING LEGAL MARKET (2014), available at <http://www.attorneyatwork.com/three-ways-to-compete-coming-legal-market/>.

person appearance by a lawyer licensed in the local jurisdiction, ruling out an off-shore professional or a computer.⁵⁵ Alternative dispute resolution options (e.g. mediation and arbitration) and online dispute resolution are scarcely more flexible in this regard. In personal plight practice, the most important and most frequently used form of advocacy is persuading the other side (*not* persuading a neutral third party) of the merits of one's case, in order to secure a favorable settlement. Computers are many years from being able to do this effectively, and off-shore lawyers are excluded by unauthorized practice prohibitions.⁵⁶

Computerization of settlement negotiations has some prospects in purely distributive disputes over money.⁵⁷ However, in cases where an individual client has complex and shifting interests, computers are very far from being able to understand and effectively secure those interests in a negotiated resolution. A client who is divorcing from a co-parent, or contesting the care of an older relative, is often best served by a settlement that creatively identifies options that work well for everyone involved, within the framework of the law.⁵⁸ Cost-effectively securing such an outcome may require an advocate with personal reputation within a local community of practice, and a working knowledge of what outcomes are considered reasonable by other lawyers and judges within the local legal culture.⁵⁹ The advocate may also need "insider" familiarity with the idiosyncrasies of local law and procedure.⁶⁰

Personal plight clients are usually legally inexperienced "one-shotters," who have only occasional recourse to the law.⁶¹ Unlike in-house counsel or executives within a large corporate client, personal plight clients often have little sense of what their legal rights are. Lawyers with inexperienced clients must *translate* between the law and the lived reality of the client. When clients tell stories about their lives and their needs, lawyers must empathetically understand those stories and tell intelligible stories of their own about the

⁵⁵ McGinnis & Pearce, *supra* note 3, at 3055, argue that oral advocacy will not be performed by computers in the foreseeable future.

⁵⁶ Campbell, *supra* note 28, at 43-44.

⁵⁷ See for example the eBay Resolution Centre (<http://resolutioncenter.ebay.com>) and RICHARD E. SUSSKIND, THE END OF LAWYERS? : RETHINKING THE NATURE OF LEGAL SERVICES 218 (2008).

⁵⁸ ROGER FISHER & WILLIAM L. URY, GETTING TO YES: NEGOTIATING AGREEMENT WITHOUT GIVING IN (1981); Bernard S. Mayer, *Facilitative Mediation*, in DIVORCE AND FAMILY MEDIATION: MODELS, TECHNIQUES, AND APPLICATIONS (Jay Folberg, et al. eds., 2004); Carrie Joan Menkel-Meadow, *Too many lawyers? Or should lawyers be doing other things?*, 19 INTERNATIONAL JOURNAL OF THE LEGAL PROFESSION 147, 156 (2012).

⁵⁹ Thomas Church, *Examining Local Legal Culture*, AMERICAN BAR FOUNDATION RESEARCH JOURNAL 449 (1985); LYNN M. MATHER, et al., DIVORCE LAWYERS AT WORK: VARIETIES OF PROFESSIONALISM IN PRACTICE 48-51 (2001); JULIE MACFARLANE, THE NEW LAWYER : HOW SETTLEMENT IS TRANSFORMING THE PRACTICE OF LAW 35-37 (2008) [hereinafter MACFARLANE, THE NEW LAWYER].

⁶⁰ CARROLL SERON, THE BUSINESS OF PRACTICING LAW: THE WORK LIVES OF SOLO AND SMALL-FIRM ATTORNEYS 111 (1996); AUSTIN SARAT & WILLIAM L. F. FELSTINER, DIVORCE LAWYERS AND THEIR CLIENTS: POWER AND MEANING IN THE LEGAL PROCESS Chapter 5 (1997).

⁶¹ Marc Galanter, *Why the "Haves" Come Out Ahead: Speculations on the Limits of Legal Change*, 9 LAW & SOCIETY REVIEW 59 (1974); Campbell, *supra* note 28 at 36.

law.⁶² Personal plight lawyers must not only provide information but create a bond of trust with their clients, in order to cement an effective alliance.⁶³ They must shape their clients' expectations, strengthening resolve in some cases and throwing cold water in others in order to set the stage for a resolution acceptable to both sides.⁶⁴

In order to advance a client's interests, a lawyer must first comprehend those interests. In personal plight practice, this often involves proactively helping the client understand what he or she really wants.⁶⁵ Empathy, emotional intelligence, and communication skills are very important for most personal plight lawyers.⁶⁶ These skills are useful for other lawyers as well, but more sophisticated and experienced clients are less likely to require the same level of interpersonal and "soft" skills from their lawyers.

Personal plight matters are by definition contested. The lawyer's strategy in each case must take into account not only the "shadow" of the law,⁶⁷ but also the position and tactics of the adversary.⁶⁸ Most decisions about how to proceed with a given file have cost consequences, but the price of the procedure to the client must remain proportional to the value of the outcome.⁶⁹ While different personal plight niches demand different lawyer skills, they share a high reliance on the local human touch. For this reason, lawyers in these practice areas are relatively well-positioned to survive the off-shoring and computerization threats.

