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# The Two Hemispheres of Legal Education and the Rise and Fall of Local Law Schools

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## The Two Hemispheres of Legal Education and the Rise and Fall of Local Law Schools

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Law is a unified profession — in theory. Anyone admitted to the bar can draft a contract or a will, file a bankruptcy or divorce petition, create corporate merger documents or a dispossess notice, prosecute a murder or a copyright claim, litigate a securities or a personal injury case. In reality, however, the profession has a sharp and unbridgeable chasm,<sup>1</sup> a divide which is mirrored in our law schools.

On one side of the professional divide, lawyers represent large organizations, primarily corporations. These attorneys generally work in large firms. On the other side, lawyers represent individuals and small businesses. Lawyers in this part of the profession usually work in small firms or are solo practitioners.

This professional chasm has produced a comparable divide in legal education. Graduates of high-prestige law schools primarily work on the corporate side, while those from what are often called “local law schools” primarily represent individuals. Local law schools must recognize that they are not training attorneys primarily for the same segment of the bar as elite schools, but rather for the personal-client sphere. To be successful and to justify their continued existence, local law schools must better prepare their graduates for the work they will actually do.<sup>2</sup>

This is especially important because at least financial success is increasingly difficult to attain for those who represent personal clients. More and more of the total legal fees has been going to the big-firm, corporate sector, and incomes in this sphere have been increasing dramatically. In contrast, the incomes of those representing individuals have been declining.

Local law schools should realize that successful personal-client attorneys need skills and training that are often not necessary in the corporate sector. Personal-client attorneys seldom face legally complex matters, and seldom write briefs or memoranda, but, unlike corporate attorneys, they must be able to deal with difficult human problems and relations. The personal-client attorneys need to be able to evaluate technology, manage a small business, and market in ways most corporate attorneys do not have to do. Personal-client attorneys must be able to make decisions and take responsibility for them in ways that few corporate attorneys do. Local law schools must train their students better for these tasks and recognize that the hiring path in the personal-client sphere is fundamentally different from that of large firms. However, if local law schools are dominated, as they appear to be, by the notions of prestige and success absorbed from elite law

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1. Cf. Robert L. Nelson, *The Futures of American Lawyers: A Demographic Profile of a Changing Profession in a Changing Society*, 44 CASE W. RES. L. REV. 345, 367 (1994) (“The American legal profession is formally unified. Virtually all lawyers are products of the same postgraduate education. In contrast to the legal professions of other western countries, there are few formal distinctions among types of lawyers. Yet scholars of the American legal profession have long recognized that it is a diverse, segmented, highly stratified occupational system.”).
  2. Cf. Paul D. Carrington, *The Dangers of the Graduate School Model*, 36 J. LEGAL EDUC. 11, 12 (1986) (“[A] professional faculty that has lost interest in most of the work of its alumni has also lost interest in its students, and forfeited the legitimacy of its claim for their support.”).

schools and the legal profession, the needed reforms in the education at local law schools are unlikely to occur.

Part I of this article will describe the divide in the legal profession with large-firm, corporate attorneys on one side and personal-client attorneys on the other.

Part II will discuss the fact that graduates of elite law schools primarily work in the corporate sphere, while graduates of local law schools largely populate the other sphere.

Part III will discuss the distinctive skills needed by attorneys to be successful in representing personal clients and how local law schools might better train their students for the practices those students will do.

Part IV will discuss the likelihood of educational reforms by local law schools.

## I. THE DIVIDED PROFESSION

### A. *Two Hemispheres*

The recently published *Urban Lawyers: The New Social Structure of the Bar*,<sup>3</sup> by John P. Heinz, Robert L. Nelson, Rebecca L. Sandefur, and Edward O. Laumann documents the sharply divided legal profession. The study is drawn from two surveys of Chicago lawyers, the first done in 1975 and the second in 1994–95. In each survey, about eight hundred randomly selected attorneys were personally interviewed.<sup>4</sup> The first survey led to the conclusion

that much of the differentiation within the Chicago bar could be understood as a distinction between lawyers who represented large organizations and those who represented individuals or small businesses owned by individuals: “The two kinds of law practice are the two hemispheres of the profession. Most lawyers reside exclusively in one hemisphere or the other and seldom, if ever, cross the equator.”<sup>5</sup>

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3. JOHN P. HEINZ, ROBERT L. NELSON, REBECCA L. SANDEFUR & EDWARD O. LAUMANN, *URBAN LAWYERS: THE NEW SOCIAL STRUCTURE OF THE BAR* (2005) [hereinafter *URBAN LAWYERS*].

4. *Id.* at 6. A different sample of attorneys was interviewed in 1995 and in 1975. The authors note, “The two samples are independent cross sections. That is, the same lawyers were not reinterviewed.” *Id.*

5. *Id.* at 6–7 (quoting JOHN P. HEINZ & EDWARD O. LAUMANN, *CHICAGO LAWYERS: THE SOCIAL STRUCTURE OF THE BAR* 319 (1982)) (citation omitted). The metaphor-making authors knew that the two-hemispheres image was an oversimplification, but that it articulated something important about the bar. See *URBAN LAWYERS*, *supra* note 3, at 7 (“The more cautious passages of that [earlier] work acknowledged that ‘the client type distinction is too crude and too simple to account for the full complexity of the social structure of the profession’ and there were, ‘in some respects, larger differences within the hemispheres than between them,’ but the ‘two-hemispheres’ metaphor captured the attention of the book’s audience and the image has become a frequent point of reference in the scholarly literature.”) (quoting HEINZ & LAUMANN, *supra*, at 321).

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The latter survey found an even more fragmented profession, but one still essentially divided into two regions based on the nature of the clients.<sup>6</sup> While this division may have long existed, the relative sizes of each segment have not been static. The corporate side has been growing more rapidly than the personal-client sphere. *Urban Lawyers* found that in 1975, 53% of the total legal effort was spent on corporate clients, while 40% went to individuals or small businesses with the rest unassigned. Twenty years later, 64% went to the corporate sector while 29% went to individuals and small businesses.<sup>7</sup> This trend is not limited to Chicago;<sup>8</sup> the increased dominance of corporate work in the legal profession

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6. URBAN LAWYERS, *supra* note 3, at 7 (“While urban lawyers may well have become subdivided into smaller clusters, however, the division between the two classes of clients — between large organizations, on one hand, and individuals and small businesses, on the other — endures.”).
  7. *Id.* at 43; cf. David L. Chambers, Richard O. Lempert, & Terry K. Adams, “FROM THE TRENCHES AND TOWERS”: *Law School Affirmative Action: An Empirical Study Michigan’s Minority Graduates in Practice: The River Runs Through Law School*, 25 LAW & SOC. INQUIRY 395, 435 (2000) (finding “the more recent the graduate, the more likely clients are to be businesses and the less likely they are to be individuals”).

In rural areas, lawyers may more often represent individuals than corporations. A recent survey of the Montana bar found that three areas of practice where the lawyers spent their most time were, in descending order, criminal law, real property, general practice, “other,” family law, and plaintiff’s personal injury. See *Bar Member Survey Results Are In*, MONT. L., Apr. 2005, at 5, 6.

*Urban Lawyers* stressed that the declining percentage for the personal-client field does not mean that less legal work is done in that area. The number of Chicago lawyers doubled from 1975 to 1995, and the amount of practice in the personal-client fields increased but not nearly as much as in the corporate fields. “As the number of lawyers doubled, the total amount of effort devoted to almost all of the fields increased — to varying degrees. The only fields in which the amount actually decreased, in absolute terms, were probate and public utilities . . . .” URBAN LAWYERS, *supra* note 3, at 41. The personal-client segment could decline in the percentage of legal work done but grow in absolute size because the total amount of legal work has grown tremendously. Marc Galanter reports:

Between 1967 and 1997, the legal service industry’s share of the growing Gross Domestic Product (GDP) doubled from 0.64% to 1.3% . . . . Given the substantial growth of the underlying economy, this growth in share represents a very substantial increase in absolute size of the legal services industry. In constant 1987 dollars, the gross receipts of the U.S. law firms increased 239% from \$25 billion in 1972 to \$85 billion in 1992.

Marc Galanter, “*Old and in the Way: The Coming Demographic Transformation of the Legal Profession and Its Implications for the Provision of Legal Services*,” 1999 WIS. L. REV. 1081, 1087–88. Galanter notes that the amount of the GDP going to legal services is an understatement, “for it does not include in-house legal services consumed by businesses or governments.” *Id.* at 1087; see also URBAN LAWYERS, *supra* note 3, at 8 (“Overall, expenditures on legal services in the United States increased by 309 percent between 1972 and 1992. This rate of increase was twice that of the gross national product during the same period . . . .”). This growth has not been equal throughout the country. “Expenditures on legal services grew by 327 percent from 1977 to 1997 in constant dollars . . . . Over the same period, such expenditures grew by 405 percent in New York, 459 percent in Los Angeles, and 528 percent in Phoenix, but by only 160 percent in Cleveland and 30 percent in Detroit,” while growing by 327 percent in Miami and 345 percent in Pittsburgh. URBAN LAWYERS, *supra* note 3, at 28.

8. Although *Urban Lawyers* studied Chicago attorneys, its authors conclude that “we have no reasons to believe that the Chicago bar during the last quarter of the twentieth century differed in significant respects from the bars of other American cities with diverse populations and economies.” URBAN LAWYERS, *supra* note 3, at 28.

reflects the nationwide pattern.<sup>9</sup> The result: “More and more of the legal world is devoted to servicing organizations rather than individuals.”<sup>10</sup>

### B. Legal Specialization

Legal specialization helps produce the professional divide. Few lawyers are true generalists. *Urban Lawyers* found that fewer than five percent of attorneys “did not devote as much as 25 percent of their time to any one field.”<sup>11</sup> “By contrast, a third of the practicing lawyers said that they worked in only one field, and 488 of the 674 (72 percent) indicated that they devoted half or more than half of their time to one field.”<sup>12</sup> Specialization is increasing. The Chicago data, for example, show that the percentage of lawyers who devote all or substantially all of their practice to one area of law has grown,<sup>13</sup> a movement towards speciali-

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9. See Galanter, *supra* note 7, at 1088:

In 1967, individuals bought 55% of the product of the legal services industry and businesses bought 39%. With each subsequent five year period, the business portion has increased and the share consumed by individuals has declined. By 1992 the share bought by businesses increased to 51% and the share bought by individuals dropped to 40%. Individuals' expenditures on legal services increased 262% from 1967 to 1992, while law firms' income from business increased by 555% during that period.

See also *URBAN LAWYERS*, *supra* note 3, at 43 (noting that census data shows that while in 1972, 52.2% of total United States lawyer receipts came from individuals, only 39.6% did in 1992, and business receipts increased during that span from 42.0% to 50.9%).

10. Galanter, *supra* note 7, at 1089 (“Increasingly the law is becoming an arena for routine and continuous play by organizations; individuals enter that arena briefly for a small number of standardized transactions (e.g., will, real estate purchases) and in personal emergencies (criminal charges, serious injuries, financial catastrophe). Few individuals can afford to engage in protracted legal activity.”).

11. *URBAN LAWYERS*, *supra* note 3, at 53.

12. *Id.*

13. The Chicago study found that the percentage of lawyers who indicated that they worked in only one legal field increased from 23% in 1975 to 33% in 1995. *URBAN LAWYERS*, *supra* note 3, at 27. The authors devised a specialization index for twenty-seven legal areas and found that specialization had generally increased. Specialization in only three fields — labor union work, public utilities/administrative law, and plaintiffs' environmental work — had decreased. It had remained the same or nearly so in probate, civil rights, and business real estate. Specialization had most markedly increased in plaintiffs' personal injury, defense environmental, and commercial work. All the other fields showed an increase in specialization, that is, attorneys increasingly spent more of their time on the area. The authors conclude, “[i]n sum, specialization increased both substantially and quite generally over the twenty-year period.” *Id.*; see also BRIAN MELENDEZ, ABA YOUNG LAW DIV., SURVEY: CAREER SATISFACTION 15 (2000) (finding that 18.2% of the surveyed junior attorneys spent all their time on litigation, and about half of the respondents spent 40% or more on litigation.); cf. RONIT DONOVITZ, NAT'L ASS'N FOR LAW PLACEMENT, AFTER THE JD: FIRST RESULTS OF A NATIONAL STUDY OF LEGAL CAREERS 34 (2004) [hereinafter *NALP*], available at [http://www.nalpfoundation.org/webmodules/articles/articlefiles/87-After\\_JD\\_2004\\_web.pdf](http://www.nalpfoundation.org/webmodules/articles/articlefiles/87-After_JD_2004_web.pdf).

Over two-thirds of the [recent-graduate] respondents . . . report that half or more of their recent work has been in a single substantive field, but only 40% actually describe themselves as “specialists.” This may reflect the difference between being assigned to a particular concentrated area as a new lawyer and making a conscious commitment to specialize in that area.

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zation that mirrors the trend in most professions.<sup>14</sup> Such practice concentration helps divide the bar by the kind of client represented.<sup>15</sup> In many legal specialties, clients are primarily large businesses and other organizations, while in other specialties clients are predominantly individuals. Only a few practices have a true mix of corporate and individual clients.<sup>16</sup>

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*But see* CARROLL SERON, *THE BUSINESS OF PRACTICING LAW: THE WORK LIVES OF SOLO AND SMALL-FIRM ATTORNEYS* 168–69 n.13 (1996) (quoting her study of solo and small-firm attorneys in the New York City metropolitan area):

[T]he largest group reported having a “general” practice, including real estate closings for individuals and small businesses, wills and estates, and other commercial matters. Many attorneys in general practice pointed out, however, that they try to avoid divorce and other matrimonial matters. Among attorneys who specialized, the most common area . . . was personal injury, plaintiff work. [Some] specialized in matrimonial practices. Other specialties included worker’s compensation, immigration, “elder law,” court-appointed work, and criminal defense.

14. See Geoffrey C. Hazard, Jr., “Practice” in *Law and Other Professions*, 39 ARIZ. L. REV. 387, 388–90 (1997):

[A]ll professions, including the legal profession, are having to respond to an environment of more specialized knowledge and correspondingly specialized technique. The result is balkanization within the professions along lines of specialization [and] a deterioration of the sense of common identity among the professionals . . . . All traditional professional callings have divided into subspecialties. In law, for example, we have long since subdivided between the traditional bifurcation between courtroom lawyer and office lawyer (i.e., between barrister and solicitor). Among the courtroom people there are now divisions between civil versus criminal litigation, personal injury versus commercial, administrative versus judicial proceeding, securities versus environmental, ad infinitum. In office practice the old subdivision between mortgage lawyers and will draftsmen has proliferated into real estate versus Article 9 practice, estate planning versus pension practice, continuing counseling of business management versus merger and acquisition specialists, etc.

*Cf.* Carrie Menkel-Meadow, *Culture Clash in the Quality of Life in the Law: Changes in the Economics, Diversification and Organization of Lawyering*, 44 CASE W. RES. L. REV. 621, 657 (1994) (“Specialization should be reduced . . . . [N]arrow specialization may lead to a winnowing of scope and judgment in lawyering . . . . With greater generalization lawyers should be better able to learn new fields and adapt to changes in the law.”).

15. Such increasing concentration increasingly segments the bar in other ways, for “[s]pecialization of practice tends to create boundaries for professional relationships among lawyers . . . .” *URBAN LAWYERS*, *supra* note 3, at 44. The authors of *Urban Lawyers* recognized that on the other hand that increased concentration may lead to more stable professional relationships within segments of the bar.

