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**\*351 HARD CHOICES: THOUGHTS FOR NEW LAWYERS**

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Good afternoon. Thank you for inviting me here today. It is always exciting to have an opportunity to talk to law students, because the topic I want to address — how lawyers choose whom they represent and the consequences that flow from that choice — is rarely the subject of any serious discussion at law schools.

Most students come to law school for one or more of a constellation of related reasons: the lure of an intellectually challenging job, the hope of financial security, the luster of a professional career, and perhaps, and I want to emphasize perhaps, the idea that a law degree will enable them to engage in public service.

But rarely do law schools challenge students to examine their assumptions about what being a lawyer really means. Seldom do law schools undertake a probing examination of the role that lawyers play in society and the choices that lawyers have to make in terms of how they spend their working lives. For example, how many of you have a clue about the basic facts of our profession? How many lawyers there are in the United States? What do they do? What percentage work for the government? For large law firms? For small firms? For legal services organizations? For public interest groups? The percentage of lawyers who represent corporations? The percentage who represent individuals? The percentage who represent the poor?

**Four Basic Facts About the Legal Profession**

Let me begin with four related facts about the legal profession, which, by the way, are hard to come by. The first elusive fact is the number of lawyers in the United States. According to the Bureau of Labor Statistics, which is part of the Department of Labor, there are \*352 752,000 lawyers in the workforce today, either practicing law or serving in some judicial capacity. [FN1] The Bureau of the Census — an arm of the Commerce Department — says that there are 912,000 lawyers in the United States as of 1998, a figure that swells to 951,000 if judges and their legal staffs are included. [FN2] I cannot account for the differences in estimates, [FN3] but it is not material to my thesis, which is that too few of our nation's lawyers are actually serving the people who are in dire need of help.

The second important fact is that a majority of lawyers in America now work in law firms that predominantly represent institutions, not people. [\[FN4\]](#) This marks a dramatic — indeed seismic — shift in the nature of the legal work being performed by lawyers. For instance, when I graduated from law school in 1976, which you may know better as the end of the Pleistocene era, only about one-quarter of lawyers worked for corporate law firms. [\[FN5\]](#)

This shift in the demographics of the legal profession has only exacerbated a problem that has existed for decades: namely, that for most Americans legal services are generally unavailable, not by reason of their poverty — most of these people are not poor — but simply because they are not wealthy. (I call these people “the un-rich”). Indeed, the difficulty of finding affordable legal services for most Americans is so profound that they cannot afford anything but the most routine legal services (e.g., the preparation of a will), and the poor, unless they are the lucky ones who win the legal services lottery, are simply denied access to the justice system altogether. [\[FN6\]](#)

The third fact is stark: According to the best estimates available, the number of lawyers who regularly represent the poor in civil cases is about 6,000. [\[FN7\]](#) In Washington, D.C., of course, I have more lawyers than that living on my block. But by any measure, that number is small. Do the math. Even assuming that the lower figure of the number of lawyers in the United States, 752,000, is correct — and who am I to take the Census Bureau's word over the Bureau of Labor Statistics' — the fact remains that fewer than one percent of our nation's lawyers provide legal services to the poor.

Let me turn to fact number four: According to the Legal Services Corporation, nearly 50 million Americans (out of about 270 million) live in households that are so poor that they are nominally eligible for free legal services [\[FN8\]](#) — I say nominally because the resources of the Corporation have been cut so thin that its lawyers can take on only a small fraction of worthy cases brought to them by eligible clients. [\[FN9\]](#) These people are too poor to hire lawyers. As a result of the dearth of lawyers to assist them, current studies by the Legal Services Corporation estimate that between eighty and ninety percent of their legal needs are unmet. [\[FN10\]](#) The ABA has reached the same conclusion. [\[FN11\]](#) And, to make matters worse, this epidemic of under-service is accelerating along with the reduction of funding for legal service programs. [\[FN12\]](#)

Thus far, I have been talking mainly about the inability of the people who occupy the bottom twenty percent or so of our economic ladder to have access to legal assistance. \*353 But the picture for the next thirty percent or so — “the un-rich” generally thought of as “the middle class” or “the lower middle class” — is not much brighter. [\[FN13\]](#) Think about this for a minute. Suppose your parents are average Americans; they work hard, they make \$50,000 between them, and because they are helping you through law school, and your siblings through college as well, they do not have a lot squirreled away in savings.