2. Resistance to Decomposition

As noted above, off-shoring and computerization usually depend on the decomposition of legal matters.⁷⁰ Compared to corporate-hemisphere work, it is relatively

⁶² SARAT & FELSTINER, *supra* note 60 at 17; Daphne Dumont, "Better . . . or Worse?" *The Satisfactions and Frustrations of the Lawyer-Client Relationship*, in *WHY GOOD LAWYERS MATTER* 24, (David L. Blaikie, et al. eds., 2012).

⁶³ Stephen Ellmann, *Client-Centeredness Multiplied: Individual Autonomy and Collective Mobilization in Public Interest Lawyers' Representation of Groups*, 78 VA. L. REV. 1103, 1128-9 (1992); SERON, *supra* note 60 at 107; McGinnis & Pearce, *supra* note 3, at 3055.

⁶⁴ MATHER, *supra* note 59 at 96 *et seq* and Chapter 5.

⁶⁵ Ellmann, *supra* note 63 at 1139; SARAT & FELSTINER, *supra* note 60 at 53.

⁶⁶ SERON, *supra* note 60 at 111-112; MACFARLANE, *THE NEW LAWYER*, *supra* note 59 at 23 and 137; Ann Juergens, *Valuing Small Firm and Solo Law Practice: Models for Expanding Service to Middle-Income Clients*, 39 WILLIAM MITCHELL LAW REVIEW 80, 108 (2012)).

⁶⁷ Robert H. Mnookin & Lewis Kornhauser, *Bargaining in the Shadow of the Law: The Case of Divorce*, 88 YALE L.J. 950 (1979).

⁶⁸ SERON, *supra* note 60 at 107-8; BECKY BATAGOL & THEA BROWN, *BARGAINING IN THE SHADOW OF THE LAW: THE CASE OF FAMILY MEDIATION* (2011).

⁶⁹ ACTION COMMITTEE ON ACCESS TO JUSTICE IN CIVIL AND FAMILY MATTERS, *ACCESS TO CIVIL & FAMILY JUSTICE: A ROADMAP FOR CHANGE* (2013), available at http://www.cfcj-fcjc.org/sites/default/files/docs/2013/AC_Report_English_Final.pdf

⁷⁰ Part I, section 3, *supra*.

uneconomical to subdivide personal plight legal work into constituent tasks. Inexperienced personal plight clients are less able than corporate clients are to decompose and parcel out their own legal needs to a "vendor network."⁷¹ An intermediary can work with the client to decompose the work, but the necessity of a middle-person makes decomposition less economically viable.

The size of personal plight files is a more intractable impediment to decomposition. Compared to a corporate lawyer, a family lawyer or a personal injury lawyer is likely to work on a much larger number of much smaller files within a year.⁷² Decomposing each file involves fixed costs, which are harder to justify if each file is smaller. For example, an offshore legal process outsourcer specializing in document review must be briefed about what to look for in each file that is allocated to it. If the work is a single large transaction or corporate litigation file with 10,000 documents, this fixed cost can easily be recouped. However if the work is 500 criminal defence files with 20 documents each, then the fixed cost of bringing the outsourcer up to speed on each file is much harder to absorb.

3. Resistance to Commodification

Personal plight practice is distinguished not only from corporate-hemisphere work, but also from personal business work involving uncontested transactions and planning for individual and small business clients.⁷³ Personal business work, like personal plight work, typically has legally inexperienced clients. However, it lacks the adversaries and the necessity for compromise which characterize personal plight work. Companies like LegalZoom and RocketLawyer have led the way in computerizing and commodifying personal business work, posing a grave and immediate threat to lawyers' revenue from tasks such as incorporation, will-drafting, and transfer of real estate.⁷⁴

However to the extent that these new businesses seek to offer personal plight legal services, they can do so only by referring clients to lawyers, perhaps with a discounted rate secured by buying in volume. The computerization which has allowed LegalZoom and its peers to provide personal business services with minimal lawyer input has not yet been successfully applied to personal plight matters. Moreover, these businesses expose themselves to legal liability for unauthorized practice when they attempt to deploy non-lawyers.⁷⁵

⁷¹ Campbell, *supra* note 28 at 36.

⁷² John P. Heinz & Edward O. Laumann, *The Legal Profession: Client Interests, Professional Roles, and Social Hierarchies*, 76 MICH. L. REV. 1111, 1120-1 (1978); RICHARD L. ABEL, *AMERICAN LAWYERS* 204 (New ed. 1989); Sara Parikh, *How the Spider Catches the Fly: Referral Networks in the Plaintiffs' Personal Injury Bar*, 51 NEW YORK LAW SCHOOL LAW REVIEW 243, 246 (2007).

⁷³ Part II, *supra*.

⁷⁴ CAROL MCEOWN, CIVIL LEGAL NEEDS RESEARCH REPORT 3042 (2009), available at <http://www.lawfoundationbc.org/wp-content/uploads/Civil-Legal-Needs-Research-FINAL.pdf>.

⁷⁵ Campbell, *supra* note 28, at 43-47; Gillian Hadfield, *Innovating to Improve Access: Changing the Way Courts Regulate Legal Markets*, 143 DAEDALUS, 16-17 (2014).