If most of the practitioners in a field of law do that work only occasionally, so that there is a constantly changing case of characters, then stable relationships are unlikely to form. By contrast, when larger numbers of lawyers devote the major share of their efforts to the field, then they are more likely to come into frequent contact with repeat players, and it becomes efficient for them to invest the time and effort necessary to establish continuing working relationship with those other lawyers.

*Id.* at 45.

16. *Urban Lawyers* found that attorneys in these fields had a high percentage of business clients in descending order: defense environmental, banking, commercial (including business bankruptcy), patent, trademark and copyright, securities, insurance, corporate civil litigation, general corporate, defense personal injury, business real estate, corporate tax, public utilities and administrative, and employment law for management. The middle group with a mixture of corporate and individual clients was personal tax, plaintiffs’ environmental, municipal, residential real estate, civil litigation for personal clients, probate, and civil rights. The group with few corporate clients consisted of divorce, employment law for unions, general family practice, plaintiffs’ personal injury, criminal defense, and criminal prosecution. *Id.* at 40.

If the boundary line between practices representing corporations and individuals does get breached, generally it is only in one direction. Those who primarily represent corporations may have some individual clients, but those who have a predominantly individual-client base seldom represent large businesses. "Any lawyer can hang up a shingle and seek clients in auto accident or refrigerator repossession cases, but it is difficult for lawyers to obtain access to the places where corporate legal services are delivered. Lawyers in personal client fields, for the most part, do not have the option of moving into corporate work. Some practitioners in corporate fields, however, can and do represent individuals."<sup>17</sup> Even when a corporate attorney represents some individuals, he still, in an important way, operates in a separate sphere from the other part of the bar, for the individuals represented will tend to be wealthy and generally be an extension of the business practice.<sup>18</sup>

### C. Practice Settings

Lawyers on each side of the divide work in different practice settings. Solo practitioners and small firms primarily represent individual clients,<sup>19</sup> and large law firms do the corporate work.<sup>20</sup> In fact, corporations have increasingly sent their legal work to large firms. *Urban Lawyers* found that between 1975 and 1995, "the corporate fields of practice became even more concentrated in large firms."<sup>21</sup> Thus, solo practitioners and small firms by and large, do not have corporate clients, and large firms by and large, do not have personal clients.<sup>22</sup>

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17. *Id.* at 46.

18. *See id.* at 46 ("Even the largest law firms work in selected areas of personal client practice, often for the individuals who are officers of their corporate clients[,] frequently doing probate and personal income tax work, and sometimes even divorces. But the authors also note that "there is a division of labor within law firms, and the lawyers who do the corporate work may not be the same ones who handle the personal matters.").

19. *See id.* at 70. The Chicago study found that firms of fewer than ten attorneys or solo attorneys did the majority of work in the fields of general personal business litigation, personal real estate, probate, divorce, family law, and plaintiff's personal injury with nearly a majority of the work in criminal defense done in this setting. In fact, 80% of both divorce and plaintiff's personal injury work was done by these small firms and solo attorneys. *Id.*

20. *See, e.g., id.* at 69 ("Of the public utilities work, 41% was done in firms with 300 or more lawyers. Of banking law work, 44% was located in the legal departments of banks, and more than half of all municipal work was done in firms with 100 to 299 attorneys."). In addition, *Urban Lawyers* found that, excluding work done by government lawyers, firms of 100 or larger and in-house counsel did more than half of all legal work in the fields of defense antitrust, securities, defense environmental, and commercial with firms of 100 or larger or in-house doing nearly half the work in business real estate, business tax, and general corporate. *Id.* at 70.

21. *Id.* at 71.

22. *See id.* at 70-71 (noting that firms of thirty and fewer and solo attorneys do a small, but significant, amount of work in some corporate fields, such as banking and public utilities). The authors also note, "with the exception of 15% of personal tax work, 10% of criminal defense, and 18% of civil rights practice, no substantial amount of work in a personal client field was done in a law firm with 100 or more lawyers." *Id.* at 69-70.



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As a result, lawyers do not really select the kinds of clients they represent. At most, they can choose the setting in which they will practice, and that setting determines what kind of client the attorneys will have. *Urban Lawyers* explains:

Lawyers specialize in particular types of clients as well as in fields because the organizations in which they work typically serve only a limited range of clients. . . . The ability of Chicago lawyers to choose the types of clients they will or will not serve is severely restricted by their access to particular practice settings. Corporations that generate securities law problems send that work to large law firms or to their own inside counsel; plaintiffs in personal injury cases, by contrast, are usually not welcome in large law firms, so such work is done almost exclusively by solo practitioners and the smallest firms. For the most part, lawyers do not choose their clients. If they have a choice, it is a choice of practice settings.<sup>23</sup>

With the amount of corporate legal working increasing at a much greater rate than legal services for individuals, and with that corporate work increasingly concentrated in large firms, the legal profession has seen a striking growth in the largest firms during the latter part of the last century.<sup>24</sup> That expansion, however, can obscure the fact that the great majority of attorneys do not practice in large firm settings. According to the ABA, federal, state, and local governments employed about 8% of all lawyers in 2000,<sup>25</sup> and private industry employed another 8%,<sup>26</sup> while 2% of the profession worked as legal aid attorneys, public defenders, or in private associations.<sup>27</sup> Another 9% might be classified as non-practicing attorneys, falling into the categories of retired or inactive, the judiciary, or education.<sup>28</sup> Thus, about 74% of practicing lawyers were in private

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23. *Id.* at 72.

24. See Robert L. Nelson, *The Futures of American Lawyers: A Demographic Profile of a Changing Profession in a Changing Society*, 44 CASE W. RES. L. REV. 345, 372 (1994) ("From the period of 1980 to 1988, alone, the number of lawyers in law firms with more than fifty attorneys more than doubled, from 27,018 to 75,912."); see also Galanter, *supra* note 7, at 1092 ("From 1980 to 1991, the number of firms with 51 or more lawyers almost tripled from 287 to 751, while the average size of firms grew from 95 to 140, so that the total number of lawyers in these firms quadrupled."). Elizabeth Chambliss's study of elite law firms in Chicago, Los Angeles, New York, and Washington found that they "grew an average of 97% measured by number of lawyers" from 1980 to 1990. See Elizabeth Chambliss, *Organizational Determinants of Law Firm Integration*, 46 AM. U.L. REV. 669, 707 (1997) (noting that "most elite firms have grown significantly over the past several decades."); cf. Melendez, *supra* note 13, at 10 tbl.8 (finding that 24.8% of the members of the ABA Young Lawyers Division worked in firms of more than 150 attorneys in 2000, while 19.2% did in 1995).

25. American Bar Association, *Lawyer Demographics*, [http://www.abanet.org/marketresearch/lawyer\\_demo\\_graphics\\_2006.pdf](http://www.abanet.org/marketresearch/lawyer_demo_graphics_2006.pdf) [hereinafter *Lawyer Demographics*] (last visited Jan. 26, 2007). Governments also employed 8% of attorneys in 1991 and 9% in 1980. *Id.*

26. *Id.* Private industry employed 9% of attorneys in 1991 and 10% in 1980.

27. *Id.* Such organizations also employed 2% of the profession in 1991 and 3% in 1980.

28. *Id.* These categories also contained 9% of lawyers in 1991 and 10% in 1980.

practice in 2000.<sup>29</sup> Of those in private practice, 14% were in firms larger than 100 attorneys with another 4% in firms of fifty-one to one hundred attorneys.<sup>30</sup>

In contrast, 48% of all lawyers in private practice were solo practitioners in 2000.<sup>31</sup> Another 15% of lawyers then in private practice were in firms of two to five attorneys<sup>32</sup> and 7% of private-practice lawyers were in firms of six to ten.<sup>33</sup> The percentage of lawyers in solo practice or firms of ten or fewer has declined from 1980 when it constituted 81% of those in private practice. But at 70% in 2000, it represents the majority of practicing lawyers and dwarfs the numbers of attorneys in large firms. Since the size of the firm indicates in which sphere of the profession its lawyers operate, the majority of lawyers in private practice are representing individual clients.<sup>34</sup>

Younger lawyers are more likely to be in larger firms than the profession as a whole, but still only a minority of recent graduates is in the large-firm setting.<sup>35</sup> A survey of recently admitted attorneys by the National Association of Legal Placement (“NALP study”)<sup>36</sup> found that 28% of the respondents were in

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29. *Id.* About 73% of lawyers were in private practice in 1991, while only 68% were in 1980. The proportion of lawyers in what might be labeled the for-profit sector of the bar — private practice plus in-house counsel — thus remained stable during the 1990s as it generally has for over a generation. *See ELIZABETH CHAMBLISS, MILES TO GO: PROGRESS OF MINORITIES IN THE LEGAL PROFESSION* 20 (2004) (“The distribution of lawyers by type of employment has remained relatively stable since the 1960s with about 85 percent of all lawyers working in private sector (private practice and business) and about 15 percent working in the public or not-for-profit sector (government, judiciary, public interest and education).”); *see also* Lewis A. Kornhauser & Richard L. Revesz, *Legal Education and Entry into the Legal Profession: The Role of Race, Gender, and Educational Debt*, 70 N.Y.U. L. REV. 829, 839 (1995) (“[S]ince the 1960s, the division between for-profit and not-for-profit jobs has been relatively stable.”).
30. The ABA reports that in 1980 7% of the lawyers in private practice were in firms of fifty-one to one hundred lawyers, the largest firm size listed. In 1991, 5% of private practitioners were in firms of that size, plus another 13% in firms of more than one hundred attorneys. *Lawyer Demographics*, *supra* note 25.
31. *Id.* The percentage of solo practitioners is down one point from 1980, but up three from 1991 when 45% were solo practitioners.
32. *Id.* In 1991, the percentage in firms of two to five was also 15% while it was 22% in 1980.
33. *Id.* The same percentage were in firms of six to ten in 1991 while 9% were in such firms in 1980.
34. Indeed, slightly more than half of all attorneys (52%), whether in private practice or elsewhere, are employed in these small practice settings, and if non-practicing lawyers are excluded, about 57% of those practicing law are solo practitioners or in firms smaller than ten. *Id.* When the percentages of those working for the government and in public interest and public defender positions is added to the small-firm attorneys, it is clear that most attorneys are not working in a big-firm setting, but in the kinds of practices where large corporations are not represented. *Id.*
35. *See* NALP, *supra* note 13, at 25 (“New lawyers are much more concentrated in large firms than are lawyers as a whole, but even at this stage a great many new lawyers go into what, by modern standards, are comparatively small firms.”).
36. The National Association of Legal Placement Foundation for Law Career Research and Education, with the American Bar Foundation, is in the midst of an intensive tracking of the first ten years of the professional lives of more than five thousand attorneys admitted to the bar in the year 2000 who form a representative sample of all lawyers who were admitted that year. The first information from that project

firms of more than 100 attorneys. In contrast, 5% were in solo practice with another 25% in firms of 2–20 attorneys, the smallest size firm categorized in this data.<sup>37</sup> In other words, more attorneys even at the beginning of their careers were in solo practice and small firms than in the largest firms. In addition, another 22% of the young lawyers were in the kinds of practices that would not normally represent large corporations — government, legal services, public interest, and nonprofit or education.<sup>38</sup> Thus, a majority of the recent graduates were in settings other than those where they would be representing corporations.<sup>39</sup>

It is true that young lawyers in urban legal centers are more concentrated in large firms than is suggested by the national figures. This concentration is most pronounced in New York City, where 24% of the recent graduates worked in offices of larger than 250 attorneys with another 18% working in offices of 101–250.<sup>40</sup> Still 15% of the recent graduates in New York City were in firms of two to twenty while another 2% were solo practitioners. In addition, 14% were in government with another 9% in legal services, public defender, public interest, or the other category.<sup>41</sup> Even in New York City, the percentage of beginning lawyers in the kind of setting that is clearly corporate — the largest firms — was about the same as those in a setting that is largely non-corporate — solo practitioners, the smallest firms, and the government.

#### D. Unequal Incomes

The portion of overall legal fees from corporate clients has increased,<sup>42</sup> but most lawyers do not represent corporations. Not surprisingly, then, lawyers' in-

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resulting from questionnaires administered two to three years into the subjects' careers was published in 2004. See NALP, *supra* note 13. Much more information will become available as the project conducts face-to-face interviews with a subset of the sample and undertakes additional surveys and interviews six and ten years into the subjects' careers.

37. NALP, *supra* note 13, at 27 (finding that 8% were in firms of 101–250 with another 20% in firms larger than 250).

38. Sixteen percent were in government (5% with the federal government and 11% with state or local governments); 3% were with legal services or a public defender; 1% in a public interest practice, and 2% in what was listed as nonprofit or education and other. *Id.*

39. In addition to the largest and smallest firms, 13% of the respondents were in firms sized twenty-one to one hundred lawyers and 9% worked in business settings. *Id.* About those in business, the study reports, "[t]his is a very heterogeneous group. Most do not work at Fortune 1000 corporations, and about a third are doing primarily non-legal work." *Id.*

40. *Id.* at 29. This data is for *offices*, not *firms*. More of those New York attorneys no doubt work in firms of over 250 attorneys. Nationally, while 20% worked in firms of that size, 7% worked in offices that large. *Id.* at 27.

41. *Id.* at 29. New York, along with several other locations, has more public interest jobs than the national average. See *id.* at 26 ("Just over 4% of lawyers in the sample work in public interest or legal services organizations. Of all groups, the public interest lawyers are the most geographically concentrated — 42% of those in the AJD sample in are New York, D.C., or Chicago.")

42. See URBAN LAWYERS, *supra* note 3, at 317.

comes, already among the most unequal of any profession,<sup>43</sup> have become increasingly disparate, with incomes falling for the majority of attorneys. *Urban Lawyers* summarizes striking trends:

In 1975, when firms with one hundred or more lawyers employed 8 percent of the practicing bar, those lawyers earned 9 percent of the bar's total income, but in 1995, when the percentage of lawyers working in firms of that size had increased to 25 percent, their income share reached 37 percent . . . . Government lawyers constituted 11 percent of the practicing bar in 1975 and earned 6 percent of the total income; in 1995, they were still 11 percent of the bar but received only 4 percent of the income. Solo practitioners declined from 21 percent to 15 percent of practicing lawyers, but from 19 percent to 10 percent in income share. The gulf between the wealthiest lawyers and the less fortunate widened considerably. In 1975, lawyers in the bottom quartile of the income distribution earned an average of \$43,231 (in 1995 dollars.) That had dropped by almost \$10,000 in 1995 (to \$33,816). In the top quartile, however, average income (again, in constant dollars) increased from \$266,733 to \$325,030. In 1995, the 25 percent of lawyers with the highest incomes received 61 percent of total practice incomes, while the bottom 25 percent received only 6 percent.<sup>44</sup>

This increasing inequality is not confined to just the top and the bottom. Incomes in the middle two quartiles also dropped. In 1995 dollars, incomes for them were \$73,938 and \$112,357 in 1975 but had dropped twenty years later to \$67,242 and \$106,234 respectively. In other words, while the incomes of one-quarter of lawyers had soared, incomes had dropped for all the rest.