Suppose they encounter a serious legal problem. The house they purchased from a builder five years ago is falling apart, \$20,000 in repairs is needed, and they have what they believe to be a strong breach of warranty claim. Can they afford to hire a lawyer to help them? Probably not. Surely not on a fee-for-service basis. Even at a modest hourly rate of, say \$125 per hour, your parents would see their savings drained before their case was resolved. Unless a lawyer is willing to take the case on for a contingency fee — which is hardly a certainty given the complexity of the case and the modest size of the potential recovery — they might well be out of luck in finding a lawyer willing to

help them. But they have at least a chance.

Others are even less fortunate. Suppose your parents are lower-income wage earners, and suppose that you have a school-age sibling with special educational needs, like eight million American families. [\[FN14\]](#) A federal statute — the Individuals with Disabilities Education Act (IDEA) — “guarantees,” at least in name, a free appropriate public education to special needs children. [\[FN15\]](#) But special education is costly, and school boards often cut corners. [\[FN16\]](#) Suppose the school board denied your sibling the educational opportunity he needs to progress. What then? Who will assist your parents in their battle with the school board? The reality is that they will not find legal counsel they can afford, and virtually no legal service programs provide assistance to parents in IDEA cases (assuming that your parents were eligible for legal services help, which, in my example, they are not). As a result, they will be forced into the Hobson's choice of taking on the school board, which is represented by counsel, in a highly formal, adversarial hearing on their own, or forfeiting their right to challenge the school board's decision. [\[FN17\]](#) As unfair as it may seem, their plight is not unusual.

Every day, thousands of Americans wrestle with serious legal problems that can result in the deprivation of critically important things we refer to, naively, as “rights” — rights to an education, a divorce, a spousal protective order, a child's health care insurance, or a disability payment — without any assistance at all. Why? Because our justice system is laden with complex, time-consuming and expensive procedures that ordinary citizens cannot hope to navigate successfully. And to compound the problem, the legal profession encourages lawyers to serve corporate interests and not the interests of ordinary citizens and often prohibits non-lawyers from rendering legal assistance at all. [\[FN18\]](#)

### **\*354 Why the Profession Serves Corporate Interests Far Better Than Human Ones**

The sorry state of our profession today — one that in practice freezes out a vast segment of the American people — can be attributed to the confluence of two distinct, although related problems:

First: Virtually all of the incentives push lawyers — especially recent law school graduates — away from serving people and into practices serving corporate interests or the wealthiest segment of society; and

Second: Despite the widespread recognition that the legal profession provides little or no service to many Americans, the profession nonetheless insists on strictly enforcing the lawyer monopoly on the provision of legal services.

My thesis today is simple: It is time for the profession to fish or cut bait. If we as lawyers truly believe that only lawyers, and no one else, can dispense justice to ordinary people with ordinary, but critical, legal problems, then let us get serious about meeting those needs. Let us have what the ABA has called a “civil *Gideon*.” [\[FN19\]](#) The first few critical steps would be as obvious as they would be unpopular, even within many segments of the Bar.

- Restore and expand funding to the Legal Services Corporation;
- Lift restrictions on the kind of cases Legal Services Corporation lawyers may bring, the procedures they may employ (like class actions) and the arguments they may make so that they may effectively represent their clients;

- End the lawyer monopoly on the provision of routine legal services; and
- Implement mandatory *pro bono* programs — even for law professors — until every American who needs a lawyer has access to one.

History says that none of this will come about. Why do I say that? Because for at least three decades the legal profession has understood that it was failing to serve millions of Americans, and it has done virtually nothing to change that state of affairs. Indeed, as I will now discuss, the actions of the institutional forces within the Bar have only aggravated this intolerable problem.

### **The Role of Law Schools**

The problem begins in law schools, and our nation's law schools are at least complicit in building the hydraulic pressure on young graduates to seek out corporate law firm jobs rather than pursue other career paths. Although the message is rarely overt, law schools convey a message to students that public interest/public service work is less prestigious and less rewarding than firm practice, and is therefore disfavored. Far too often, students who come to law school to prepare for a career in public service are \*355 deterred from that goal. It is time for the law schools to try to understand this phenomenon and ask “Why?”