4. Not Future-proof, but Sheltered

Personal plight legal practice is not future-proof. The "more-for-less challenge" – people's inability to go without legal services combined with inability to pay for those services as traditionally delivered – is very pressing for personal plight clients.⁷⁶ They are certainly part of the "tremendous pent-up demand for better, faster, and cheaper legal products and services."⁷⁷ Some personal plight lawyers will face competition from non-lawyers in jurisdictions that license independent paralegals, such as New York, Washington State, and Ontario.⁷⁸ However, legal services regulation in North America requires that most paralegal services be provided under the supervision of a lawyer. These rules make paralegals a sustaining innovation which enhances lawyer profits, rather than a disruptive innovation which puts lawyers out of business.⁷⁹

Thus, it seems plausible that personal plight legal practice will offer better career prospects than other practice areas will, at least over the 40-50 year period during which today's law students and new lawyers will be practicing.⁸⁰ To the extent that off-shoring and computerization do occur, personal plight lawyers are relatively well positioned to be the beneficiaries, rather than the victims, of these trends. Because inexperienced clients have difficulty decomposing their own legal needs, lawyers will have the opportunity to do so on their clients' behalf. If they take advantage of this opportunity, they will be able to reduce prices while preserving profits and remaining essential to their clients.⁸¹ Heinz et al. found that the proportion of all Chicago lawyers' time devoted to corporate and institutional clients increased markedly between 1975 and 1995.⁸² It would be

⁷⁶ SUSSKIND, *supra* note 2; Campbell, *supra* note 28 at 36.

⁷⁷ Henderson, *Letting Go of Old Ideas*, *supra* note 25 at 121.

⁷⁸ New York State Unified Court System, *Court Navigator Program*, <http://www.courts.state.ny.us/COURTS/nyc/housing/rap.shtml> (last visited May 23, 2014); Washington Courts, *Supreme Court Adopts Rule Authorizing Non-Lawyers to Assist in Certain Civil Legal Matters*, <http://www.courts.wa.gov/newsinfo/?fa=newsinfo.internetdetail&newsid=2136> (last visited May 23, 2014); Law Society of Upper Canada, *By-Law 4: Licensing. Adopted by Convocation on May 1, 2007; most recently amended June 23, 2011*, (2007), ss. 5-6. See also Jordan Furlong, *Three Ways to Compete in the Coming Legal Market (Attorney at Work, March 3, 2014)*, <http://www.attorneyatwork.com/three-ways-to-compete-coming-legal-market/> (last visited May 23, 2014) Summarizing these and other threats to the legal profession's monopoly, see Leslie C. Levin, *The Monopoly Myth and Other Tales about the Superiority of Lawyers*, 82 FORDHAM L. REV. 2611 (2014).

⁷⁹ Campbell, *supra* note 28, at 40.

⁸⁰ It is difficult to confirm or deny this argument using lawyer employment data. Personal plight work is predominantly done by small firms and solo practitioners (HEINZ ET AL., URBAN LAWYERS, *supra* note 47 at 69). Hiring and revenue figures for these firms are not part of the data gathered by organizations such as the National Association for Law Placement (NALP). Nor do lawyer unemployment statistics issued by the American Bar Association distinguish between practice areas. (see e.g. http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/reports/law_grad_employment_data.authcheckdam.pdf).

⁸¹ See Part III, Section 2, *supra*.

⁸² HEINZ ET AL., URBAN LAWYERS, *supra* note 47 at 46-47.

unsurprising to find this trend halted or reversed in coming decades, if corporations and institutions increasingly substitute technology and foreign labor for their domestic lawyers, while personal plight clients remain unable to do so.

In any court or tribunal where individuals' matters predominate, the large cohort of self-represented litigants offers evidence of extensive unmet demand for personal plight legal services. Empirical research with self-represented litigants suggests that most of these people have *not* decided that they do not need expert help.⁸³ Rather, they want and in many cases have some ability to pay for expert legal services.⁸⁴ Scholars such as Russell Pearce and Edward Rubin predict continuing, and perhaps increasing, demand for lawyers to assert human and economic rights for individuals in the face of growing socioeconomic inequality.⁸⁵ Tomorrow's lawyers have an opportunity to tap a large and potentially lucrative middle-class market, if they can surmount the affordability and other problems that make lawyers' services inaccessible to middle- and low-income people today.⁸⁶

IV. Opening Doors to Personal Plight Practice

Law schools, regulators, and professional groups should work to open doors between tomorrow's lawyers and personal plight legal practice. If it is true that these fields offer relatively strong long-term career prospects, then opening these doors is a constructive and practical response to the insecurity and pessimism afflicting many at the outset of their careers today. Moreover, bringing more lawyers into personal plight practice can help address the endemic inaccessibility of justice in North America.⁸⁷ Personal plight is the epicentre of the access to justice problem, and having more trained "boots on the ground" to meet these needs is part of the solution.

⁸³ JULIE MACFARLANE, *THE NATIONAL SELF-REPRESENTED LITIGANTS PROJECT: IDENTIFYING AND MEETING THE NEEDS OF SELF-REPRESENTED LITIGANTS* 82, 121 (2013), available at <http://www.representing-yourself.com/PDF/reportM15.pdf>.