The widening income gap follows the increasing concentration of corporate business in the large firms. The median and mean incomes of those who primarily serviced the legal needs of business went up from 1975 to 1995,<sup>45</sup> but those who largely represented individuals saw their average income decline, from \$116,348 to \$105,955, while median incomes fell from \$99,159 to \$65,000.<sup>46</sup> "This suggests both that real incomes in the personal client sector of the profession were falling and that the income inequality was increasing."<sup>47</sup> As a result, the

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43. URBAN LAWYERS, *supra* note 3, at 159 ("Lawyers' income[s], in fact, are among the most unequal of those in any profession."); Nelson, *supra* note 1, at 373 ("The legal profession has had the highest levels of income inequality among the leading professions.").

44. URBAN LAWYERS, *supra* note 3, at 317.

45. The mean income increased from \$142,602 in 1975 to \$151,398 in 1995, with the median incomes at \$99,159 and \$112,500, respectively. *Id.* at 162.

46. *Id.*

47. *Id.* ("The ratio of the mean to the median of an income distribution is a conventional summary measure of inequality, useful for indicating how distant the highest earners are from those at the middle of the distribution . . . ."); *cf.* CHAMBLISS, *supra* note 29, at 49 (noting that a 2003 survey of members of National Association of Criminal Defense Lawyers found that in constant dollars their income was about the same as ten years earlier).

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incomes of those in large firms went up, while those in a small-firm setting dropped.<sup>48</sup> In addition, salaries for government lawyers have also been falling. "[T]he average incomes of lawyers working in government fell by 23 percent (from \$63,458 in 1975 to \$49,190 in 1995), and the median income fell even more, by 37 percent, (from \$70,828 to \$45,000 . . . )."<sup>49</sup>

### II. LAW SCHOOLS AND THE DIVIDED PROFESSION

A meaningful legal education cannot be fashioned without understanding the chasm in the profession.<sup>50</sup> This is especially important at the less prestigious law schools, for their graduates will overwhelmingly practice on the personal-client and government side of the divide where the share of the legal market has been shrinking and incomes dropping. The skills and abilities needed to be successful in this sphere, or even to survive as lawyers in it, are strikingly different from those needed by large-firm, corporate attorneys.

#### *A. Practice Settings and Law School Hierarchy*

While the *U.S. News and World Report* law school rankings order schools from one to a hundred and then group the remainder into Tier 3 and Tier 4, for purposes of understanding the law schools' roles in the divided legal profession, law schools can be grouped, as the study of the Chicago bar did, into four catego-

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48. See URBAN LAWYERS, *supra* note 3, at 291:

[T]he median income of associates in large firms, in constant (1995) dollars, increased from \$70,828 in 1975 to \$85,000 in 1995 . . . . The median real income of partners in such firms increased from \$198,318 to \$225,000 over the same interval. In the largest firms, those with 300 or more lawyers, the median partner income in 1995 was \$350,000. In small firms and solo practice, however, the pattern was quite different. For partners in small firms, median income decreased from \$127,490 in 1975 to \$112,500 in 1995, and for solo practitioners it decreased from \$99,159 to \$55,000, in constant dollars. Thus, the income gap between lawyers in large firms and those in small firms and solo practice widened considerably . . . .

49. *Id.* at 166. The median incomes of those working for the federal government were \$55,000 in 1995 versus \$70,828 in 1975; for those in local government were \$45,000 in 1995 versus \$70,828 in 1975; and in state government were \$42,497 in 1975 versus \$45,000 in 1995. *Id.* at 166-67; see also CHAMBLISS, *supra* note 30, at 48 ("The national median starting salary for 2003 law graduates who entered government was \$43,000, compared to \$80,000 who entered private practice and \$60,000 for those who entered business."); Kornhauser & Revesz, *supra* note 29, at 867-68 (noting starting salaries at elite firms were 69.3% higher than starting federal salaries in 1980, but were 145.5% higher in 1993. The starting salary at non-elite firms was 9.2% higher than the starting federal salary in 1980 and 99.1% higher in 1993.); *cf. id.* at 870 (noting that starting salaries for lawyers in the federal government, which were \$36,516 in 1978, fell in constant dollars to \$30,362 in 1993).

50. *Cf.* Nancy L. Schultz, *How Do Lawyers Really Think?*, 42 J. LEGAL EDUC. 57, 57 (1992) ("[W]e cannot really teach students how lawyers think without teaching them at the same time what lawyers do."); see also Gary S. Laser, *Educating for Professional Competence in the Twenty-First Century: Educational Reform at Chicago-Kent College of Law*, 68 CHI-KENT L. REV. 243, 245 (1992) ("To determine what skills and values lawyers need, we should ascertain what tasks lawyers perform (skills), how they solve legal problems (skills and values), and how they meet their ethical and social obligations (values).").

ries: elite, prestige, regional, and local.<sup>51</sup> In terms of the *U.S. News* rankings, the elite group is somewhat less than the top ten schools; the prestige category extends to about the twentieth ranking; the regional ends at about the fortieth place; and the local schools are all the rest.

With over 190 law schools approved by the American Bar Association,<sup>52</sup> local law school graduates overwhelmingly form the largest segment of the bar, but they are not evenly distributed among the various practice settings. Thus, in 1995, 45% of the Chicago bar were graduates of the local schools, but only 17% of the lawyers in the largest firms of more than three hundred attorneys were graduates of those institutions. This meant that only 5% of all local law school graduates were in the largest firms with only another 7% in the next largest firms of more than one hundred attorneys.<sup>53</sup> Graduates of elite and prestige schools dominate the large-firm setting. While 14% of the Chicago bar were graduates of elite schools, 30% of the attorneys in the largest firms had graduated from elite schools. Thirteen percent of the Chicago bar had graduated from prestigious schools, but 24% of the attorneys in the largest firms had come from those schools. In fact, about 30% of all elite law school graduates were in the largest firms, with another 14% in firms of 100–299 attorneys. One-quarter of all the prestige school graduates were in the largest firms while another 19% were in firms of 100–299. Thus, 44% of both elite and prestige school graduates were in firms of 100 or more.<sup>54</sup>

On the other hand, local law school graduates dominated the smallest firms and solo practitioners. In firms of two to nine attorneys, two-thirds of the lawyers were graduates of local law schools, while only 7% were elite school graduates and another 7% graduated from prestigious schools. A majority (58%) of solo practitioners had graduated from local law schools, while only 10% of this group had come from elite schools with another 8% from prestige schools.<sup>55</sup> Thus, 24% of all the local law school graduates practicing in Chicago were in firms of two to nine and another 22% were solo practitioners.<sup>56</sup> While nearly a half of all the

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51. In considering the law schools from which members of the Chicago bar had graduated, *Urban Lawyers* placed Chicago, Columbia, Harvard, Michigan, Stanford, and Yale in the elite category. The prestige group included Berkeley, Cornell, Duke, Georgetown, New York University, Northwestern, and four other schools with three or fewer respondents. The regional category consisted of Illinois, Indiana, Iowa, Ohio State, Notre Dame, Wisconsin, and several schools with a small number of graduates in the survey. The local schools included four Chicago institutions: Chicago-Kent, DePaul, John Marshall, and Loyola. *URBAN LAWYERS*, *supra* note 3, at 24–25.

52. American Bar Association, ABA Approved Law Schools, <http://www.abanet.org/legaled/approvedlaw/schools/approved.html> (last visited Jan. 26, 2007).

53. *URBAN LAWYERS*, *supra* note 3, at 58 tbl.3.1.

54. *Cf.* Galanter, *supra* note 7, at 1091 (“Lawyers who provide services for corporations and other organizations tend to be drawn from the more prestigious law schools and to practice in larger aggregations.”).

55. *URBAN LAWYERS*, *supra* note 3, at 58 tbl.3.1

56. This pattern is not confined to Chicago. In a study of solo and small-firm attorneys working in the New York City metropolitan area, 48% of the respondents had graduated from local law schools with another

elite and prestige law school graduates were in firms of more than one hundred attorneys, about the same percentage of local law school graduates were in practice settings of fewer than ten lawyers. In addition, two-thirds of government attorneys in Chicago were local law school graduates, which was another 13% of all local law school graduates.<sup>57</sup> Thus, well over a majority of local law school graduates were practicing in a setting where they were unlikely to be representing corporations, and they dominated the professional sphere where individuals are represented.

Since local law school graduates are concentrated in the government and personal services fields where incomes are less than in corporate practice, it is not surprising that local law school graduates do not make as much money as graduates from other institutions. *Urban Lawyers* found that incomes of graduates of elite schools averaged a third more than their counterparts from regional schools while those from prestige law schools made 17% more than regional-school graduates. In contrast, graduates of local law schools made 14% less than those from regional schools.<sup>58</sup>

### B. *The Importance of Initial Hiring Decisions*

The disparate professional paths do not simply evolve over careers but are set by initial hiring decisions. As *Urban Lawyers* points out, "the restriction of practice usually occurs early in the lawyers' career, often when they get their first job."<sup>59</sup> If a graduate is not hired by a large firm or corporation, the odds are that the graduate's profession will be in the personal-client sphere. The gateway to much of the profession is thus controlled by those who hire for large law firms,<sup>60</sup> and the law school attended is a chief determinant in that decision. "[L]aw firms

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37% from regional schools. SERON, *supra* note 13, at 158 (defining elite and prestige schools as the top twenty in the country). Regional referred to most law schools attached to public or private universities "that tend to serve a local constituency. In New York this includes the State University of New York at Buffalo and Fordham Law School. Local law schools are the least prestigious, in large part because they have easier admission standards, tend to be proprietary, and, reflecting their populist roots, maintain night school programs. In the New York area, Brooklyn, St. Johns, and New York Law are the major schools in this category." *Id.* at 160.

57. URBAN LAWYERS, *supra* note 3, at 58 tbl.3.1.

58. *Id.* at 172; see also Jo Dixon & Carroll Seron, *Stratification in the Legal Profession: Sex, Sector, and Salary*, 29 LAW & SOC'Y REVIEW 397-98 (1995) (noting that lawyers' incomes correlate with prestige of law school attended). The authors of *Urban Lawyers* found that "[b]y the time a graduate of an elite or prestige school reached the mean age [of Chicago lawyers] in 1975 (age forty-four), his or her probability of having an income in the top quartile was 41%. For those from regional and local schools, it was 31%. In the 1995 sample, the income difference between the school categories was even more substantial. In 1995, the predicted probability of an elite or prestige school graduate being in the top quartile was 34%, at the mean age, but for those who went to regional or local law schools it was only 20%. Thus, the gap between the school categories widened from ten percentage points in 1975 to fourteen percentage points in 1995." URBAN LAWYERS, *supra* note 3, at 59-60.

59. URBAN LAWYERS, *supra* note 3, at 72.

60. See *id.* at 69:

construct their associate supply by simply choosing the law schools from which they recruit,”<sup>61</sup> and the largest, most prestigious firms quite clearly prefer to hire from elite and prestige schools.

William Henderson and Andrew Morris may overstate the case when they assert that the “[s]chools near the top of the *U.S. News* hierarchy continue to have one enormous competitive advantage: they provide unfettered entree to the [elite law firms],”<sup>62</sup> but they capture a fundamental truth about the hiring of law school graduates. The recent NALP survey of young attorneys found:

[R]espondents who graduated from the more selective law schools, as ranked in [*U.S. News and World Report*], work disproportionately in the larger offices in private practice and in the markets where the highest paid lawyers are located . . . . Those graduating from the so-called medium and low selectivity schools, in contrast, are more likely to work in smaller firms, in state and local government, or in the business sector, where salaries tend to be somewhat lower.<sup>63</sup>

The report found that 42% of graduates of *U.S. News*’ Tier Three schools were in firms of twenty or fewer lawyers or in solo practice with another 16% in government practice. Only 3% of them were in firms of over 250 attorneys with another 6% in firms of 100–250. In contrast, 25% of graduates from the top ten schools were in the largest firms with another 25% in firms of 100–250 lawyers. Only 6% of the elite-school graduates were in firms of two to twenty, none in solo practice, and another 10% worked for a government.<sup>64</sup>

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In order to be a plausible candidate for a distinct type of legal work (e.g., work on corporate mergers), it is often necessary for a lawyer to be affiliated with a particular kind of institution (e.g., a large law firm), and the employment decisions of such institutions are therefore likely to control access to the same kinds of work. Organizations are the gatekeepers for entry into those fields of law. If the managers of the organizations have a preference for colleagues of a specific ethnicity, race, gender, social class, law school pedigree, or political affiliation, those preferences will be reflected in the characteristics of the practitioners in the field.

61. Chambliss, *supra* note 24, at 692.

62. William D. Henderson & Andrew P. Morris, *Student Quality as Measured by LSAT Scores: Migration Patterns in the U.S. News Rankings Era*, 81 IND. L.J. 183, 194 (2006).

63. NALP, *supra* note 13, at 42.

64. *Id.* at 44 tbl.5.2. Of the graduates of the schools ranked from eleven to twenty, 33% were in firms with more than one hundred attorneys, 18% were in firms of twenty or fewer or solo practice, and another 11% worked for the government. Of the graduates of the schools ranked twenty-one to one hundred, 15% were in firms with more than one hundred attorneys, 33% were in firms of twenty or fewer or solo practice, and another 18% working for the government. *Id.*; cf. Kornhauser & Revesz, *supra* note 30, at 894 (finding that 60.7% of the graduates of New York University Law School took their first jobs with elite firms). The authors defined an “elite for-profit job” as working in a firm with more than 250 attorneys or a “job at any New York firm that we knew paid salaries at, or near the going-rate for elite firms.” *Id.* at 893. They also found that 48.9% of the University of Michigan Law School graduates entered employment in the elite for-profit sector, a number which they concluded closely matches the nationwide pattern of employment from elite law schools. *Id.* at 903; see also Chambers, Lempert & Adams, *supra* note 7, at 432–33.



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Furthermore, even when recent local school graduates appeared to be in the same practice setting as elite and prestige law school graduates, incomes revealed an important difference. While median salaries for the new lawyers working in the largest firms was relatively the same for graduates across the law school hierarchy,<sup>65</sup> in firms of 101–250 attorneys the median salary of those who graduated from the top ten schools was \$145,000; from the next ten schools, \$136,000; from schools ranked twenty-one to one hundred, \$107,000; and from Tier Three schools, \$95,000. In firms of twenty-one to one hundred attorneys, the median salaries by those categories were, respectively, \$130,000, \$130,000, \$94,000, and \$85,000. And, in firms with twenty or fewer attorneys, they were \$135,000, \$75,500, \$60,000, and \$55,000.<sup>66</sup>

The varying opportunities afforded by different law degrees is also apparent when median salaries are correlated with law school selectivity and student grades. Thus, for recent graduates of the top ten schools, the result is basically flat, with those who had the best grades receiving a median salary of \$130,000 and those with the bottom grades \$125,000. But for Tier Three schools, those with the top grades had a median salary of \$93,000 and those with the bottom grades \$51,000.<sup>67</sup> Overall, the median salary of a recent graduate of a top ten school was \$135,000; from a school ranked eleven to twenty, \$107,000; from a school ranked twenty-one to one hundred, \$73,500; from a Tier Three school, \$60,000; and from a Tier Four school, \$56,341.<sup>68</sup>

By the measures of practice setting and income, graduates of local law schools are entering a different sphere of the profession from graduates of elite schools. The elite school graduates are in the corporate sphere with concomitant high sala-

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Michigan graduates . . . tend to work in law firms with substantial portions of attorneys from other leading law schools . . . [, and] the graduates of the 1990s tend to have a somewhat higher proportion of “elite” law school colleagues than the graduates of earlier decades, reflecting the higher proportion of more recent graduates working in large firms.