One answer is that law school itself is a transformative event that changes people and their career aspirations. But that answer alone is not sufficient. If it were, we would expect to see some migration in the opposite direction. After all, how often does a student who comes to law school hell-bent on going to a large corporate law firm end up applying to legal service programs? The fact that the street is mainly one way — with students heading towards corporate law practice and abandoning their public service aspirations — troubles me deeply. This phenomenon is true even at law schools like Georgetown (where I teach), which has a number outstanding public interest advocates on its faculty, and which makes a serious effort to promote public interest practice.

So where does this hydraulic pressure driving students to the firms come from? A few thoughts: some of it, of course, is student driven; some of it is the nature of the market-place. The firms offer jobs first - they are paying enormous sums for junior lawyers [\[FN20\]](#) -and they woo students. Public interest/public service employers cannot compete on those terms. The salary disparity is magnified by the economics of law school. By the time they graduate, most law students are saddled with debt, even those who attend public schools. And for many, the amounts are staggering. [\[FN21\]](#) Nonetheless, few schools have loan forgiveness programs adequate to permit a graduate who wants to perform public service, but is debt-laden, any choice at all. And law school placement offices tend to serve the large firm patrons of the law school, rather than attempting the far more time-consuming and difficult task of trying to help place students interested in legal services or public interest work. This too fuels the perception that it is big firm practice that counts.

Law schools rarely identify the achievements of the legal services, civil rights, and public interest segments of the Bar as a way of showing students that there are indeed career paths other than corporate law. As a friend of mine put it, law schools no longer teach the “nobility” of the profession. Students read *Brown v. Board of Education*, *NAACP v. Button*, *Goldberg v. Kelly*, *Matthews v. Eldridge*, *Goldfarb v. Virginia*, and *Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, Inc.*, without any understanding that these cases were brought as test cases by dedicated, public-spirited litigators in an effort to reshape the law. Does it make sense to learn about

the school desegregation cases without any appreciation of the role the NAACP Legal Defense and Educational Fund played in that effort? Should students read the landmark due process cases without an understanding of the strategy underlying them developed by legal services lawyers? Test case litigation that my office has handled, for example, has brought about many dramatic changes in the landscape of separation of powers jurisprudence, [\[FN22\]](#) administrative law, [\[FN23\]](#) and the regulation of the legal profession. [\[FN24\]](#) Textbooks address our cases at length, but they make no mention of our role in reconfiguring the law. Why not?

\***356** These are obvious questions, but law schools do not address them. Until there is a serious discussion of these issues within the academy, it is fair to bet that law schools will not play an active role in encouraging their graduates to pursue alternative careers.

### **The Role of the Bar**

In my view, the lion's share of the blame falls on the shoulders of the organized Bar. [\[FN25\]](#) To be sure, organizations like the ABA have for years studied the lack of access problems that plague the poor and un-rich, have urged reforms, have fought for IOLTA (Interest on Lawyers' Trust Accounts) funding for legal services programs, [\[FN26\]](#) and have lobbied Congress against cut-backs in funding for the Legal Services Corporation. All of that is commendable, and the lawyers who have led the charge in these areas deserve our collective thanks.

But the Bar's refusal to take more decisive action lies at the heart of the problem. Here are just a few examples:

First, although the question of mandatory *pro bono* has been debated for years, and although the need for *pro bono* assistance has grown almost exponentially over the past decade, the Bar has resisted the simple idea of conscripting lawyers to help to serve the poor. Hospitals must accept indigent patients; why not law firms? [\[FN27\]](#)

Second, the Bar has refused to address the problem by easing restrictions on non-lawyer practice. Concerns about the quality of lay assistance cannot be the real answer because study after study has shown that trained lay advocates can effectively represent people in standardized legal proceedings — and even in complex ones when they are specially trained. The ABA commissioned a blue ribbon panel to study the merits of relaxing restrictions on lay advocacy, and that panel strongly recommended that the reins be eased considerably. [\[FN28\]](#) But the ABA House of Delegates has refused to act on these recommendations. Not surprisingly, following the ABA's lead, most states still aggressively enforce the restrictions on non-lawyer representation, even where it is conceded that lawyers will not step in to fill the representational vacuum and that non-lawyers can competently address the problem. [\[FN29\]](#)