⁸⁴ Moreover, those who do have lawyers are generally pleased with them: Rachel Birnbaum, et al., *The Rise of Self-Representation in Canada's Family Courts: The Complex Picture Revealed in Surveys of Judges, Lawyers & Litigants*, 91 *CANADIAN BAR REVIEW* 67, 77 (2013)

⁸⁵ Russell Pearce & Samuel J. Levine, *Rethinking the Legal Reform Agenda: Will Raising the Standards for Bar Admission Promote or Undermine Democracy, Human Rights, and Rule of Law?*, 77 *FORDHAM L. REV.* 1635 (2009); Russell G. Pearce & Sinna Nasser, *The virtue of low barriers to becoming a lawyer: promoting liberal and democratic values*, 19 *INTERNATIONAL JOURNAL OF THE LEGAL PROFESSION* 357 (2012); Rubin, *supra* note 25, at 513-4.

⁸⁶ Noel Semple, *Canada: Depending on the Kindness of Strangers— Access to Civil Justice*, 16 *LEGAL ETHICS* 373 (2013) [hereinafter Semple, *Kindness of Strangers*] at 374-5; Noel Semple, *Access to Justice: Is Legal Services Regulation Blocking the Path?*, 21 *INTERNATIONAL JOURNAL OF THE LEGAL PROFESSION* 267 (2013) [hereinafter Semple, *Legal Services Regulation*].

⁸⁷ See e.g. DOCUMENTING THE JUSTICE GAP IN AMERICA 9 (2009), available at http://www.lsc.gov/sites/default/files/LSC/pdfs/documenting_the_justice_gap_in_america_2009.pdf and AB CURRIE, *THE LEGAL PROBLEMS OF EVERYDAY LIFE: THE NATURE, EXTENT AND CONSEQUENCES OF JUSTICIABLE PROBLEMS EXPERIENCED BY CANADIANS* 10, 67 (2007), available at http://justice-canada.net/eng/pi/rs/rep-rap/2007/rr07_la1-rr07_aj1/rr07_la1.pdf; Semple, *Kindness of Strangers*, *id.*

1. Debunking Myths and Fostering Prestige

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

1.1 Show them the Money

Debunking myths would be a good way to start, especially with regard to the economic prospects for personal plight practice. High student debt loads and the desire for financial security compel tomorrow's lawyers to seek opportunities to 'do well,' in addition to 'doing good.' Some of them believe this is impossible in personal plight legal practice, and it is true that these careers don't offer Wall Street's \$160,000 first year salaries. However, this work can also pay very well. According to Forbes Magazine, the single wealthiest practicing lawyer in the United States is not a "BigLaw" partner with corporate clients but rather Joe Jamail, a personal injury attorney and a billionaire.⁸⁸ The most successful American plaintiff-side tort lawyers have incomes in the top 1% for the profession.⁸⁹ In 1995, Herbert Kritzer found a median income for Wisconsin contingency fee lawyers of \$88,861, somewhat higher than the median for all lawyers in the state.⁹⁰

Nor is contingency tort practice the only personal plight niche with prospects for good pay. Family lawyers and estate litigators, especially those with high net-worth clientele, often have very good incomes. There is also a huge untapped market of middle-class people with personal plight legal needs.⁹¹ While factors including the North American regulatory environment currently make it difficult to provide services that these people can afford, this could change in the short term-future, as it already has in the UK and Australia.⁹²

⁸⁸ Forbes Magazine, *The World's Billionaires: Joe Jamail Jr.*, <http://www.forbes.com/profile/joe-jamail-jr/> (last visited May 23, 2014).

⁸⁹ Lester Brickman's reading of the data concludes that "lawyers specializaing in aggregative litigation, including class actions and mass torts, realize effective hourly rates of \$5,000 to \$25,000 per hour" and "the upper tier of contingency fee lawyers, who specialize in product liability, toxic torts, and airline crash litigation, are realizing \$2,500 to \$5,000 per hour" (LESTER BRICKMAN, *LAWYER BARONS: WHAT THEIR CONTINGENCY FEES REALLY COST AMERICA* (2011) at 35).

⁹⁰ HERBERT M. KRITZER, *RISKS, REPUTATIONS, AND REWARDS: CONTINGENCY FEE LEGAL PRACTICE IN THE UNITED STATES* 32 (2004).

⁹¹ Renee Newman Knake, *Democratizing the Delivery of Legal Services*, 73 OHIO ST. L.J. 1 (2012) [hereinafter Knake, *Democratizing the Delivery*]; Semple, *Kindness of Strangers*, *supra* note 86.