65. In those firms, the median salary of those who graduated from the top ten schools was \$150,000; from the next ten schools, \$140,000; from schools ranked twenty-one to one hundred, \$135,000; and from Tier Three schools, \$137,000. NALP, *supra* note 13, at 44 tbl.5.2.

66. *Id.*

67. *Id.* Graduates with top grades from schools ranked eleven to twenty had median salaries of \$135,000, and those with the bottom grades \$49,000. Graduates with top grades from schools ranked twenty-one to one hundred had median salaries of \$100,000 and those with the bottom grades \$51,500 salaries. *Id.*

68. *Id.* at 75 tbl.10.3. The income disparity in the profession starts at the beginning of careers. The NALP survey respondents had a median income of \$73,000, but, as the study notes, that figure “already conceals an enormous range of incomes. About 25% of the attorneys in the sample reported incomes of more than \$110,000 (and 10% were over \$150,000), while another 25% reported incomes below \$50,000.” *Id.* at 41.

ries while local law school graduates are not.<sup>69</sup> Looked at this way, just as the profession is divided into distinct segments, so too, are law schools.<sup>70</sup>

### C. *The Continuing Preference for Elite School Graduates*

The hemispherical division of law schools might appear to be breaking down because more local law school graduates do practice in corporate firms than a generation ago. *Urban Lawyers* found that in 1995, the percentage of attorneys who graduated from local law schools working in firms of 100 or more lawyers was 12%, while it was only 1% in 1975.<sup>71</sup> In other words, over this period, “the representation of local schools in large firms did increase substantially . . . .”<sup>72</sup>

The increased hiring of local law school graduates by corporate firms, however, does not indicate that those firms have a decreased preference for elite school graduates. The largest firms grew mightily at the end of the last century,<sup>73</sup> and the number of elite law school graduates did not keep pace with this burgeoning demand.<sup>74</sup> Those firms could not restrict themselves to elite law school graduates

69. There is a long symbiotic relationship between the top law schools and corporate law firms. Robert Stevens, in his history of legal education, notes that from the beginning of the twentieth century, “the elite law schools were seen as increasingly bent on serving corporate law firms . . . . The elite law schools grew alongside the burgeoning corporate law firms.” ROBERT STEVENS, *LAW SCHOOL: LEGAL EDUCATION IN AMERICA FROM THE 1850S TO THE 1980S*, at 51 (1983); see also Henderson & Morris, *supra* note 62, at 195 n.93 (“There is surely some irony in corporate America paying for the lifestyles of elite law school faculties, whose views are generally thought to be highly liberal and anti-corporate.”). The irony also runs in the other direction. The faculties of the elite school, even if nominally anti-corporate, are primarily supporting the corporate state by training the lawyers for the corporate law firms. *Id.* at 195 n.93.

70. See Henderson & Morris, *supra* note 62, at 195 n.93 (“The clear segmentation of the law school hierarchy, and the symbiotic relationship that exists between Tier 1 and [elite] law firms, is reminiscent of the famous ‘two hemisphere’ theory of lawyers . . . . In essence, the present law school hierarchy correspond to these two hemispheres in terms of the proportion of their graduates that end up in each sphere.”).

71. *URBAN LAWYERS*, *supra* note 3, at 58 tbl.3.1.

72. *Id.* at 58.

73. The ABA reports that in 1980, 7% of the lawyers in private practice were in firms of fifty-one to one hundred lawyers, the largest firm size listed. In 1991, 5% of private practitioners were in firms of that size, plus another 13% in firms of more than one hundred attorneys. In 2000, 4% were in firms of fifty-one to one hundred while another 14% were in firms of more than one hundred. Lawyer Demographics, *supra* note 25; see also Nelson, *supra* note 1, at 372 (“From the period of 1980 to 1988, alone, the number of lawyers in law firms with more than fifty attorneys more than doubled, from 27,018 to 75,912.”); cf. Galanter, *supra* note 7, at 1092 (“From 1980 to 1991, the number of firms with 51 or more lawyers almost tripled from 287 to 751, while the average size of firms grew from 95 to 140, so that the total number of lawyers in these firms quadrupled.”). Elizabeth Chambliss’ study of elite law firms in Chicago, Los Angeles, New York, and Washington found that they “grew an average of 97% measured by number of lawyers” from 1980 to 1990. Chambliss, *supra* note 24, at 707. She notes that “most elite firms have grown significantly over the past several decades.” *Id.*; cf. Melendez, *supra* note 13, at 10 tbl.8 (finding that 24.8% of the members of the ABA Young Lawyers Division worked in firms of more than 150 attorneys in 2000, while 19.2% did in 1995).

74. See Nelson, *supra* note 1, at 372 (“[E]lite law school enrollments made up 10% of the total ABA approved enrollments in the period from 1941 to 1960, prestige schools contributed between 14% and 17% during the period. Between 1970 to 1990, the percentage of elite and prestige students among the total began to decline. The most recent percentages are 4.3% elite and 9.8% prestige. In absolute numbers there has been

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as they once did.<sup>75</sup> They simply had to hire outside this narrow band of institutions, and thus they came to employ more graduates of other schools, including local law schools.<sup>76</sup>

As indicated by the percentages of elite school graduates who are employed by the largest firms,<sup>77</sup> the large-firm preference for elite school graduates continues, and it can be expected to increase further. Richard Matasar reports that while dean at a local law school he tried to get large firms to employ more graduates of his institution, “[b]ut in response to our question why they did not hire more of our students (or reach deeper into the class), the answer was always the same, ‘we can always train smart people to get better, but we cannot train intelligence’ — sort of like the National Basketball Association’s preference for height, which simply cannot be taught.”<sup>78</sup>

“Intelligence,” at least as indicated by LSAT scores, has become more concentrated at the highest ranked schools and weaker at the other end of the law school spectrum. The median LSAT scores for the top 16 schools increased by more than a point-and-a-half from 1992 to 2004; increased by slightly less than a half point for the rest of the schools in the top and second quartile schools; and declined by about a point-and-a-half for the rest of the law schools.<sup>79</sup> If the largest firms

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almost no change in the number of elite law school students from 1970 to present. The law schools in the prestige category grew by some 1400 students, a 12% increase from 1970 to 1990.”); *see also* URBAN LAWYERS, *supra* note 3, at 25 (“[A]s the size of the bar increased over the two decades [1975-95], the enrollments of elite schools remained constant or grew only modestly.”); *id.* at 58 (“The percentage of the bar drawn from elite schools decreased (from 20 percent in 1975 to 14 percent in 1995) because those schools did not grow as much as the bar . . .”).

Total law school enrollments increased from 112,401 in 1976-77 to 137,681 in 2003-04. The total number of JDs awarded increased from 36,687 in 1984 to 38,863 in 2003. CHAMBLISS, *supra* note 29, at 8-9; NALP, *supra* note 13, at 19 (“There are roughly one million practicing attorneys in the United States today. The number of new lawyers entering the profession each year tripled between 1960 and the late 1970s, but growth has been fairly stable — about 40,000 per year — for the past 20 years.”).

75. *See* Chambliss, *supra* note 24, at 696 n.129 (“In 1962, more than 70% of the lawyers in New York’s leading law firms had graduated from Harvard, Yale, or Columbia law schools; 30% were listed in the Social Register.”).

76. URBAN LAWYERS, *supra* note 3, at 58 (“[T]he representation of local schools in large firms did increase substantially, perhaps because those firms were growing so rapidly that they found it necessary to recruit more widely — that is, they were unable to hire sufficient numbers of lawyers from their usual, more elite sources.”); *see also id.* at 288 (“When the demand for corporate legal services was growing most rapidly, some law firms found it difficult to recruit enough lawyers to supply demand. Large firms were then hiring seventy or more new lawyers per year . . . and the need for bodies led the firms to hire from a broader range of law school they had previously.”).

77. *See supra* text accompanying notes 53-54.

78. Richard A. Matasar, *The Rise and Fall of American Legal Education*, 49 N.Y.L. SCH. L. REV. 465, 486 (2005).

79. Henderson & Morris, *supra* note 62, at 178 tbl.3; *see id.* at 193 (“In terms of attracting high LSAT students, law schools in the top half of the law school hierarchy have generally benefited at the expense of those schools at the bottom. Schools in the elite Top 16 have done particularly well, increasing their median LSAT scores by an average of 1.69 points.”).

desire “intelligence,” then their preference for elite school graduates will only increase. If their needs require it, those firms will employ a top fraction of the local law schools graduates, but the size of that percentage will not be affected by the curriculum, faculty hiring or scholarship, or programs of the local law schools. In other words, the local law schools will not make their graduates more competitive for these positions.<sup>80</sup> Those students’ large-firm opportunities will depend on forces outside the schools. If the segment of the legal profession employed by the largest firms continues to grow, then there will be more such opportunities for graduates of non-elite schools in the elite firms; if that segment shrinks, the opportunities will decline. While local law schools should be concerned about training the comparatively few students well who will enter large firms, if those schools are expending significant resources with the goal of expanding the number of students who will go into such practices, they are wasting their time and money.

#### *D. The Future of Local Law School Graduates in Large Firms*

Certainly local law schools should not somehow plan as if a significantly higher percentage of their students will go into elite firms. That would require the continued enormous expansion of the largest firms, and that rate of growth may have already slowed.<sup>81</sup> In 1980, 7% of all lawyers in private practice were in firms that had more than fifty attorneys. In 1990, 5% of those in private practice were in firms of fifty-one to one hundred lawyers with another 13% in firms larger than one hundred attorneys. Thus, the percentage in firms larger than fifty increased by more than 150% during the 1980s, but that expansion largely ended in the 1990s. In 2000, 4% of those in private practice were in firms of fifty-one to one hundred with another 14% in firms larger than one

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80. Cf. Matasar, *supra* note 78, at 480 (“Outside of the very top of the [law school] rankings, the [large firm employment] market seems to have little preference for students at one mid-tier school or another, regardless of the relative ranking [sic] the schools.”).

81. Cf. Nelson, *supra* note 1, at 358 (“In 1972 the top 50 firms received an estimated 5.1% of receipts for all law firms; by 1987 their share had increased to 7.8%, a fifty percent increment. The strong implication of these findings is that top corporate firms will continue to grow and prosper in the foreseeable future. The shakeout in the corporate sector, if one is coming, is likely to be among smaller corporate firms, who must struggle to achieve sufficient size and a reputation for specialized competence to compete with larger firms within their region and nationwide.”); *id.* at 359 (“[W]e cannot now predict the future of corporate legal firms in the next century.”); see URBAN LAWYERS, *supra* note 3, at 299 (“There is probably nothing inherent in the nature of legal work that would prevent substantially greater concentration of it in larger organizations. At present, however, rules concerning conflicts of interest are a significant impediment to the acquisition of new clients by major firms.”); see also Galanter, *supra* note 7, at 1093–94:

The large-firm sector seems likely to grow with the continuing increase in the volume of legal services purchased by businesses. The increase in the size of individual firms suggests that many of the existing large firms will continue to grow. But it is less certain that there will be a multiplication of large firms matching that of the past generation. Our uncertainties are accentuated by the specter of so-called multidisciplinary practice — whether and how accounting firms will practice law, and how law firms might expand into other work.

hundred.<sup>82</sup> The total percentage of attorneys in firms larger than fifty remained the same, with the percentage in the largest firms increasing only slightly over the previous decade.<sup>83</sup> If this trend of the 1990s holds, local law schools will continue to place a handful of graduates in the largest firms, but those numbers will not mushroom.

Furthermore, few from the small percentage of local law school graduates who will enter the largest firms will stay there for a long period of time.<sup>84</sup> Compared to an earlier era, fewer associates in the largest firms, no matter what their educational pedigree, make partner.<sup>85</sup> For example, in Chicago, "[i]n 1975, 38 percent of the lawyers who began their careers in large firms had become partners

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82. Changes in the corporate economy fueled an increased demand for legal services resulting in the growth of the largest law firms. Nelson, *supra* note 1, at 347 ("In recent decades the United States has undergone a dramatic transformation from a manufacturing-based economy in which international trade plays a relatively small part, to a service economy that is heavily involved in international transactions."). The older-style corporation produced fewer demands for legal services than present day companies. See URBAN LAWYERS, *supra* note 3, at 284 ("When the largest sectors of the U.S. economy were agriculture and heavy industry, those enterprises probably generated fewer demands for legal services, per dollar of product, than does the present economy . . . .") Thus, "a survey of companies headquartered in the Chicago area found that 'companies dealing with financial services and insurance and those in the transportation industry are the most intensive consumers of legal services' and that 'manufacturers in heavily science-dependent fields are considerably more likely than others to make extensive use of lawyers.'"). URBAN LAWYERS, *supra* note 3, at 284 (quoting Robert Bell, *Some Determinants of Corporate Use of Attorneys* 22-24 (Am. Bar Found., Working Paper Series 1999)).

While increased government regulation and the expansion of corporate liability has produced a need for more corporate legal services, that growth was also caused by the "rise in the financial conception of the corporation. While corporations in earlier periods were viewed as entities engaged in making a particular product or providing a particular service, the dominant conception of the corporation today is a set of assets whose value is determined through the tools of financial analysis." Nelson, *supra* note 1, at 350. Corporations began to engage in more financing transactions, ownership changes, and mergers and acquisitions that required legal services. If the changed economy remains, then the high demand for corporate legal services will continue and so will large firms. Cf. Nelson, *supra* note 1, at 359 ("If present political and economic trends continue, so that our society experiences more trade with distant partners, and if we continue to follow relatively legalistic approaches to commerce, finance, and corporate governance, we can expect the continued expansion of the corporate legal sector."). On the other hand, if the corporate economy has already been largely transformed, then it is unlikely that the demand for corporate legal services will continue to grow exponentially as it has over the last decades, and it is unlikely that the growth of the largest firms will be what it was in the 1980s.

83. Lawyer Demographics, *supra* note 25. In 1980, 1% of all law firms had fifty-one or more attorneys. In 1990, 1% of all law firms were of the fifty-one to one hundred size with another 1% of firms having over one hundred attorneys. During the 1990s, those percentages remained the same, with 1% of the firms being fifty-one to one hundred attorneys and 1% being larger than one hundred attorneys in 2000. *Id.*
84. Cf. CHAMBLISS, *supra* note 29, at 33-34 (finding approximately one-half of all associates leave their initial job within three to four years of practice). The NALP study found that more than a third of the respondents, even though only out of law school less than three years, had already switched jobs more than once. While those in the largest firms were more likely to have remained in their initial job, over half still said that they planned to change jobs within the next two years. NALP, *supra* note 13, at 53.
85. See, e.g., Chambliss, *supra* note 24, at 717 n.182 ("In New York, for example, the promotion rate was 25.1% for associates hired between 1968 and 1970, but only 18.8% for associates hired between 1978 and 1980.").

in the firms where they started; in 1995, only 26 percent had.”<sup>86</sup> And while little systematic data has been collected about the progression of local law school graduates within the large firms where they have been hired, one study of such firms has suggested that the path for them there is harder than it is for the graduates from elite schools. Elizabeth Chambliss reports that in elite firms “[a]ssociates with less distinctive incoming credentials . . . tend to get less specialized attention and may suffer disproportionate criticism by their evaluators.”<sup>87</sup> The odds would seem to be that local law school graduates, even if hired by a large firm, have lesser chances of a permanent relationship with those firms than associates from higher ranked schools.<sup>88</sup>

Indeed, in an important sense, it may actually be harmful to their careers for local law school graduates to go to the largest firms. They are unlikely to become partners, and *Urban Lawyers* found that in both 1975 and 1995, “among lawyers who did not become partners in their first law firms, less than half worked in other firms later and only about a quarter eventually became partners. Being denied partnership in one’s first law firm meant that one was less likely *ever* to attain partnership.”<sup>89</sup>

Most of the tiny fraction of local law school graduates hired by the largest law firms will not have a career in such a setting,<sup>90</sup> and the overwhelming majority of all local law school graduates will never practice at all in a large firm. Whatever local law schools may be attempting to do, in reality they are not educating their students for a large-firm practice.