Preserving the lawyer monopoly should not be an end to itself. But more often than not, restrictions on non-lawyer practice end up hurting only the public without even protecting the profession's pocketbook. In this day and age, the restrictions on unauthorized practice rest almost entirely on an illusion — that the choice for people of low or modest means is one between a skilled lawyer and an incompetent charlatan. That just isn't so. The un-rich in the United States ordinarily cannot afford a lawyer who will assist them, and it is hard to fathom why the Bar so stubbornly insists that because they cannot afford the sort of “Cadillac” justice the Bar prefers, they should be forbidden from at least riding in a Chevy.

\*357 Third, the Bar bears considerable responsibility for the asymmetry in the drafting and enforcement of ethics rules that clearly favor lawyers representing corporate interests (generally defendants). I recognize that codes of professional conduct are typically issued by state courts of last resort, and not by Bar associations. But the reality is that codes of professional conduct generally are based on model rules drafted by the ABA, and the committees that generate these proposals or that recommend their adoption by the states are dominated by corporate lawyers. [\[FN30\]](#)

Why do I say that the rules are one-sided? Take a few examples. For instance, ABA Model Rule 5.4 governs the “professional independence of a lawyer.” Among other things, this rule forbids lawyers from entering into financial arrangements with non-lawyers to render legal services. This rule is a serious obstacle to the provision of legal services to ordinary Americans. Although defended on the ground that the rule preserves a lawyer's independence, it serves as a barrier to formation of partnerships between lawyers and non-lawyers to offer a wide range of legal services to people of modest means. Lawyers cannot go to work with retailers like Sears to offer low cost or prepaid legal service, nor can lawyers form partnerships with American Express to offer clients low-cost legal and financial planning service. [\[FN31\]](#) This rule freezes the services that a lawyers may offer prospective clients in accordance with 19th Century norms, not 21st Century economic realities.

Take another example. Model Rule 5.6 imposes restrictions on the right of practice and forbids a lawyer from entering into an “agreement in which a restriction on the lawyer's right to practice is part of the settlement.” To be sure, the restriction extends not just to the lawyer accepting the restriction, but also to the lawyer offering a settlement containing such a restriction. But it is not uncommon in highly specialized tort litigation for a defense attorney to offer the plaintiff a generous settlement, conditioned on the plaintiff's lawyer willingness to agree not to file suit against the defendant again. Insofar as I'm aware, this provision is enforced, if at all, against members of the plaintiff's bar, not against the defense attorneys who make the offer. [\[FN32\]](#)

Consider as well Model Rule 7.3, which forbids lawyers to engage in direct, in-person solicitation of clients. Suppose that a partner from a leading law firm is quietly having a gin and tonic at his club. He (and trust me, it almost certainly will be a he) happens to strike up a conversation with the next fellow at the bar, who happens to be the CEO of a Fortune 500 corporation. During their conversation, the partner suggests that perhaps his firm can fill the company's legal needs. The rule quite explicitly forbids a lawyer from “solicit[ing] professional employment from a prospective client ... when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain.” That is exactly what the partner is doing. Is there any doubt that the Bar is not going to bring charges against the partner for soliciting this CEO, even though his actions may be \*358 a clear-cut violation of the rule? Of course not. Nor do I believe that a lawyer should be sanctioned in these circumstances, despite what the rule says.

But turn the tables. Suppose that a personal injury lawyer is sitting at a lunch counter and strikes up a conversation with his neighbor, who happens to have a family member who has just been seriously injured in an automobile accident. Naturally, the lawyer gives some general advice and offers to be of service. At the end of lunch, he hands his lunch-counter companion his card. Are we confident that the personal injury lawyer will not be charged and punished under the rule? [\[FN33\]](#)

Perhaps even more striking than the imbalance in the model rules themselves are the rules that will never be written, even though the need for them is clear, because they would offend the corporate clientele of the elite law firms. Two examples should suffice.