⁹² For evidence that justice is more accessible and legal services are more affordable in the United Kingdom than it is in North America, see Gillian K. Hadfield, *Higher Demand, Lower Supply? A Comparative Assessment of the Legal Landscape for Ordinary Americans*, 37 FORDHAM URB. L.J. 129, 134 (2010); MARK DAVID AGRAST, et al., *WORLD JUSTICE PROJECT RULE OF LAW INDEX 2011* (2011), available at http://worldjusticeproject.org/sites/default/files/WJP_Rule_of_Law_Index_2011_Report.pdf; *RULE OF LAW INDEX 2011 DATASET* (2011), available at http://worldjusticeproject.org/sites/default/files/wjprol_index_2011_data_0.xls. Regarding the role of legal services regulation, see Part IV, section 2, *infra*; Noel Semple, *Access to Justice: Is Legal Services Regulation*

1.2 Can't get no Satisfaction?

Another common perception which may not have any factual basis is that personal plight practice is more stressful or less enjoyable than other legal work. Most empirical studies of lawyer job satisfaction have not distinguished between practitioners in different practice areas.⁹³ However, the *After the JD* longitudinal study found that solo practitioners and lawyers in firms of less than 20 are at least as satisfied with their careers as are those working in larger private firms.⁹⁴ Personal plight legal work is concentrated in small firms and solo practices,⁹⁵ and probably makes up a very sizable portion of the work done in these work environments. The *After the JD* data therefore suggests tentatively that personal plight practitioners are just as satisfied with their careers as other lawyers are.⁹⁶

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

Because many personal plight clients are people of modest means, their lawyers have an opportunity for personal fulfilment which is not available to those in the corporate hemisphere: the opportunity to dedicate their careers to helping people who might not

Blocking the Path?, 21 INTERNATIONAL JOURNAL OF THE LEGAL PROFESSION 267 (2013); and Gillian K. Hadfield, *Innovating to Improve Access: Changing the Way Courts Regulate Legal Markets*, 143 DAEDALUS Forthcoming (2014).

⁹³ E.g. John Monahan & Jeffrey Swanson, *Lawyers at Mid-Career: A 20-Year Longitudinal Study of Job and Life Satisfaction*, 6 JOURNAL OF EMPIRICAL LEGAL STUDIES 451 (2009); David L. Chambers, *Overstating the Satisfaction of Lawyers*, 39 LAW & SOCIAL INQUIRY 313 (2014). Sheldon and Krieger did find that lawyers in what they call "money" jobs report significantly less personal happiness than those in "service" jobs. (Kennon M. Sheldon & Lawrence S. Krieger, *Service job lawyers are happier than money job lawyers, despite their lower income*, THE JOURNAL OF POSITIVE PSYCHOLOGY (2014).) Their categorization of legal careers does not map onto that of Heinz & Laumann explained above.

⁹⁴ RONIT DINOVIETZ, et al., *AFTER THE JD II: SECOND RESULTS FROM A NATIONAL STUDY OF LEGAL CAREERS* 50 (2009), available at <http://www.americanbarfoundation.org/publications/338>.

⁹⁵ Leslie Levin, *Guardians at the Gates: The Backgrounds, Career Paths and Professional Development of Private U.S. Immigration Lawyers*, 34 LAW & SOC. INQUIRY 399, 415 (2009) re concentration of immigration lawyers in small and solo firms. See also Parikh, *supra* note 72 at 246 re personal injury practitioners.

⁹⁶ On the other hand, it is conceivable that the non-personal-plight small firm and solo practitioners have high enough satisfaction scores to outweigh very low spersonal plight satisfaction scores, producing a high average score for those working in this environment.

otherwise have any access to legal services.⁹⁷ Personal plight practitioners are more likely to have the opportunity to choose a balance between doing well and doing good. They also have the opportunity to develop innovative practice models in order to do well and do good simultaneously.

One empirically-verified source of job satisfaction is autonomy.⁹⁸ Personal plight practice may be more likely to offer autonomy than corporate practice in a law firm, because the clients' lack of legal experience necessitates more exercise of professional judgment by the lawyer.⁹⁹ The relative paucity of repeat business for personal plight practitioners creates another variety of professional autonomy. If a family lawyer's working relationship with a client breaks down irreparably due to personality conflicts, then the lawyer can simply move on to the next client. If a Wall Street lawyer's working relationship with a Fortune 500 client breaks down for similar reasons, then his or her entire career may be on the rocks. Different legal practices offer different degrees of satisfaction to different lawyers, but the overall prospects for lawyer happiness in personal plight seem just as good as they are in other areas.

1.3 The Prestige Mirage

The perception that personal plight careers lack *prestige* is perhaps the most complex stumbling block for tomorrow's lawyers.¹⁰⁰ The prestige deficit is the reason why many students would see a personal plight career opportunity as second rate, even if it were to come with guaranteed high pay and great job satisfaction. Rebecca Sandefur defines prestige as an "entitlement to deference," obtained due to a person's "position in a certain role or as the practitioner of particular tasks."¹⁰¹ According to Chicago lawyers surveyed in 1995, the legal profession as a whole accords very little prestige to personal plight fields such as divorce, immigration law, personal injury, and criminal defense.¹⁰²

⁹⁷ Juergens, *supra* note 66 at 107.

⁹⁸ ANH NGOC NGUYEN, et al., JOB AUTONOMY AND JOB SATISFACTION: NEW EVIDENCE (WORKING PAPER) (2003), available at <http://www.lancaster.ac.uk/staff/ecasb/papers/job%20autonomy%20%20job%20satisfaction%2030july03.pdf>.

⁹⁹ LYNN MATHER, *WHAT DO CLIENTS WANT - WHAT DO LAWYERS DO*, 52 EMORY L.J. 1065, 1080 (2003); MACFARLANE, *THE NEW LAWYER*, *supra* note 59 at 5.