### *E. The Increasing Competition in the Personal-Client Sphere*

To serve their students well, local law schools should recognize that they are primarily training attorneys for the personal-client sphere where not only the share of the legal services pie and incomes have been declining, but also where competition may become even stronger partly because local law schools continue to

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86. URBAN LAWYERS, *supra* note 3, at 150. The partnership trend in the large firms mirrors a general trend on partnership. “Of lawyers who started in law firms of all sizes, 30 percent in 1975 and 22 percent in 1995 held the position of partner in the firm in which they took their first job.” *Id.*

87. Chambliss, *supra* note 24, at 693.

88. See URBAN LAWYERS, *supra* note 3, at 59 (calculating the probability that an attorney at the mean age of those surveyed would be a partner in a large firm and found that “[f]or graduates of elite and prestige school, the partnership probability was 21 percent, but for those who had attended regional or local schools it was only 8 percent”).

89. *Id.* at 150 (stating that their data might not fully indicate the effect that the denial of partnership has). “Moreover, if lawyers who were not promoted to partner in their first firm simply left the profession, these calculation may understate the true size of the decline.”

90. Cf. Chambers, Lempert & Adams, *supra* note 7, at 431 (“[T]he usual migration of young lawyers [is] from an initial job in a larger firm to a long-term position in a smaller practice setting. . . .”); see also Patrick J. Schiltz, *On Being a Happy, Healthy, and Ethical Member of an Unhappy, Unhealthy, and Unethical Profession*, 52 VAND. L. REV. 871, 887 (1999) (“[L]awyers who leave big firms rarely go to other big firms.”).

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turn out more graduates.<sup>91</sup> Law school enrollments rose in the 1960s, leveled off in the 1980s, but have begun to rise again.<sup>92</sup> While the total number of law students was 125,397 in the academic year starting in 1995, it was 137,676 in 2003.<sup>93</sup> While this increase may partly result from larger class sizes at some schools, the primary cause is the growth in the number of law schools. The ABA had 132 approved law schools in 1960, 171 in 1980, 175 in 1995, and over 190 in 2006.<sup>94</sup> The new schools do not join the elite ranks, but find themselves clumped with other local law schools, and the increased number of local law school graduates brings more competition to the personal-client sphere. Marc Galanter predicts:

Among the solo and small-firm practitioners who serve individual and small business clients, there will be ever more lawyers competing for business. The number of lawyers in solo practice and smaller firms will continue to increase in the coming decades. A larger portion of the future increments of additional lawyers will end up in these practices because even with renewed growth in demand, the large-firm sector is not likely to absorb a much larger portion of new entrants.<sup>95</sup>

In addition, most lawyers who initially enter a large firm will leave, and an increasing number of them will migrate to small firms and solo practices increasing the competition in that segment of the bar. *Urban Lawyers* noted:

Because more lawyers in the second survey had started out in large firms, lawyers who left those jobs increasingly supplied the workforce of other settings. . . . In the 1975 survey, no lawyer working for an agency of government had started in a large law firm; in the 1995 survey, 8 percent of lawyers in government practice had started in large firms. Large law firms also became a source/supplier of lawyers working alone and in the smallest firms. Although only 2 percent of those in solo practice or in firms of two to ten lawyers at the time of the 1975 survey had begun their careers in large firms, in the 1995 survey

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91. See SERON, *supra* note 13, at 167:

Competition is especially pronounced in solo and small-firm practice, where the expansion of demand has been relatively weak but the number of attorneys entering the field has grown rapidly—partly because of the expansion in the number of lower-tier and proprietary law schools. By contrast, among corporate-client firms, real demand has increased while supply has been constant, given the steady state of the size of elite and prestigious law school classes.

92. See Galanter, *supra* note 7, at 1083 (“Starting in the 1960s, more students entered law school each year. From 15,607 in 1960, the number of those entering law school rose to 34,289 by 1970 and leveled off in the low forty thousands after 1980.”).

93. Lawyer Demographics, *supra* note 25.

94. See Galanter, *supra* note 7, at 1083 n.2; American Bar Association, ABA Approved Law Schools, <http://www.abanet.org/legaled/approvedlawschools/approved.html> (last visited Jan. 26, 2007).

95. Galanter, *supra* note 7, at 1098.

13 percent of solo and small-firm lawyers had started as big-firm associates.<sup>96</sup>

Even if the demand for legal services in the personal-client sphere increases somewhat,<sup>97</sup> incomes may continue to decline in that sector, where most local law school graduates will practice because of this increased competition.

The local law schools are in a strange position. They need to continue to attract students. They would like them to be bright, but those students must also be naive enough to be oblivious to these realities or willing to ignore them. Robert Nelson has suggested that it may be

that prospective law students are attracted by the high starting salaries of Wall Street law firms, even though most do not have a realistic chance of participating in that segment of the bar . . . . The dispersion of lawyers' salaries should give pause to college students and others contemplating legal careers. Potential law students may not comprehend such complexities.<sup>98</sup>

The local law schools themselves may be the counterparts of these students and remain oblivious to the realities of the opportunities for the majority of their graduates. The assumption by faculty and administrators may be that my local law school is different, affording real access to all careers for a majority of the students. Schools ought to check such assumptions. They ought to collect information about recent graduates' employment, not just about the percentages that go into private practice and government, but also about the size of the private firms and expand the information further by asking for estimates of time spent on various areas of the law — e.g., corporate, intellectual property, personal injury, family, criminal — and by asking for a rough breakdown of the kinds of clients they have been representing — corporations, small business, individuals — for

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96. URBAN LAWYERS, *supra* note 3, at 146.

97. See Nelson, *supra* note 1, at 381:

The future of the small law firm engaged in personal injury litigation depends on trends in the propensities of Americans to sue, on statutory limits that may be imposed on various forms of recovery, and on the policies and practices of the insurance companies who are repeat players in such litigation. The futures of solo practitioners depend on the nature of the services they offer, the networks through which they obtain clients, the kind of competition they face from other lawyers, and, increasingly, from the efforts of other institutional service providers, such as banks and real estate companies, to make inroads into the market for legal services to the middle class.

*Cf.* Matasar, *supra* note 78, at 495:

Tort reform is quite likely, with the effect of depressing returns for personal injury lawyers . . . . New forms of competition from online providers of legal advice to computerized forms to breaking the monopoly of lawyers to dispense advice may undercut the meat and potatoes of small firm practice.

98. Nelson, *supra* note 1, at 370, 374.



the nature of legal practice is set early in a career.<sup>99</sup> And, it would be even more valuable if law schools surveyed their graduates seven or so years after receiving their degrees to confirm what their graduates' careers really are.

Law schools do not collect this data,<sup>100</sup> but such information would be valuable to students, faculty, and administrators. Students might better understand the careers truly open to them and choose courses and other law school experiences accordingly. Faculty and administrators might better design the curriculum and experiences to aid their students in their likely careers.

Such information might lead to more niche training. A dean of a local law school has claimed that "[s]ome organizations may look for specific knowledge in order to fulfill client responsibilities."<sup>101</sup> If that is so, then local law schools should consider teaching such subjects more intensively than they do now so that their graduates can be well positioned to get hired by such employers. It is not clear, however, that such curricular emphases actually will have that effect. The dean does not cite any data to support his assertion, and elsewhere he casts doubt on whether the law school curriculum or programs matter in hiring decisions.<sup>102</sup> Meanwhile, law firms have not always been good at predicting future legal needs,<sup>103</sup> and law schools attempting niche education may simply be training students for markets that will dry up soon.

If, however, local law schools do create centers and specialty programs to increase the markets for their graduates, the efforts should not be aimed at getting more students employed by elite law firms. Those firms will simply hire to fill their needs from the very top of the local law school classes whether or not the

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99. URBAN LAWYERS, *supra* note 3, at 141 ("Lawyers who started out in work for individuals usually stayed with that work, and lawyers who started their careers working for businesses generally spent all of their working lives with such clients.").

100. Few law schools have systematically studied the careers of their alumni. An exception is the University of Michigan Law School, which took a comprehensive survey of all its minority graduates and a sample of its white graduates from the classes of 1970 through 1996 to explore its alumni's careers. See Chambers, Lempert & Adams, *supra* note 7.

101. Matasar, *supra* note 78, at 486.

102. *Id.* at 481:

[S]everal schools have recently tried to distinguish their (rather generic) programs from each other. They create specialty and certificate programs, offer overseas study, create dual degrees, etc. Although these initiatives often raise costs, few schools undertake an analysis to see if they are valued in the market as superior training of students to become lawyers, as opposed to another marketing tool to take advantage of law school's applicants lack of sophistication in measuring value.

103. URBAN LAWYERS, *supra* note 3, at 309:

Several large law firms had invested heavily in increasing their capacity to do intellectual property work, with a particular focus on clients engaged in developing and marketing computer technology. When the dot-com bubble burst in 2001, most of those law firms found that they then employed many more intellectual property lawyers than they had any use for. Some of the firms incurred substantial losses. Because law firms do not accumulate capital, they lack the resources to carry them through lean times of long duration. They must adjust to changed circumstances quickly.

students have a certificate in securities or international law or the like. Instead, the school's specialty programs should focus on the personal-client legal fields, such as personal injury, personal bankruptcy, divorce, or criminal law, or corporate law not aimed at the legal affairs of Fortune 500 companies but at small businesses.<sup>104</sup>

Local law schools, however, must do more than this to justify their continued existence. The schools need to focus more on training their students to practice and compete better in the small-firm, personal-client sphere where the majority of their graduates will practice. That requires understanding of not only where their graduates are heading, but also something too often lacking — an understanding of the nature of small-firm and solo practice.

### III. SKILLS AND TRAINING FOR THE PERSONAL-CLIENT SPHERE

Small-firm or solo practice calls on few of the legal skills and knowledge that law schools pride themselves on teaching.<sup>105</sup> The lawyers in these settings seldom analyze appellate opinions or parse statutes. Their practices infrequently require memos or briefs. Legal research hardly ever enters what they do.<sup>106</sup> While the assumption might be that various written products are usually the requirement for courtroom work, often that is not the case.<sup>107</sup>

Instead, the work of attorneys representing individuals is almost all legally routine.<sup>108</sup> The attorneys' professionalism does not come from technical lawyery

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104. See SERON, *supra* note 13, at 25–26 (describing a solo practitioner who “has a corporate practice located in White Plains[, N. Y.]. His ‘corporate’ clients are not IBM or General Mills, which both have headquarters nearby, but the smaller businesses that have emerged to service the giants. As [he] points out, the Fortune 500 companies still use downtown, Wall Street lawyers, but over the years he has nonetheless developed quite a stable client base among those smaller companies . . . . While recognizing that service businesses are by definition precarious, creative attorneys may carve out successful, corporate suburban practices.”).

105. A leading source for understanding the legal work in the personal-client sphere, is SERON, *supra* note 13. She conducted lengthy interviews with over one hundred solo attorneys and attorneys in small firms selected from a random sample of lawyers in the New York City Metropolitan area. *Id.* at xi, 154–55. Not surprisingly, graduates of local and regional law schools predominated — 83.3% of the sample — with the median experience for the entire group being between ten and twenty years of practice. *Id.* at 158 tbl.A.1.

106. *Id.* at 67 (“[T]heir professional practice does not entail very much legal research.”); see also *id.* at 76–77 (“[W]ith few exceptions, these lawyers do not use on-line legal research tools. . . .”); *id.* at 76 (“[A] number of attorneys acknowledged that they do not have work for paralegals because they do not do a great deal of legal research for appellate cases.”); cf. URBAN LAWYERS, *supra* note 3, at 105 (“Only about half of the solo practitioners and small-firm lawyers surveyed in 1995 had access to Lexis or Westlaw . . . .”).

107. See URBAN LAWYERS, *supra* note 3, at 133 (“We might expect brief writing to be associated with court appearances, but some types of courtroom work involve little writing. Solo practitioners, who reported little work on briefs or memoranda, went to court more often than most Chicago lawyers . . . .”).

108. SERON, *supra* note 13, at 67 (finding that most of the surveyed small practice lawyers would agree with the statement that 80% of their work is routine involving things done before). Of course, much corporate work is also mundane, but in the hierarchical structure of large firms the assignment of the routine to others frees some to concentrate on the complex legal problems. See Rebecca L. Sandefur, *Work and*

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ability, for the overtly legal work largely consists of revising skeletal documents pulled up from computers,<sup>109</sup> forms the practitioners have developed themselves or copied from others.<sup>110</sup>

Not surprisingly, Carroll Seron, who has studied solo practitioners and small-firm attorneys,<sup>111</sup> found that they did not feel well prepared by their education for practice. "There was overwhelming agreement that their law schools did not take the time to teach them how to deal with clients, handle a case in local court, or work with other lawyers. They did not learn, they agree, anything of a 'practical' bent . . . . Most of these attorneys found law school irrelevant because most of it, they claimed, was too 'theoretical'." <sup>112</sup> These lawyers learned their profession not from law school,<sup>113</sup> but from lengthy on-the-job experiences. Seron summarizes:

Attorneys described three fairly distinct though not mutually exclusive strategies of coping with the initiation rites of professionalization.

First, some reported that they cultivated an informal network of attorneys and court officials on whom they could call to ask questions, copy legal forms, or clarify court procedures. . . .

Second, others described a process of learning by watching other lawyers and then trying out what they saw, feeling their way as they went along. . . .

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*Honor in the Law: Prestige and the Division of Lawyers' Labor*, 66 AM. SOC. REV. 382, 393 (2001) ("Fields of law in which work is organized in the pyramidal division of labor . . . provide an opportunity for some lawyers to specialize in 'strategic, complex legal work' by delegating simpler and relatively impure work to other lawyers."). Of course, those who do the mundane in the corporate firms may hope to move on to more complex legal work in time; in contrast, the work of those representing individuals tends to stay legally mundane no matter where they are in their legal careers. *Id.*

109. SERON, *supra* note 13, at 82 ("[F]or most of these attorneys, technical work is limited to reworking skeletal documents.").

110. *Id.* at 81 ("Most reported that they have developed their own forms or have copied from other attorneys forms, clauses, and paragraphs that they find particularly good.").

111. *See supra* note 13.

112. SERON, *supra* note 13, at 6-7; *see also id.* at 6 (noting that one attorney "explained there was too much emphasis on appellate case law and not enough to trial preparation"). Although the surveyed attorneys were critical of their law school educations, "they were ambivalent about educational reform. There was an underlying sentiment that if they had to go through it and they made it, then others who want to be lawyers should have to go through it too. Law school may be like 'boot camp,' but it just seems to be necessary in order to learn to 'think like a lawyer,' they tended to agree. . . . [T]hey were not quite ready to advocate an alternative." *Id.* at 7.

113. *Cf. NALP, supra* note 13, at 79. The survey of recently graduated lawyers in all kinds of practices found: On the question of whether law school prepared them well for their legal careers, the median response is exactly in the middle (neither agree nor disagree). Respondents tended to agree — but not strongly — with the proposition that law school teaching is too theoretical and unconcerned with real-life practice. They also evinced a desire for more practical training in their assessment of the most helpful law school courses. Both clinical and legal writing courses received higher ratings than more conventional law school offerings. Most helpful in the transition to practice, however, was experience working during law school summers and during the year.