First, consider the “sacrifice offer” or “*Jeff D.*” problem, which occurs when the defendant proposes a settlement offer that requires the plaintiff’s attorneys to waive all or part of their statutory attorney’s fees in return for full (or nearly full) recovery for their clients. [FN34] *Jeff D.* was a class action suit for injunctive relief brought against the State of Idaho on behalf of a class of children who alleged that they were not receiving the educational and health services they were entitled to under state and federal law. The State offered to settle the case on favorable terms to the plaintiffs, but the settlement was conditioned on the defendant not paying any of the plaintiffs’ fees or costs. Plaintiffs’ counsel accepted the offer, but then filed a motion for fees and costs, arguing that the settlement agreement’s fee preclusion provision was void because it placed the lawyer in an irreconcilable position of conflict between his obligation to achieve his clients’ goal and his right to an attorney’s fee under the civil rights laws. The Supreme Court rejected the argument that the “sacrifice” offer placed the plaintiffs’ lawyer in an ethical dilemma, concluding that the lawyer’s sole ethical constraint was to fulfill his client’s goals and not collect a fee. [FN35] Justice Brennan’s dissent forecast that “allowing defendants in civil rights cases to condition settlement of the merits on a waiver of the statutory attorney’s fees [will] diminish lawyers’ expectation of receiving fees and decrease the willingness of lawyers to accept civil rights cases.” [FN36] In the aftermath of *Jeff D.*, sacrifice offers have become the norm, not the exception, in statutory fee cases where money damages are not the principal relief sought, compounding the difficulties that civil rights plaintiffs have in finding counsel. [FN37] Although *Jeff D.* has been the law for nearly fifteen years, the ABA has made no effort to modify its model code to limit the use of sacrifice offers. The ABA’s failure to address this critical problem speaks volumes about its priorities. [FN38]

The same can be said with respect to protective orders that are demanded by defense counsel, not to preserve trade secrets and other proprietary information, but to conceal serious safety defects from other plaintiffs’ lawyers and from federal regulatory agencies. A prime illustration of this common abuse is the strategy Ford and Firestone apparently pursued to suppress revelation of the serious tire problems that plagued the \*359 Ford Explorer. According to the New York Times, both Ford and Firestone concealed evidence of safety defects in settlements with victims’ families in order to stave off additional litigation and keep federal regulators in the dark about the magnitude of the tire defect problem. [FN39] How can anyone defend the morality of defense lawyers deliberately keeping information secret that, if made public — especially to the responsible regulatory authorities — is certain to avert the loss of life? [FN40] Yet such secrecy orders are the norm, not the exception. Nonetheless, the Bar has steadfastly resisted proposals to limit the use of protective orders in cases dealing with serious health and safety threats, [FN41] and even in light of the Ford/Firestone debacle, there is little hope that reform will be forthcoming.

The courts too have applied the ethics rules in a uneven way. Look at the enforcement of Rule 11, which empowers district court judges to impose sanctions against lawyers who submit frivolous pleadings or briefs to the court. The rule applies with equal force to both plaintiff’s and defense counsel, but in practice the application of the rule has fallen disproportionately hard on plaintiff’s lawyers. The easiest way to test this proposition is to examine how the courts treat frivolous claims in complaints and contrast that with their treatment of frivolous defenses in answers. It is difficult to find cases imposing sanctions against defense lawyers for raising “clearly frivolous” defenses, although answers are routinely larded with boiler-plate defenses that often bear no relevance to the case and require motions to strike. On the other hand, cases sanctioning plaintiff’s lawyers for raising frivolous claims in



complaints are legion. [\[FN42\]](#)

The point of this litany is not to suggest that the Bar and the courts are deliberately engaging in a campaign to subvert the provision of legal services to non-corporate entities. I do not believe that to be the case. My submission is narrower: It is that the incentives to practice corporate law are strong; that they are reinforced at every turn by law schools, the organized Bar, and even to some extent the courts, and that these incentives are hard to resist. For reasons I will now explain, however, these incentives are not irresistible.

### **Why the Grass Is Greener on Our Side**

Now let me turn to the incentives — no, I mean incentive, singular — on the other side of the ledger: We have more fun. Having practiced public interest law for nearly 25 years, I would not dream of exchanging the career that I have had with that of any of my classmates, many of whom are partners in large law firms and command salaries in the high six figures and beyond. Why do I say this? Am I nuts?