¹⁰⁰ Gillian K. Hadfield, *Exploring Economic and Democratic Theories of Civil Litigation: Differences between Individual and Organizational Litigants in the Disposition of Federal Civil Cases*, 57 STAN. L. REV. 1275, 1285 (2005).

¹⁰¹ Rebecca L. Sandefur, *Work and Honor in the Law: Prestige and the Division of Lawyers' Labor*, 66 AMERICAN SOCIOLOGY REVIEW, 384 (2001).

¹⁰² Out of 42 fields of law, the prestige rankings for the largest personal plight areas were as follows: divorce (42/42); immigration law (41/42); personal injury—plaintiff (33/42); criminal defense (31/42). HEINZ ET AL., *URBAN LAWYERS*, *supra* note 47 at 84. See also Levin, *supra* note 95 at 400-1 (re immigration law) and ZARA SULEMAN, *NOT WITH A TEN-FOOT POLE: LAW STUDENTS' PERCEPTIONS OF FAMILY LAW PRACTICE. A REPORT FROM WEST COAST LEAF'S FAMILY LAW PROJECT* (2010), available at <http://www.divorcemate.com/library/Chapter%204%20-%20Attracting%20Lawyers%20to%20Family%20Law.pdf> (re family law).

High prestige is generally accorded to work for large corporate clients and, to a lesser extent, to pro bono or public interest work for non-profit organizations.¹⁰³

How does personal plight practice come to rank so poorly in this prestige hierarchy? Susan Carle suggests that "prestige hierarchies are socially constructed through the transmission of subtle but powerful messages across professional generations."¹⁰⁴ The hierarchies are manifested, for example, through (often groundless) "common knowledge" among law students that corporate work is more "interesting" or "sophisticated" than personal plight work.¹⁰⁵

Sociologists have proposed three theories of professional prestige. According to the "client-type thesis," the prestige of different practice areas reflects the prestige of their clients.¹⁰⁶ Because capitalist societies venerate large corporations, lawyers who work for them bask in their glory. A second theory of prestige holds that the most "professionally pure" fields – those with the most connection with abstract legal knowledge and the least engagement with "messy" emotional or other non-legal factors – will be considered the most prestigious.¹⁰⁷ Both of these theories help to explain the prestige advantage enjoyed by lawyers in the corporate hemisphere.¹⁰⁸

However there is a third theory of prestige which offers hope for improving the reputation of personal plight work. Heinz et al. identify a "classical theory of professionalism," which emphasizes "being able to control your own work – being able to tell your client what his problem is and how, with your help, it may be solved."¹⁰⁹ As noted above, working with the typical, legally inexperienced personal plight client offers more scope for this type of professionalism than does working for a legally sophisticated corporate hemisphere client. Lawyers and legal educators can emphasize this reality to students, and in so doing perhaps help lower the prestige barrier to personal plight practice.

¹⁰³ Susan D. Carle, *Re-Valuing Lawyering for Middle-Income Clients*, 70 *FORDHAM L. REV.* 719 (2001); Juergens, *supra* note 66.

¹⁰⁴ Carle, *id.*

¹⁰⁵ *Id.*

¹⁰⁶ Sandefur, *supra* note 101, at 384; HEINZ AND LAUMANN, *CHICAGO LAWYERS*, *supra* note 44 at 128.

¹⁰⁷ ANDREW DELANO ABBOTT, *THE SYSTEM OF PROFESSIONS: AN ESSAY ON THE DIVISION OF EXPERT LABOR* (1988); Rebecca L. Sandefur, *Work and Honor in the Law: Prestige and the Division of Lawyers' Labor*, 66 *AMERICAN SOCIOLOGY REVIEW*, 384 (2001).

¹⁰⁸ Rebecca L. Sandefur, *Work and Honor in the Law: Prestige and the Division of Lawyers' Labor*, 66 *AMERICAN SOCIOLOGY REVIEW*, 384 (2001)

¹⁰⁹ HEINZ ET AL., *URBAN LAWYERS*, *supra* note 47, at 73.

2. Bringing Personal Plight Practice into Larger Firms

A second impediment to personal plight practice is the fact that, in North America, it is almost entirely performed in small firms and solo practices.¹¹⁰ Of course, these practice environments have significant appeal for some clients and some lawyers. To clients, they offer direct personal connection to the professional, unmediated by bureaucracy. To practitioners, they offer unparalleled independence.¹¹¹ For a new lawyer, one advantage of personal plight practice is the opportunity to begin by simply "hanging out a shingle." One need not convince a firm to extend a job offer in order to get started. A mediocre GPA from a non-elite law school may foreclose the top ranks of corporate practice, but it is no impediment to eventually reaching the top ranks of practitioners in a personal plight field such as family or personal injury law.

However, for many of tomorrow's lawyers, the lack of opportunities in mid-sized and large firms is a major drawback of personal plight practice.¹¹² As workplaces, larger firms have significant attractions which smaller ones struggle to match. These include better access to support staff and technology, more opportunities for mentorship and teamwork, and, in the early years of a career, freedom from the administrative and business-generation work which many lawyers find tedious.¹¹³ Law students' preference for large firms reflects these factors, in addition to the income that these jobs offer.