Third, a minority of attorneys learned through mentors. . . .

These attorneys reported that “getting started” took five years of either watching and doing, calling and asking questions, or mentoring and guidance. At the end of this process, said [one surveyed attorney], the goal was “to have a business rather than merely be a lawyer.”<sup>114</sup>

On-the-job experiences will, of course, always be significant in the professional life of an attorney, but local law schools seem to be fundamentally failing the majority of their graduates. These institutions can do much better in preparing students for their lives as personal-client attorneys.

### *A. Technology Training*

Computers, of course, have altered legal practice, and this has been especially so for the solo practitioner and the small-firm attorney. Carroll Seron notes, “Most of these attorneys also claim that computerization has been indispensable to the expansion and organization of their practice. Automating the organization of technical work, these findings show, systematizes and eases access to forms, documents, and clauses of small business law practice. Computerization automates legal practice by reorganizing forms, documents, and clauses in a more systematic, rational manner . . . .”<sup>115</sup>

Unlike in large firms, where others might make the decisions, successful personal-client attorneys will need the ability to evaluate coming technological changes.<sup>116</sup> Local law schools are failing their graduates if they do not offer training in how to use and assess technological advances.<sup>117</sup> For local laws that are part of a university, the efficient answer might be a university-wide approach. Many students in various disciplines, such as medicine, architecture, accounting, fashion design, and business, will need such knowledge for successful careers. Universities could devise generic courses to cut across departmental divides with perhaps special modules for the various disciplines.

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114. SERON, *supra* note 13, at 8–10 (finding that government lawyers were the ones most likely to have a mentor).

115. *Id.* at 83–84.

116. *See* Galanter, *supra* note 7, at 1098 (“[N]ew technologies for retrieving and generating documents will make lawyers more productive in handling many of the staples of this kind of practice (wills, real estate closings).”).

117. *Cf.* Nelson, *supra* note 1, at 383:

Perhaps law schools should begin to rethink legal education even more fundamentally to recognize that they are training students for careers in rapidly changing organizational environments that rely on rapidly changing information technologies. The legal curriculum could be substantively enriched by training in the basic principles of management, accounting, and information technology.

*B. Human Problems and Relations*

The work of the personal-client attorney may be legally mundane, but that does not mean that the practices are merely routine. Those who represent individuals and small businesses have constant, close client interactions in ways lawyers in large firms do not. This human element, not the legal one, presents the professional challenges. As Carroll Seron found, "it is the 'people side' of the law that complicates their work and makes each case different . . . . Difficulties with cases are the result of difficulties with clients. Thus, the knowledge to do their job (that is, their technical autonomy) has two components: the routine part of filling in the forms for house closings, divorces, or wills, and the non-routine part that comes from the human element, from working with people."<sup>118</sup>

The lawyer must be able to listen empathetically to individuals' problems,<sup>119</sup> untangle the personal from the legal concerns, and translate the situation into legally appropriate cases.<sup>120</sup> This work is often difficult, as Seron once again indicates:

But relations with clients are rarely clear-cut, especially for attorneys who handle legal matters for individuals whose problems arise out of some personal crisis, such as a failed marriage, a personal bankruptcy, or a death in the family. For these attorneys, many legal issues are fraught with psychological and emotional difficulties as well. Lawyering, after all, demands more than technical competence and professional training. To navigate the slippery slope of legal matters tinged by personal trauma, it is generally believed, one must gain the trust of the client.<sup>121</sup>

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118. SERON, *supra* note 13, at 67-68; *see also id.* at 178 n.3:

Attorneys were specifically asked whether some of their cases lend to themselves to a more straightforward or formulaic solution. It was not unusual for these respondents to request clarification and then point out that cases are never straightforward because something can always pop up, and after all, people are people. But they almost always emphasized that any complications came from the people involved, not the legal issue *per se*.

119. *Id.* at 106 (noting the successful attorney representing individuals "must be comfortable with the *real* troubles of *real* people"); *see also id.* at 179 (finding that the surveyed attorneys have "a commitment to serving individual clients through the work they do every day of the week").

120. *Id.* at 189 ("The individual client attorneys in this study, then, describe a process of listening to personal troubles in order to translate them into legally appropriate cases."); *cf.* Sandefur, *supra* note 109, at 387:

Professional purity also explains why legal work performed for personal clients of high social status is more prestigious. Highly educated clients are more often knowledgeable about the law, and they often remove professionally irrelevant aspects from matters before presenting them to their lawyers, saving their lawyers the work of diagnosing their problems and translating them into legal terms . . . . In other words, work for high status clients is more professionally pure because the challenge it presents is generally a specifically legal challenge, demanding peculiarly legal skills and knowledge . . . .

121. SERON, *supra* note 13, at 107.

The attorneys, of course, must understand the law, but also need social skills<sup>122</sup> and a different kind of technical skill from that traditionally taught in law schools to function well. The individual client wants to know the probable outcome of the matter, and attorneys do not get this knowledge from their education, but from experience in the relevant, specific legal institutions.<sup>123</sup>

Individual clients also seek direct contact from their attorneys, and successful lawyers representing individuals must be willing to spend time with them.<sup>124</sup> This leads to long hours.<sup>125</sup> While much is often made of the amount of time that is demanded from those working in large firms,<sup>126</sup> *Urban Lawyers* found that solo practitioners work the longest hours.<sup>127</sup> The individual-client lawyers must be willing to put in lengthy days and be skillful in using the telephone<sup>128</sup> and in

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122. *See id.* at 116:

[W]hen attorneys suggest that clients look for professional skills, the emphasis is more likely to be on reliability, conscientiousness, tidiness, and timeliness than on technical expertise or knowing the details of a particular specialty. Whether these attorneys are describing what they bring to their work or what clients want from them, there is a symmetry. To be a successful attorney in personal-plight practice, it is essential to have good social skills — to be an effective listener, to be willing to understand the client's troubles, to respond when a client has a question, and to encourage the client's participation. Equally important, all this must be done in a timely manner, because the clock equates with money and fees.

123. *See id.* at 111:

When most of these lawyers speak of the importance of technical expertise, they actually tend to describe a skill rooted in experience rather than in educational training. One variation on expertise emphasizes an insider's knowledge of the ways around a community . . . . [One surveyed attorney] went on to explain that he knows how to advise a client about the probable outcome of a case and the appropriate course of action because he brings to the conversation a backlog of similar cases with local players (other lawyers and judges).

*Cf.* Austin Sarat & William L.F. Felstiner, *Lawyers and Legal Consciousness: Law Talk in the Divorce Lawyer's Office*, 98 YALE L.J. 1663, 1679 (1989) ("[T]he skilled lawyer is more than a good legal technician; he is someone who knows the back corridors of legal institutions, the personalities of judges and how to present client desires in such a way as to appeal to the judges' proclivities.").

124. SERON, *supra* note 13, at 114 ("[W]hen [individual-client] attorneys describe what clients want in a lawyer, it is some variation on a demand for *their time*.").

125. *Id.* at 31 ("Attorneys who are successful, who make a go of law practice in a highly volatile and competitive market, are required to put in long hours to stay ahead.").

126. *See, e.g.,* Schiltz, *supra* note 90, at 892 ("Within private practice, the general rule of thumb is the bigger the firm, the longer the hours.").

127. URBAN LAWYERS, *supra* note 3, at 130 ("The median number of total hours per week is highest among solo practitioners, where it is 53.").

128. SERON, *supra* note 14, at 115:

The telephone — taking and returning calls — is a client's lifeline to the attorney; there was a remarkable consensus that it is essential to use the telephone effectively. Yet the telephone also brings demands from clients to be aggressive and move the case, to keep an eye on the bottom line, or to sympathize with the emotional turmoil caused by a legal battle.

general time management,<sup>129</sup> a difficult task, especially for those who go to court regularly.<sup>130</sup>

### C. Office Management Skills

Local law school graduates also need a set of management skills that few big-firm attorneys do. Lawyers in solo practice or a small firm will be running or helping to run a small business, a task for which they have not been prepared by their legal education<sup>131</sup> and which many find onerous. Carroll Seron notes, "For many in full-time solo practice, however, the major disadvantage is that the work includes running a small business, a demand that many assumed they were sidestepping when they opted for *professional* careers."<sup>132</sup> Those in small firms and solo practitioners will often have to deal with issues like hiring, training, and supervising support personnel, deciding about office space and equipment, buying insurance, and paying taxes in ways attorneys in larger firms seldom do.

Local law schools seeking to aid the majority of their students should be offering education in law-office management.<sup>133</sup> Law school faculties, however, may not be competent to teach such courses, and the answer again for university law schools might be for a university-wide approach. Just as graduates of local law schools will be heading to careers that, in effect, require them to run small businesses, so too will many other university graduates. Universities should seek to devise useful, generic small-business-management courses that again perhaps could have specialized modules for different professions.

### D. Marketing Skills

Local law school graduates also must have an ability to obtain clients that the corporate attorney does not need. While in a large firm advancement may depend on obtaining business, the pressure to secure clients is much different in the personal-sector field. Corporate clients usually bring an array of work into a firm and establish continuing attorney-client relationships that bring ongoing

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129. *Id.* ("The balance between price, productivity, and profit again translates into time pressure.").

130. *Id.* at 116 ("I was left with the overwhelming impression that the men and women who go to court on a regular basis find it difficult if not impossible to structure time in a predictable manner.").

131. See Duncan Kennedy, *Legal Education and the Reproduction of Hierarchy*, 32 J. LEGAL EDUC. 591, 602 (1982) ("Law school does not prepare students to run a small law business.").

132. SERON, *supra* note 13, at 80.

133. *Cf.* Menkel-Meadow, *supra* note 14, at 662 ("Legal education should be encouraged (I will not say required) to teach more about the policy and practical issues implicated in being a professional (including law firm management, billing practices, diversity, work organization and the relation of work roles to other life roles)."). But see Bayless Manning, *Law Schools and Lawyer Schools — Two-Tier Legal Education*, 26 J. LEGAL EDUC. 379, 380 (1974) ("The law schools of this country have developed in a very special form to perform a limited function in an environment of extremely limited resources. Fundamentally, our law schools have the job of giving law students a highly developed set of analytic tools and a generalized theoretical grasp of the legal process.").

legal fees. New clients are not a daily concern. In contrast, individual clients want an attorney for a particular legal matter — a will, a divorce, a personal injury case — and once that matter is concluded, the relationship ends.<sup>134</sup> Consequently, the lawyer representing individuals is in the insecure position of having constantly to obtain new, one-shot clients,<sup>135</sup> an increasingly difficult task as the personal sector of the bar becomes more competitive.<sup>136</sup> In addition, unlike many or most in large-firm practices, the small-firm attorneys must also be concerned with the often difficult task of setting and collecting fees,<sup>137</sup> which are often determined not by fixed hourly rates or a given sum for a specific service but on a case-by-case basis.<sup>138</sup>

Personal and social skills are at least as important as legal ability in securing the clients,<sup>139</sup> for these “attorneys’ client base rests on a carefully constructed social network.”<sup>140</sup> But personal-client attorneys also increasingly need to know how to use other tools to market their practices. They should understand existing mar-

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134. See SERON, *supra* note 13, at 13 (“[T]he structure of this tier of legal practice is dependent on a client base of ‘one-shot’ players.”).

135. See *id.* (“These attorneys recognize that this structural factor within the organization of their work makes for insecurity.”). One of the surveyed attorneys stated that the attorneys were generally insecure and concluded, “I think they’re insecure because their client base is not secure.” *Id.*

136. See *id.* at 17 (“Younger cohorts believe that they cannot expect the same degree of financial security as their older counterparts. There is more competition among lawyers, and their earnings generate a less comfortable, less secure lifestyle.”).

137. See *id.* at 116 (“In view of the pressures that lawyers feel to keep costs low, coupled with the competition brought about by advertising, it should come as little surprise that setting fees and getting paid are easier said than done.”).

138. See *id.* at 116–17:

[M]ost of the attorneys interviewed acknowledge that they do not have a fixed hourly rate or set fees for specific services. More typically, there is a negotiated fee that varies from client to client. . . .

. . . The most typical service for which attorneys reported having a “set” fee is a real estate transaction . . . . Others added that they might set a fixed rate for a personal bankruptcy, a simple will, or an uncontested divorce; many implied that a fixed price for a particular service makes it easier to handle inquiries when a prospective client calls . . . . While most claimed that they explain the fee structure at an initial interview, few actually work out a written agreement or require partial payment up front. Much more typically, it “depends” on the client . . . .

139. One of those surveyed by Seron stated that to be successful in a small practice, the lawyer did need to know the law, but also had to be a “good communicator” and “be warm to people” to be able to market the practice, and be able to run an office efficiently. *Id.* at 10.

140. *Id.* at 49; cf. Nelson, *supra* note 1, at 381 (“The futures of solo practitioners depend on . . . the networks through which they obtain clients . . .”). Seron found that for those representing individuals “the single most important source of new clients is referrals from former clients . . . . Referrals from professional colleagues — other lawyers, real estate agents, accountants, or bankers — though neither as typical nor as important a source as client referrals, are another important source of business.” *Id.* at 52–53. These attorneys also find referrals through family and friends and from social clubs and fraternal associations. “For most small-firm and solo attorneys, getting business is rooted in collegial, informal, and community ties.” SERON, *supra* note 13, at 56; cf. Dixon & Seron, *supra* note 58, at 384 (“It has been argued that individuals attending prestigious law schools develop social networks with wealthy individuals, networks that later increase the probability of garnering corporate clients and individual clients of high status.”).



keting methods and be able to evaluate new methods as they emerge.<sup>141</sup> Local law schools should be making sure that their graduates have such information. Once again, this need cuts across academic disciplines, and again universities ought to consider generic courses with specific modules for distinctive professions.

### *E. Taking Responsibility*

Personal-client attorneys need another capacity that many in large firms do not — the ability to make decisions and take responsibility for them. Associates in the largest firms seldom make important decisions for which they bear ultimate accountability. They do not set the strategy; rather, they work on assignments parceled out by others.<sup>142</sup> Ultimately a partner is in charge, but even the partner, for a number of reasons, often has a limited responsibility. Frequently the legal work is done in a team, with accountability fragmented.<sup>143</sup> Non-legal professionals, such as investment bankers, may be involved, once again limiting individual autonomy and responsibility. Perhaps most important, the clients are often knowledgeable and have a large hand in setting the legal course confining the lawyer's decision making.<sup>144</sup>

In contrast, the individual client is often legally unsophisticated and expects her lawyer to make the determinations that will control the outcome of the mat-

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141. Seron, in her study of solo practitioners and small-firm attorneys, labeled some "entrepreneurial" because they tried different methods to attract clients. She concluded that the successful ones "carefully track the return on their advertising investments and know where their clients come from. Whenever a client comes in, the first question asked is how he or she heard about the firm." SERON, *supra* note 13, at 103.

142. The Chicago study asked lawyers if they could do their work without having someone else direct it and concluded, "Among private practitioners, lawyers in the larger-firm categories were less likely to report a high degree of control over their work — in 1995, 87 percent of solo practitioners claimed to have great freedom of action, but only 58 percent and 59 percent of those in firms of thirty-one to ninety-nine and one hundred or more, respectively, did so." URBAN LAWYERS, *supra* note 3, at 118.