Maybe, but I do not think so. The psychic, if not economic, rewards of engaging in public interest legal work come from at least three sources. First, there is enormous satisfaction of working on the “right” side of an issue and in litigating cases that have meaning beyond moving a large amount of cash from one corporate treasury to another. Whether the case is brought to establish a broad constitutional principle or to make sure that poor people in South Dakota receive all of the food stamps to which they are **\*360** entitled [\[FN43\]](#), litigating cases which have a real impact on the parties themselves makes the work much more enjoyable. True story. Of all of the couple of hundred cases I have litigated, the one that brings me the greatest satisfaction was a case I litigated for eight years on behalf of hospital workers exposed to ethylene oxide — a potent carcinogen — to force the Occupational Safety and Health Administration to regulate it strictly. [\[FN44\]](#) Winning that case meant improving the lives of nearly 80,000 hospital workers by removing a major threat to their health and well-being. I would be quite surprised if combing commas out of registration statements confers that sort of satisfaction.

The second source of enjoyment comes with working with highly qualified lawyers, with a shared set of values, in a highly collegial setting. Whatever you might think, most lawyers are not hermetically sealed in their offices cut off from their colleagues. Good lawyers share their ideas, have co-counsel assist on cases, and work collaboratively because their collective ideas produce a higher quality product. And the joy of practicing public interest law is the shared effort to achieve a common goal. My sense is that competitive pressures make it difficult for corporate lawyers to take advantage of these opportunities. Corporate lawyers worry about attracting clients, billing rates, hours billed, partnership shares, under-performing partners, and the internecine warfare that seems to mark many law firms. [\[FN45\]](#) That cannot be fun.

Finally, the work of public interest lawyers is at least as intellectually challenging as the work of the corporate lawyer, if not more so. Here I want to confront head on the mythology that legal services or public interest work is somehow second-class, and that the “cutting edge” work is really performed in the inner sanctums of the great law firms. I cannot imagine that there is a law firm of any size in the country — even the mega-firms — that has the volume of cutting edge legal work that we do. In its nearly thirty-year history, our ten-person law firm has had forty cases in the United States Supreme Court, hundreds of cases in the federal appellate courts, and a score or more of



cases in state courts of last resort. I doubt that many firms in the country can match our track record. And that should not be surprising. Our role is to test the limits of the law; rarely do we take on cases where there is clear, controlling legal authority that supports our position. We deliberately seek out hard cases to make new law. Thus, the demand for creativity in the public interest sector is certainly as great as in any other segment of the Bar. [\[FN46\]](#)

The notion that the grass is greener on our side of the turf is not simply mine. Citing the same reasons I have just discussed, studies of lawyer satisfaction confirm that lawyers who practice in public interest and legal services organizations are generally quite content with their work and career choice while lawyers working on large law firms are the least satisfied with their jobs, proving true the old adage that money isn't everything. [\[FN47\]](#) Nonetheless, the number of lawyers serving the interests of people and not corporations has stagnated, leading to the problem of under-service that I began with. I am not optimistic that this state of affairs is likely to change any time soon. But before I **\*361** conclude, I want to discuss briefly a far more optimistic appraisal of the legal profession by perhaps its most astute observer: Professor Marc Galanter of the University of Wisconsin Law School.

### **Professor Galanter's Theory**

In his recent article *Old and in the Way*, Professor Galanter charts the changing demographics of the legal profession and observes that, due to a variety of factors, there soon will be an exodus of a considerable number of reasonably young (fifty- to sixty-year-old) partners from large law firms. These lawyers, Professor Galanter theorizes, will not be driven by financial concerns (since they have made their fortunes practicing corporate law), will be too young and productive to retire, and may well seek to continue their careers by providing legal services to the poor.

Let me say at the outset that my natural inclination would be to share Professor Galanter's rosy prediction that these lawyers will be harnessed to meet the presently unmet legal needs of the poor and un-rich. After all, these are highly skilled lawyers who have achieved considerable professional success and are still at the peak of their careers. Presumably they could bring their wisdom and insight to assist those who have no access to the justice system. So my heart is with Professor Galanter.