If there were more mid-size and large law firms doing personal plight work in North America, then more students would embrace personal plight careers. In the United Kingdom and Australia, large firms like Co-Operative Legal Services and Slater & Gordon are now offering both more accessible services to personal plight clients, and new career opportunities to lawyers.¹¹⁴ Franchise initiatives such as England's QualitySolicitors offer another model for bringing together lawyer and non-lawyer professionals.¹¹⁵

The absence of similarly large personal plight firms in North America seems to be at least partially attributable to legal services regulation.¹¹⁶ Non-lawyer investment in firms,

¹¹⁰ *Supra*, note 95.

¹¹¹ JEROME CARLIN, *LAWYERS ON THEIR OWN* (1962); Juergens, *supra* note 66 at 106.

¹¹² E.g., regarding family law in Canada, see Suleman, *supra* note 102 at 4-217.

¹¹³ ALTERNATIVE BUSINESS STRUCTURES WORKING GROUP (LAW SOCIETY OF UPPER CANADA), *REPORT TO CONVOCATION (FEBRUARY 27, 2014)* 39 (2014), available at <http://www.lsuc.on.ca/WorkArea/DownloadAsset.aspx?id=2147495044>.

¹¹⁴ For example, Co-Operative Legal Services plans to hire 3000 lawyers to provide mostly personal plight services by 2017: John Robins, "If people want a Rottweiler, they can go somewhere else." (*LegalVoice: October 4, 2012*), <http://legalvoice.org.uk/family/if-people-want-a-rottweiler-they-can-go-somewhere-else/> (last visited May 23, 2014).

¹¹⁵ *Quality Solicitors*, <http://www.qualitysolicitors.com> (last visited May 23, 2014); Knake, *Democratizing the Delivery*, *supra* note 91; Edward Iacobucci & M. J. Trebilcock, *An Economic Analysis Of Alternative Business Structures For The Practice Of Law*, *CANADIAN BAR REVIEW (FORTHCOMING)*, III(g) (2014).

¹¹⁶ OECD, *COMPETITIVE RESTRICTIONS IN LEGAL PROFESSIONS* (2007), available at <http://www.oecd.org/regreform/sectors/40080343.pdf>; Semple, *Legal Services Regulation*, *supra* note 86, at section 3.2.

which has been welcomed in the England & Wales and Australia, is still prohibited on this continent. Among other good reasons to roll back these rules,¹¹⁷ doing so would allow personal plight law firms to become significantly larger and thus create attractive new career opportunities for tomorrow's lawyers to serve personal plight clients.

Evidence from Australia and the UK suggests that regulatory liberalization would not eliminate solo and small firm practice in the personal plight sector.¹¹⁸ Instead, these countries now have legal services marketplaces in which both small and large firms are available to individual clients -- and available to lawyers as career options. A vibrant market for personal plight legal services might resemble the urban market for food. A hungry person in a city has options with many price points and many service models (full-service restaurant, bulk food store, and everything in between). Those seeking food services careers have a similar array of options. Regulatory liberalization could allow a similar flourishing of options, for the benefit of both personal plight clients and their lawyers.

3. Reforming Legal Education

Non-elite American law schools are currently imperilled by a dramatic drop in applications and by a mounting perception that legal education is no longer worth its six-figure price tag.¹¹⁹ Law schools must demonstrate their value proposition to increasingly sceptical prospective students, and career outcomes are among the primary yardsticks by which students measure value.¹²⁰ In reaching out to prospective students, law schools' room to manoeuvre is sharply constrained by the tenure system and by the power of the U.S. News and World Report law school rankings.¹²¹

The crisis in American legal education has produced a plethora of law school reform proposals. Susskind says law students should learn more "21st-century legal skills that will support future law jobs," such as teamwork and information technology.¹²² Henderson calls for a consortium of like-minded law schools to create a competency-based curriculum designed to produce in-demand graduates.¹²³ Other proposals emphasize practice-

¹¹⁷ Paul D. Paton, *Multidisciplinary Practice Redux: Globalization, Core Values, And Reviving The Mdp Debate In America*, 78 *FORDHAM L. REV.* 2193 (2010); Knake, *Democratizing the Delivery*, *supra* note 91; Stephen Gillers, *A Profession, If You Can Keep It: How Information Technology and Fading Borders are Reshaping the Law Marketplace and What We Should Do About It*, 63 *HASTINGS LAW JOURNAL* 101 (2012); Semple, *Legal Services Regulation*, *supra* note 86; Edward Iacobucci & M. J. Trebilcock, *An Economic Analysis Of Alternative Business Structures For The Practice Of Law*, *CANADIAN BAR REVIEW* (FORTHCOMING) (2014) at section IV(f).

¹¹⁸ Semple, *Legal Services Regulation*, *supra* note 86.

¹¹⁹ BRIAN Z. TAMANAHA, *FAILING LAW SCHOOLS* Part IV (2012). See also note 15, *supra* and accompanying text.

¹²⁰ Henderson, *Blueprint for Change*, *supra* note 22.

¹²¹ TAMANAHA, *supra* note 119.

¹²² SUSSKIND, *supra* note 2.