143. Chambliss, *supra* note 24, at 692 ("[L]awyers in elite firms typically work in teams."); see Robert Eli Rosen, "We're All Consultants Now": *How Change in Client Organizational Strategies Influences Change in the Organization of Corporate Legal Services*, 44 ARIZ. L. REV. 637, 640 (2002) (contending "that corporate legal services are changing because corporate clients are organized to use lawyers as they use any consultant," which requires project teams); see also URBAN LAWYERS, *supra* note 3, at 51 ("Lawyers in complementary specialties, for example, may work together if they serve the same client — a tax expert and a real property specialist may collaborate on the acquisition of land for a major real estate development.").

144. URBAN LAWYERS, *supra* note 3, at 279 ("Large, powerful clients usually know what their options are, they are sophisticated consumers of legal services, and they know how to choose lawyers so as to achieve their goals."). The surveyed Chicago lawyers were asked whether they had refused a potential client not because of a formal conflict of interest but because of "personal values." *Id.* at 119. About 40% of solo practitioners and those in the smallest firms had while a fifth or less of those in larger firms had. *Id.* ("The businesses represented by big law firms, however, are 'repeat players'—they generate recurring legal problems. By declining the business of such a client, the firm forgoes not one fee but future fees as well. This is, no doubt, an important part of the reason why lawyers in large firms were less likely to refuse clients than were solo practitioners and those in the smallest firms."); see also *id.* at 135 ("[P]owerful clients and strong organizations provide status and security but impose constraints."); *id.* at 79 ("[P]owerful clients are presumably able to exercise greater control over their lawyers.").

ter.<sup>145</sup> The attorney designs and sets the strategies to be employed. Solo practitioners obviously do not work in teams, and seldom does the small-firm attorney have the luxury of legal teamwork. Instead, personal-client practitioners have to make decisions for which they alone are responsible,<sup>146</sup> and their work is more likely to affect the outcome of the matter they work on than is the work of corporate attorneys.<sup>147</sup> *Urban Lawyers* notes:

There is a tendency to think that big cases must be consequential, and thus that the lawyers who handle such matters must also be consequential. If enough money is involved, the deal is assumed to be one that will change the world, and the lawyers are therefore people of consequence because they make it happen—the investment bankers, the venture capitalists, the insurers, the boards of directors, the executives, the engineers, and the construction companies, shipping companies, manufacturers, and/or scientists on whom the deal depends. Lawyers are less likely to have discrete roles in corporate transactions than in child custody, or criminal, or political asylum cases. In the latter contexts, lawyers' roles probably also have a greater impact on the eventual outcomes.<sup>148</sup>

Because lawyers representing individuals are likely to have an important influence on what happens, those lawyers must be able to make decisions and take responsibility for them, an ability they must have from the beginning of their careers. The NALP study of young lawyers found:

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145. See *id.* at 279 (“Weak clients have fewer options [than powerful ones]; they are therefore likely to be more malleable, more subject to persuasion. Lawyers can push them around.”); cf. SERON, *supra* note 13, at 187 n.3 (“[C]orporate clients are *active* consumers of legal services who knowledgeably participate in decision-making, whereas individual clients tend to be more passive and to fit the stereotypical classical model of interaction between professional and client. . . .”).

146. SERON, *supra* note 13, at 12:

[D]esire for autonomy runs throughout the work lives of [the individual-client attorneys] . . . .

These attorneys are *not* organizational men and women. Their professional quest emphasizes a search for independence, and they place an unusually high premium on feeling that they are in control of their workplace. Professional autonomy translates into controlling their place of work and helping people with “real” troubles. In discussing their experiences, they rarely mentioned a desire to be viewed as experts, as professionals respected for their broad or esoteric knowledge of the field.

One of the few attorneys surveyed by Seron who had left a large firm stated:

Well, in the big firm practice you feel like you are a slave to not only the other attorneys, but to your clients . . . . [Y]ou have no autonomy and don’t have any decision-making . . . . I got the feeling from partners on down that the lawyer didn’t control the client, but the client controlled the lawyer.

*Id.* at 165 n.16.

147. Seron found that those representing individuals worked hard, but “[m]ost acknowledged that they are willing to accept the long hours in exchange for the wide-ranging and privileged autonomy to control when and where they go to work.” *Id.* at 31.

148. URBAN LAWYERS, *supra* note 3, at 279.

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Within private law firms, the data suggest two general patterns in the work assignments of new lawyers. Some attorneys are given a large number of comparatively small projects and commensurately large level of responsibility for each project. Others play minor, supporting roles on bigger, more complex projects. As one might imagine, new lawyers in smaller firms tend to follow the first pattern—that is, learning by taking primary responsibility for relatively small projects. New lawyers in large firms tend to follow the second pattern—learning by playing sometimes minor or routine roles in big, complex projects.<sup>149</sup>

Personal-client attorneys have to exercise the essence of professionalism, at least as Professor Geoffrey Hazard has summarized it: “Activity, not simply contemplation or analysis; use of best available knowledge or technique, under constraints against acquiring more knowledge or improving technique; confrontation of uncertainty; real world consequences; and personal responsibility.”<sup>150</sup> While law schools may seek to train professionals, they do not stress these aspects of professionalism. They concentrate on the mastery of analytic techniques and absorption of substantive doctrine. The lawyer representing individual clients seldom draws on these analytic techniques. The applicable law is seldom in doubt, but factual disputes, the often conflicting goals of clients and others involved, and the uncertain behavior of those who form the relevant legal system often leave the personal-client lawyer with difficult, important decisions.<sup>151</sup> The law school training in legal analysis does not provide the answers.

Law schools provide scant education in making decisions under conditions of uncertainty and taking responsibility for the results. Local law schools’ resources limit clinical and related programs, where this aspect of lawyering may be encountered, to a comparative handful of students or to relatively infrequent exercises. More important, little indicates that law schools, either in the faculties’ scholarship or pedagogy, treat the processes of decision, action, and responsibility as topics worthy of study. This should change at least at the schools where graduates will be representing individuals.<sup>152</sup>

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149. NALP, *supra* note 13, at 34.

150. Hazard, *supra* note 14, at 398–99.

151. See *supra* text accompanying notes 119–31.

152. Cf. Hazard, *supra* note 14, at 399:

High on the agenda should be more systematic and sympathetic inquiry into the processes of practice. If practice requires a synthesis of the best insights from the academic disciplines, then professional school students should have background in those disciplines . . . . If practice requires decision and action, then professional school students should have wider opportunities for clinical and apprenticeship opportunities . . . . If practice requires self-consciousness and a sense of responsibility in a field of action, then professional school should treat that problem with the seriousness it deserves. If self-consciousness and a sense of responsibility are important, then these phenomena need continuing attention at the philosophical level as well as in the application.

### F. *The Path to the Small Firm*

While large-firm employment largely depends upon academic credentials, in small firms, “grades, class rank, and law school prestige are decidedly unimportant factors in the hiring process.”<sup>153</sup> Instead, the personal-client firms are primarily interested in an experienced person who has practiced in the local courts allowing the partners to learn about the abilities of the attorney.<sup>154</sup> Unlike large firms, “they try to avoid hiring a recent law school graduate unless the individual worked for them while in school.”<sup>155</sup> Although the small-firm partners may list various desirable characteristics in a new associate, not surprisingly considering the nature of the work, they are looking for someone who has the ability to function well with people.<sup>156</sup> Seron found that the “ideal candidate . . . is a young lawyer from the immediate geographical area, one who is known personally by the partners, who has some work experience so that intelligence and reputation may be assessed directly, and who has a good personality so that he or she can work with clients and get along with colleagues.”<sup>157</sup>

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153. SERON, *supra* note 13, at 178 n.8.

154. *Id.* at 72–73:

Most typically, partners reported, they look for attorneys with some work experience . . . They . . . prefer someone from the immediate area; the rationale is that they have watched the person function in court or in the local DA’s office; they “know” his or her reputation. A few years of work experience and personal reputation are the two key factors that go into most hiring decisions.

155. *Id.* at 72.

156. *Id.* at 73 (discussing while the partners mentioned common sense, intelligence, creativity, integrity, and honesty, “they were actually describing another aspect of work experience, of practice with clients, or of having a feel for working with people”).

157. *Id.* Not only are the paths to the different practice settings different, the paths within those settings are also different. The largest firms have to have bureaucratic structures for decision-making. Associates are hired with the promise that some will be promoted to partners or other permanent status, and a relatively defined path for advancement is in place. Most associates go to such firms hoping to become partners or planning to move on to another firm. In contrast, the smallest firms do not have bureaucratic structures but are collegial. *See id.* at 68 (“The majority of these partnerships are between men of approximately the same age, many of whom met at other firms or in school, or shared office space and decided to start a firm together. At its core a small law firm rests on a tight, closed, personal, and fraternal bond.”). Consensus decisions are the goal. The firms do not have a partnership track. *See id.* at 70 (“A partnership ‘track’—the essential building block of the organization of a corporate-law firm . . . does not exist in most small-firm practices.”). Instead, the small firms offer associates experience with the understanding that those associates will leave to start their own practices. “Because the partnership is so tight, most associates [in small firms] are treated less as potential partners than as employees who work for partners and, in the process, eventually learn how to start their own small firms.” *Id.* at 83.

It is not surprising, then, that many associates in these firms view their work as training and preparation for setting up their own practices at some future date.

. . . .

. . . In short, associates in small firms *may* become partners, but there are no cues, no time frames, no ground rules, no clear expectations. The basic trade-off is that partners employ someone to help with their work, and the associates they hire get experience.

*Id.* at 70–71.

Local law schools can do little if anything to expand their graduates' presence in the large firms, but they should be concerned about assisting their students' entry into the increasingly competitive arena in which most will practice. A crucial key in such hiring is that small-firm partners are unlikely to hire people they do not personally know, and schools, while remaining concerned about the balance between study and work, should actively encourage part-time positions in the kinds of settings where the graduates will practice. The mission of placement offices should include helping students to find such employment. Similarly, internships and externships ought to emphasize placements where students might get jobs after graduation or where they might get the most valuable experiences for the practice that they will enter, that is, placements with small firms and in local courts.

### *G. Tuition*

Local law schools should lower tuition or at least seek to restrain tuition increases. While "the cost of legal education has increased far more quickly than the rate of inflation, primarily because of significant increases in tuitions[.]"<sup>158</sup> local law schools are primarily educating students for the segment of the bar where real incomes have been declining.<sup>159</sup> Even though in a crucial way they get much less for their education, local law school graduates are saddled with as much debt as those from elite institutions.<sup>160</sup> The local law schools escalating tuition and the limited opportunities in the personal-client sphere combine to make the futures of their graduates increasingly difficult.

The schools may see high tuition as necessary to be competitive in a rankings-driven world.<sup>161</sup> They may rationalize the fees as beneficial to the students, claiming that the money allows the schools to improve, and better schools afford more opportunities for their graduates. This logic is dubious.

First, few, if any, institutions have altered their rankings significantly enough to truly make a difference to their graduates.<sup>162</sup> Local law schools remain

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158. Kornhauser & Revesz, *supra* note 29, at 875.

159. See *supra* text accompanying notes 43–50.

160. See NALP, *supra* note 13, at 75 (finding that the median debt for the young lawyers who had debt from the top ten schools was \$80,000; from the next ten was \$70,000; from the rest of the top one hundred was \$65,000; from Tier 3 schools was \$75,000; and from Tier 4 schools was \$72,000.); *id.* at 70–72 (finding that only about 15% of the national sample reported no debt, and a higher percentage of the debt-free graduated from the most selective schools). The median level of debt hardly varied across practice settings. *Id.*

161. See Henderson & Morris, *supra* note 63, at 195–96 ("Because deans and faculty at non-elite law schools believe [that] they must emulate the elite law school model of high salaries and light teaching loads in order to improve (or maintain) their current *U.S. News* ranking, there will continue to be enormous upward pressure on tuition costs. It is far from clear how law students benefit from these 'competitive' forces.").

162. See *id.* at 178 ("[N]o school ranked in the top 16 in 2004 . . . was not also ranked in the top 16 in the first *U.S. News* ranking in 1987."); see also Michael Sauder & Ryon Lancaster, *Do Rankings Matter? The*

local law schools. Furthermore, nothing indicates that a school's ascendance from Tier 3 to the top one hundred, or from ninety to seventy-five, matters in the opportunities available to the students. Unless law schools can show employers that the quality of their education truly matters, employers can be expected to continue on in their assumption that the education of a particular school is not important,<sup>163</sup> and elite firms will continue to hire only the fraction of local law school graduates who have performed extraordinarily well.<sup>164</sup> The majority of the graduates will still go to the personal-client sphere or government whether or not the school moves a few ratings notches.

Indeed, if higher rankings are the goal, high tuition actually seems to be self-defeating. A significant component of a school's reputation is the quality of its student body, but as tuition has spiraled, the higher LSAT students have selected the local law schools where less debt will be incurred. Henderson and Morris' study of how law school reputations varied from 1992 to 2003 concludes, "For schools in Quartiles 2-4, lower students loan indebtedness was associated with gains in median LSAT."<sup>165</sup> This, of course, "makes intuitive sense" and gives local law schools with lower fees a competitive advantage in getting higher-credentialed students.<sup>166</sup> The strategy of increasing tuition to have more faculty resources to enhance reputation by producing more and better scholarship,

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*Effects of U.S. News & World Report Rankings on the Admissions Process of Law Schools*, 40 LAW & SOC'Y REV. 105, 126-27 (2006) (finding "previous [*U.S. News*] tier is a very strong predictor of current rank").

163. Cf. Henderson & Morris, *supra* note 62, at 198 (advocating that law schools "[p]rovide legal employers with strong empirical evidence that the quality of education actually matters . . . . [I]t is fair to ask . . . whether law schools have innovated enough in their curricula to merit legal employers' attention to such details."); see also Matasar, *supra* note 78, at 477 ("Simply put: the law school market rarely asks whether the careers their graduates obtain bear a relationship to what they learn in school.").

164. See Matasar, *supra* note 78, at 480 ("Outside of the very top of the rankings, the market seems to have little preference for students at one mid-tier school or another, regardless of the rankings . . . . Firms do not come from around the country to recruit at such schools. Students are cut-off from interviewing unless they are at the top of their classes.").

165. Henderson & Morris, *supra* note 62, at 186.

166. See *id.* at 186-88 ("This relationship makes intuitive sense: all else equal, students with marginally higher LSAT scores will prefer law schools that will saddle them with lower total debt. This gives schools with lower costs an advantage in recruiting these students . . . . [A] change in a school's median LSAT is partially a function of price . . . . After controlling for starting position, gaming, and locational effects, a \$10,000 increase in student loan debt is associated with a .34 decline in a school's median LSAT score ( $p = .003$ )."); see also *id.* at 196 ("This study documents that approximately three-quarters of all law schools are already subject to a trade-off between higher tuition costs and attracting higher LSAT students."); cf. Matasar, *supra* note 78, at 481-82:

Legal education is merely a commodity where one school's program is fungible with any other school's program. Because the goods are indistinguishable from one producer to another, cost is the only rational basis to choose. The lower the cost, the greater the future returns. Under this analysis students only choose the higher-price school in cases where the value of the brand name (or some idiosyncratic reason) provides the student with a sense that the initial investment will be recouped over time.

according to Henderson and Morris, does not appear to be effective.<sup>167</sup> Local law schools that offer lower tuition are in the stronger position to improve reputation by attracting better students,<sup>168</sup> and the lesser debt will make their graduates' futures as attorneys brighter, which, of course, should be a goal of all law schools.