But my mind says otherwise. As I see it, there are several serious obstacles that have inhibited and will continue to inhibit the migration of these senior practitioners into structures that provide legal services to the middle class and poor:

1. At the outset, put aside the question of *what* these lawyers will do and focus on *where* it is that they will practice. Lawyers trained by corporate law firms will want to practice law in the context of a structured environment. After all, what environments are more structured — in terms of management and hierarchy — than large firms? A lawyer accustomed to practicing inside an institution like a law firm is not likely to hang up his/her own shingle. Thus, for Professor Galanter's forecast to come about, these lawyers will have to be absorbed by small firms or by public interest or legal service programs — institutions which, for financial and a variety of other reasons, are not capable of easily adding staff.

2. There are serious competence problems that cannot be overlooked. The legal knowledge and judgment acquired in big firm corporate/litigation practice does not necessarily translate well to the legal issues confronting in-

dividuals. Big firm lawyers are used to representing corporate clients in federal or state court, or perhaps before regulatory agencies. Their knowledge base is focused on issues like corporate law; banking; antitrust; securities; etc. — not necessarily the sort of legal questions that arise in representing individuals. Nor is there any reason to believe that even the litigators are familiar with, or would feel comfortable practicing in, state trial courts, family court, juvenile court and so forth. Thus, the notion that senior law firm lawyers accustomed to \*362 handling the legal problems of corporations can readily can step in and handle the legal problems of the un-rich is, at the very least, highly contestable. My view is that they cannot make this transition easily, and that the time and burden of making the transition will be a serious deterrent.

3. There are serious cultural issues that will further discourage the migration that Professor Galanter theorizes. Law firms are hierarchical in every sense of the word. Senior partners are used to doling out assignments — supervising senior associates, and managing the work of more junior lawyers — but rarely doing the heavy lifting of researching, writing first drafts, taking depositions, and responding to document production requests. Senior partners use their expertise, judgment, and substantive knowledge to manage relationships with clients and orchestrate the direct provision of legal services by more junior lawyers. The contrast between the law firm model and the legal services model could hardly be more stark. There are no associates at legal services organization; each lawyer is personally responsible for his/her own case load. Is it reasonable to assume that a 55/65 year old lawyer a decade or more removed from front-line legal work is going to adapt easily to once again having to bear front line responsibility? I am skeptical.

Equally implausible to me is the idea that big firm lawyers will adapt well to the resource limitations imposed on legal service practitioners. Law firms are incredibly resource-rich; they have libraries, computers, LEXIS/WESTLAW, and minions to do research, copying, filing, and all of the ministerial work. Again, in stark contrast, legal services organizations are resource-poor. To be sure, we working stiffs hate to file, copy, and so forth, but we do these tasks because there is no one else to do them. It is hard to imagine that a lawyer who has learned to take these resources for granted can readily make the shift to the Spartan working environment of legal services.

4. My last comment is the one that is likely to be the most contentious, but I will make it anyway. I think that there are serious attitudinal divides that will keep large numbers of former corporate lawyers from shifting to legal services work. Lawyers come to identify with their client-base. To be sure, that is simply my impression. But spending a career representing corporations (as these lawyers have) is bound to leave an imprint. One illustration makes my point. Put plaintiffs and defense lawyers in the same room and within minutes each group is on its own side and no one is left in the middle. That phenomenon is not serendipitous. It is the result of the acculturation that inevitably comes with practicing law. I just don't believe that lawyers shed their allegiances easily.

I suppose my skepticism here is a product of my own bias. Having spent my career on one side of the issue, I confess that I would have a difficult time readjusting my compass to defend corporate behavior I have long fought as an advocate. I imagine that my colleagues feel the same way. To the extent that Professor Galanter's thesis rests on the unstated assumption that crossing the line is easier in one direction than the other, I \*363 wish it were so, but I doubt it. I cannot join the leap of faith I think Professor Galanter makes in assuming that corporate lawyers can become people lawyers overnight.