¹²³ Henderson, *Blueprint for Change*, *supra* note 22.

readiness and skills,¹²⁴ student entrepreneurship and innovation,¹²⁵ and specialization and differentiation among law schools.¹²⁶ Perhaps most dramatically, some have called for the elimination the third year of the JD program.¹²⁷

Preparing students for personal plight practice is consistent with these initiatives, and likely to improve graduate career prospects. One obvious step is for law schools to offer courses in all of the major personal plight practice areas. Perhaps even more important is to ensure that students develop skills such as client counselling, negotiation, and problem-solving that can be deployed in multiple personal plight areas.¹²⁸ Some law schools might go further, and brand themselves and their graduates as specialists in personal plight. A school which does so, and which can demonstrate that its graduates consistently excel in personal plight practice, may gain significant advantages in placing its graduates with personal plight firms and in attracting strong students interested in doing this work.

Finally, law schools and regulators may want to reconsider their entrance criteria. Personal plight legal practice requires strong interpersonal and client-relationship skills, as much as technical or "hard" legal skills. If it is true that an increasing proportion of legal careers will be in this field, then it is important to ensure that people who have the skills needed to flourish are being admitted to the profession. Just as some medical schools now assess applicants on the basis of interpersonal and other soft skills in addition to MCAT score and grade point average,¹²⁹ it may be time for law school admissions to take into account similar factors.

¹²⁴ John Burwell Garvey & Anne F. Zinkin, *Making Law Students Client-Ready: A New Model in legal Education*, 1 DUKE F. L. & SOC. CHANGE 101 (2009); Judith S. Kaye, *2011 James P. White Lecture on Legal Education a Chief Judge's After-Life: Reflections on Educating Lawyers Today*, 45 IND. L. REV. 291 (2012).

¹²⁵ Gillian Hadfield, *Equipping the Garage Guys in Law*, 70 MARYLAND LAW REVIEW 484 (2011); Knake, *Democratizing the Delivery*, *supra* note 91. Knake also calls for law schools to spread public knowledge about the law : Renee Newman Knake, *Democratizing Legal Education*, 45 CONNECTICUT LAW REVIEW 1281 (2013) [hereinafter Knake, *Democratizing Legal Education*].

¹²⁶ Menkel-Meadow, *supra* note 58; TAMANAHA, *supra* note 119, at 172-6.

¹²⁷ Chester Higgins Jr., *A Bold Bid to Combat a Crisis in Legal Education* (*New York Times*, April 4, 2014); Samuel Estreicher, *The Roosevelt-Cardozo Way: The Case For Bar Eligibility After Two Years Of Law School*, 15 NEW YORK UNIVERSITY JOURNAL OF LEGISLATION AND PUBLIC POLICY 599 (2012); Knake, *Democratizing Legal Education*, *supra* note 125 at 1310. On a contrasting note, Edward Rubin argues that law schools may require *four* years to train students for the knowledge economy and social justice requirements of the near future (*supra* note 25 at 515).

¹²⁸ MACFARLANE, *THE NEW LAWYER*, *supra* note 59 at 15; Henderson, *Blueprint for Change*, *supra* note 22.

¹²⁹ Goldis Chami, *The changing dynamic of medical school admissions*, 182 CANADIAN MEDICAL ASSOCIATION JOURNAL 1833 (2010); McMaster University, *CASPer — Computer-Based Assessment for Sampling Personal Characteristics*, <http://fhs.mcmaster.ca/mdprog/casper.html> (last visited May 23, 2014).

V. Conclusion

Law students and recent graduates in developed countries are anxiously wondering: will computers and foreign competitors steal our jobs? Commentators argue convincingly that computerization and off-shoring will undermine demand for traditional lawyers in North America and Europe. Recent employment data seems to bear these predictions out.¹³⁰ This essay has suggested, however, that this grim prognosis should not be applied in an undifferentiated manner. Personal plight lawyers, who help individuals and small businesses resolve their disputes, will enjoy some shelter from these brisk winds in coming years.¹³¹ The legally inexperienced clientele, the emotive content of the disputes, and the small average file size will impede decomposition and commodification in the medium-term future.¹³²

In order to improve the prospects for tomorrow's lawyers and increase access to justice, the legal profession should concentrate on increasing the viability of personal plight legal practice. Myths should be debunked and accurate information should be provided to students about the opportunities for financial security and job satisfaction to be found in this field.¹³³ The lack of mid-size and large firms offering personal plight legal services is a problem for both lawyers and clients, and one which regulators can address by rolling back antiquated prohibitions on non-lawyer investment in firms.¹³⁴ Law schools can offer more preparation to students embarking upon these careers, and review entrance criteria to ensure that those with the necessary interpersonal skill sets are being given the opportunity to enter the profession. Tomorrow's lawyers, and the profession itself, are challenged to come to terms with gale-force changes sweeping across the legal services marketplace. Understanding and taking advantage of the opportunities in personal plight legal practice is a crucial part of this process.

¹³⁰ Part I, *supra*.

¹³¹ Part II, *supra*.

¹³² Part III, *supra*.

¹³³ Part IV, section 1, *supra*.

¹³⁴ Part IV, section 2, *supra*.