### *H. Re-Evaluating Scholarship Practices*

Local law schools should also re-examine scholarship practices. When scholarships are not endowed or otherwise earmarked by a donor, the scholarship funds at those schools, which are heavily tuition-dependent,<sup>169</sup> in effect come out of the pockets of the non-scholarship students. Merit-based scholarships may mean that those who will have the most opportunities will pay less while those with the fewest opportunities pay more. Lower amounts of scholarship money, on the other hand, would result in lower tuition for all.<sup>170</sup>

The supposed benefit to the non-scholarship students is that having more outstanding students enhances the general education and reputation of the school, benefiting all. Henderson and Morris do suggest that if non-elite schools are

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167. Henderson & Morris, *supra* note 62, at 191 (finding that in "[q]uartiles 2-4, changes in lawyer/judge and academic reputations are unrelated to change in median LSAT scores") (italics removed). They continue:

In theory, these two reputation variables reflect two plausible strategies for recruiting higher quality students: a law school can (1) improve its stature among judges and lawyers by developing curriculum that specializes in a substantive area of law or emphasizes skills-based training . . . ; or (2) improve its stature among law professors by producing more and better legal scholarship. In Quartiles 2-4, neither of these strategies appeared to be effective.

*Id.* at 191-92; *cf.* Matasar, *supra* note 78, at 478:

[S]chools . . . expend ever higher amounts to generate resources to enhance their reputations—better facilities, higher scholarships to buy better students, higher-priced faculty who bring fame to the school, more esoteric, but visible programs, famous speakers—whatever might gain an edge in reputation. Unfortunately, these expenses may only slightly affect the ultimate quality of a school's graduates . . . . But over time, the competitors will respond and the battle will continue without ever really affecting the overall reputation of a school. Ultimately, costs have gone up without real quality improvements and with little reputational gain.

168. *See* Henderson & Morris, *supra* note 62, at 196:

With no tangible institutional benefit for subsidizing faculty research, we predict that they day is coming when cost pressures on low-ranked law schools will cause them either to close their doors or experiment with new models of legal education, such as distance learning or the aggressive use of law firm externships. Steep tuition discounts, made possible only through radical reconfiguration of the current law school model, will be the only way to level the playing field.

*Cf.* Matasar, *supra* note 78, at 496 ("The outcome seems inevitable — high-priced schools, with moderate prestige, will not survive, unless they change.").

169. *See* John J. Costonis, *The MacCrate Report: Of Loaves, Fishes, and the Future of American Legal Education*, 43 J. LEGAL EDUC. 157, 168 (1993) ("[T]he modern law school remains overwhelmingly tuition-dependent.").

170. *Cf.* N. William Hines, *Ten Major Changes in Legal Education Over the Past 25 Years*, AALSNews (Ass'n of Am. Law Sch., Wash., D.C.) Aug. 2005, at 1, 5, *available at* [http://www.aals.org/documents/aals\\_newsletter\\_aug05](http://www.aals.org/documents/aals_newsletter_aug05) ("Higher tuitions mean greater institutional investments in student financial aid, particularly in an increasingly competitive market for students, and this in turn drives costs even higher.").

trying to improve their rankings and choosing between more scholarships to attract well-credentialed students or steps to facilitate faculty scholarship, a school is better off opting for scholarships.<sup>171</sup> They conclude that in all likelihood the academic reputation of the school will not be affected “from shifting from faculty scholarship to student scholarships. Faculty can at least console themselves because there is empirical evidence that median LSAT scores are now more likely to go up. Finally, students will be saddled with less debt, which should count for a great deal.”<sup>172</sup>

This suggestion, however, overlooks the fact that indebtedness will be less only for a fraction while the majority has higher costs. A result is higher published tuition rates and Henderson and Morris also suggest that lower tuition leads to higher LSATs.<sup>173</sup> While they do not indicate what price differential is necessary to produce the higher-credentialed students, local law schools concerned about scholarships, lower tuition, and better credentials ought to seek to determine how much tuition could be lowered through lesser merit scholarship money to see if higher LSATs might result. After all, with lower tuition, *all* students will be saddled with less debt, which is more beneficial than lower fees for just some, especially if the lower tuition for all also results in median LSATs increasing. If scholarship practices are not improving a school’s prestige in such a way as to afford more opportunities for most, then the in-school wealth distribution only harms the school’s majority.

#### IV. ELITE VALUES AT LOCAL LAW SCHOOLS AND THE LIKELIHOOD OF REFORM

##### A. *The Dominance of Elite School Graduates at Local Law Schools*

Since local law schools train their students for a different sphere of the profession, local law schools are unlikely to adopt the reforms needed to serve their students better if the local schools simply follow the lead or adopt the values of the elite institutions. This will be difficult since faculties at all levels of law schools are dominated by products of elite and prestigious schools.

A study by Brian Leiter of all those who started a tenure-track job at an American law school from 1996 through 2001 found that more than one-third had graduated from just three schools, Harvard, Yale, or Stanford.<sup>174</sup> About another quarter came from seven other schools, all of which would be categorized

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171. Henderson & Morris, *supra* note 62, at 197 (“In a price sensitive environment, non-elite law schools will fare better by emphasizing scholarships over scholarship.”).

172. *Id.* at 198.

173. See *supra* text accompanying note 168.

174. Brian Leiter, Where Tenure-Track Faculty Went to Law School, [http://www.leiterrankings.com/faculty/2000faculty\\_education.html](http://www.leiterrankings.com/faculty/2000faculty_education.html) (last visited Sept. 26, 2006).



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as elite or at least prestigious,<sup>175</sup> while more than 10% came from another nine schools, probably labeled prestigious.<sup>176</sup> Roughly three-quarters of all the tenure-track faculty hired during that period came from these nineteen schools while only about one-quarter, or 187 of 730 jobs, came from the remaining 170 or so schools.

The dominance of graduates from top-ranked schools in law teaching is not new, but it may be increasing. Thus, a study of all those in law teaching in 1988–89 found that “[a]pproximately one-third of all professors in our sample (32.7%) received their J.D. degree from one of only five law schools . . . . Together, the nation’s twenty top-ranked law schools produced nearly 60% of all sampled professors.”<sup>177</sup>

The strong majority of all law school professors are products of top-ranked schools and have been taught by those who also graduated from elite schools, for elite schools even more than other schools tend to hire only elite-school graduates.<sup>178</sup> This may be an impediment for needed reforms of legal education. Various commentators have suggested that law school faculties do not set curricular, teaching, and scholarly priorities from an understanding of what their schools’ graduates actually do, or even from the legal profession as a whole. Instead,

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175. *Id.* (noting that the elite schools were Chicago, Michigan, Columbia, Berkeley, Virginia, New York University, and Cornell).

176. *Id.* (noting that the nine prestigious schools were Duke, Georgetown, Northwestern, Pennsylvania, Texas, Minnesota, Southern California, Wisconsin, and Vanderbilt).

177. Robert J. Borthwick & Jordan R. Schau, *Gatekeepers of the Profession: An Empirical Profile of the Nation's Law Professors*, 25 U. MICH. J.L. REFORM 191, 226 (1991) (“Our findings are fully consistent with the proposition that a handful of the most established and prestigious law schools dominate the production of the nation’s law teachers.”).

178. *See id.* at 231 (“85.2% of professors teaching at top-seven schools received their J.D. degree from one of those same seven schools. This figure increased to 87% when we examined the percentage of professors teaching at schools ranked in the top twenty who graduated from top-twenty schools.”); *id.* at 232 (quoting SPECIAL COMM. FOR A STUDY OF LEGAL EDUC., AM. BAR ASS’N, LAW SCHOOLS AND PROF. EDUC. 82 (1980)):

One ABA committee confronted with this phenomenon of elite schools hiring almost exclusively elite-school graduates, observed:

Were we biologists studying inbreeding, we might predict that successive generations of imbeciles would be produced by such a system. . . .

It seems clear that the inbreeding here is likely to contribute to a form of legal education that serves large firm and their corporate clients better than it does the lawyers who handle the personal legal problems of average people.

This problem is compounded when one considers that the products of elite schools go on to take so many teaching positions not only in elite schools but in non-elite schools as well. Brian Leiter’s study of tenure-track faculty found that such positions at the top fifteen law schools were filled by graduates without LL.M.s from only eleven schools. Of those 87 top-ranked faculty slots, 73.6% were filled by graduates of Harvard, Yale, or Stanford. Leiter, *supra* note 174; cf. Schiltz, *supra* note 90, at 873:

[M]any law professors — at least those teaching at the fifty or so law schools that consider themselves to be in the ‘Top Twenty’—do not care much about lawyers. Increasingly, faculties of elite schools and aspiring schools consist of professors who have not practiced law, who have little interest in teaching students to practice law, and who pay scant attention to the work of practicing attorneys.

faculty set a school's course to satisfy the professors' priorities, which are extrapolated from their own experiences.<sup>179</sup> If those values come from their own education, which is likely because professors tend to have little practice experience,<sup>180</sup> and if they do it has often been in an elite practice setting,<sup>181</sup> then law school faculties at all levels will largely define success and prestige in much the same way as elite schools do. The result is that too often local law schools have little understanding of the kinds of law actually practiced by most of their graduates<sup>182</sup> and view educational reforms through a prism that assumes the values of elite schools.<sup>183</sup>

### *B. Law Schools' Absorption of the Profession's Notions of Prestige*

Necessary reforms are also likely to be impeded by the law schools' absorption of the legal professions' notions of hierarchy. *Urban Lawyers* notes that among lawyers "the distribution of prestige respects service to powerful clients . . . [F]or one reason or another, the legal profession is oriented toward service to wealth and power."<sup>184</sup> Lawyers, no matter what their practice areas, tend to agree on

179. Gary S. Laser, *Educating for Professional Competence in the Twenty-First Century: Educational Reform at Chicago-Kent College of Law*, 68 CHI.-KENT L. REV. 243, 246 (1992) (noting that professors extrapolate from their own experiences); see also Bethany Rubin Henderson, *Asking the Lost Question: What is the Purpose of Law Schools?*, 53 J. LEGAL EDUC. 48, 66 (2003) ("[F]aculty tend to model their teaching styles on their own professors and mentors, replicating in today's classes the teaching methods of earlier generations."); Henderson & Morris, *supra* note 62, at 197 ("[M]ost law professors tend to generalize from their own experience, are unduly influenced by recent performances, and are overconfident in their own powers of observation."). Henderson and Morris contend that if a school does have a choice of more scholarships or supporting faculty scholarship, the professors' choice will be clear. *Id.* "From the perspective of law faculty, who govern most U.S. law schools, the latter strategy is preferred because it focuses on something about which faculties care a great deal — the relative position of their faculty vis-à-vis other law schools' faculties." *Id.* at 198.

180. See Borthwick & Schau, *supra* note 177, at 219 ("[T]he vast majority of professors teaching law have had very little experience practicing law."). The average practice experience was 4.3 years, while more than one-fifth of law school professors had not had practice experience. *Id.* at 213, 217; see also *id.* at 219 ("Only one-quarter of all professors sampled had more than five years of practice [and p]rofessors at the nation's highest-ranked schools are even less likely to have practice experience than their peers at lower-ranked schools."). Consequently, "teachers at top-ranked schools began their teaching careers earlier on average than their colleagues . . ." *Id.* at 234.

181. See *supra* text accompanying notes 53–57; cf. Borthwick & Schau, *supra* note 177, at 214 ("Private practice experience [of law professors] consisted overwhelmingly of work for law firms and corporations, but also included a handful of professors who had worked as solo practitioners.").

182. Cf. Laser, *supra* note 179, at 278 ("[C]linical professors are often hired with limited amounts of practical experience. Most have not worked in traditional law offices and therefore have not been exposed to the practice of law in settings in which most law graduates will eventually find themselves.").

183. See, e.g., Karen Gross, *Process Reengineering and Legal Education: An Essay on Daring to Think Differently*, 49 N.Y.L. SCH. L. REV. 435, 445 (2005) (suggesting that a local law school emphasize the teaching of working in teams because "legal problems beg for cooperative efforts; [and] law firms regularly develop teams from different disciplines to handle a particular client's matters — a litigator, a tax person, a corporate guru, perhaps even an insolvency lawyer."). Few local law school graduates, however, work in such teams. See *supra* text accompanying note 143.

184. URBAN LAWYERS, *supra* note 3, at 97.

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how the profession ranks prestige. The top fields are those "serving large and powerful organizations, particularly large business corporations."<sup>185</sup> The bottom end of the rankings "contains numerous personal client fields . . .", including personal injury, personal bankruptcy, family, immigration, and criminal law.<sup>186</sup>

While law faculties may not see themselves as in service to wealth and power, academics and scholars rank the legal areas serving corporations as having the most intellectual challenge while those serving personal clients the least.<sup>187</sup> In other words, the professorate's notions of legal stimulation go hand in hand with the profession's notions of prestige.<sup>188</sup> And, since law school faculty presumably highly prize intellectual challenge, they may little value the areas of practice of local law school graduates. A culture that does not prize the work of local law school graduates cannot be the best setting for educating them or for making the reforms to train them better. Local law school faculties may need to undertake the difficult job of separating what they value from what and how they teach their students.

Just as there is a divide in the legal profession, there is a divide in legal education. Since elite law school graduates overwhelmingly head to the employment that serves the powerful, elite law schools are oriented toward wealth and power. Local law schools should not be. Whether they wish it or not, their graduates are not going to the most prestigious jobs. Those graduates' practices will not be in service to powerful organizations; the graduates will not serve large corporations but small business and ordinary individuals. Local law schools will only perform well when they understand the basic division in the profession and the place of local law schools in that divide.

## V. CONCLUSION

The legal profession is largely divided into those who represent corporations and those who represent individuals and small businesses. The incomes of corpo-

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185. *Id.* at 85.

186. *Id.*; see also *id.* at 92 ("[E]xpert knowledge and service to businesses are positively associated with prestige, while service to persons of low social status is negatively associated."); cf. Chambliss, *supra* note 24, at 735 ("[W]ith the 'organizational client' sector, the most prestigious fields of practice are those associated with large corporate clients (such as corporate and securities, and banking), rather than those associated with labor organizations or government.") (citing HEINZ & LAUMANN, *supra* note 5, at 380).

187. URBAN LAWYERS, *supra* note 3, at 86-88.

188. *Id.* at 86 ("[I]ntellectual challenge was strongly and positively associated with prestige . . ."). Rebecca L. Sandefur's study concludes that the prestige for legal areas of practice correlate with both how "professionally pure" the work is and the kind of client represented. The more the work is intellectually and legally challenging without extraneous "human" issues, the more professionally pure it is. Sandefur, *supra* note 108. She concludes, "[a]vailable measures of professional purity account for a substantial portion of the effects of client type on prestige. At the same time, available evidence also suggests that an effect of client type on prestige remains after professional purity is controlled." *Id.* at 399.

rate attorneys have been increasing while incomes have been dropping for personal-client attorneys.

Graduates of high prestige law schools primarily become corporate attorneys while graduates of local law schools primarily become personal-client attorneys. Local law schools are primarily educating students for a different sphere of the bar from elite schools, the sphere where it is increasingly difficult to be financially successful.

The skills needed in the personal-client field are often different from those needed by corporate attorneys. Local law schools to serve their students well and to justify their future existence should seek to train their students better in those skills needed by personal-client attorneys. Local law schools need to educate their students better for the practice they will actually do.

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