## Hard Choices

Let me end by coming full circle. One point of this discussion was to lay on the table the formidable pressures that young lawyers face when it comes to choosing a career. There is no question that the path of least resistance, and the path that holds out the promise of enormous financial reward and the mantle of respectability, is to go to work for a corporate law firm. That certainly is the easy choice. That certainly is the safe choice. That choice will guarantee no raised eyebrows, no lectures from friends and family about closed options, and no probing questions about career goals. As I have said, that is the choice that you are expected to make.

But that choice is neither ordained nor without its own cost. It is not an irresistible choice because there is another path. There are other jobs where lawyers use their legal training to help real people solve real problems. That is where your talents are most urgently needed, and that is where you will find the greatest job satisfaction. But even if financial pressures give you no choice today but to opt for a corporate firm, don't believe for a moment that that choice has to be permanent. Save money, pay off your debts, take on pro bono cases, and as soon as you are financially able to do so, consider alternatives. A few years in a corporate law firm is not a life sentence.

The choice to pursue a corporate law firm career also carries with it real life consequences. The gap that separates Professor Galanter's view from mine is his faith that former corporate lawyers are future people lawyers. As I have said, I do not think that most lawyers can make that transition easily, if at all. Practicing law is a transformative experience and the clients one represents inevitably shape a lawyer's perspective, character, point of view and values. To be sure, many of my corporate law colleagues would disagree with that statement. But practicing law is all about making choices, and, in my book, whom you choose to represent says a great deal about you.

[FNal]. **David C. Vladeck**, Director of Public Citizen Litigation Group in Washington, D.C., and Adjunct Professor of Law, Georgetown University Law Center. Adapted from the Waldron-Foster Professionalism Lecture delivered at the University of Kansas law School on October 6, 2000. The author wishes to express his gratitude to Dean Stephen R. McAllister and Sidney A. Shapiro, John M. Rounds Professor of Law, University of Kansas Law School, for their invitation to give the Waldron-Foster Lecture, and to Alan B. Morrison, also of Public Citizen Litigation Group, for his thoughts on the lecture.

[FN1]. The Bureau of Labor Statistics maintains comprehensive data on the size and composition of the American workforce. See [http:// stats.bls.gov/oco/ocos053htm](http://stats.bls.gov/oco/ocos053htm) (visited October 2, 2000) (reporting the 752,000 figure). Over a decade ago, the American Bar Association estimated that there were approximately three-quarters of a million lawyers. American Bar Association, *Civil Justice: An Agenda for the 1990s* at 15 (June 1989) (hereinafter "*Agenda for the 1990s*").

[FN2]. Statistical Abstract of the United States: 1999, at 424 (U.S. Census Bureau 2000); see also <http://www.census.gov/prod/99pubs/99statab/sec13.pdf> (visited October 2, 2000).

[FN3]. The discrepancy may be attributable in part to the way in which the agencies count lawyers employed in-house by corporations. My understanding is that the Census Bureau data includes in-house corporate counsel in its figure, while the Bureau of Labor statistics excludes them. See Marc Galanter, "*Old and in the Way*": *The Coming*

[\*Demographic Transformation of the Legal Profession and its Implication for the Provision of Legal Services\*, 1999 Wisc. L. Rev. 1081, nn.7 & 8](#) and accompanying text (hereinafter “*Old and in the Way*”).

[FN4]. See *Old and in the Way*, at 1088-90.

[FN5]. See Robert L. Nelson, *The Futures of American Lawyers: A Demographic Profile of a Changing Profession in a Changing Society*, 44 Case W. Reserve L. Rev. 345 (1994); see also *Agenda for the 1990s*, at 14. Here I am excluding lawyers employed by government. Nelson's statistics divide the profession up in terms of the size of law firms in which lawyers now practice; although it may be wrong at the margins, my assumption, and the assumption of other commentators, is that most of the larger firms, with fifty or more lawyers, principally represent institutional clients and not individuals.

[FN6]. The exception, of course, is for cases in which the plaintiff has some likelihood of recovering damages sufficient to allow for the payment of a contingency fee. In those circumstances, finding representation is generally not an obstacle for the poor and the un-rich, especially since the mid-1970s, when the courts began dismantling the prohibitions against lawyer advertising. See [\*Bates v. State Bar of Arizona\*, 433 U.S. 350 \(1977\)](#); [\*Zauderer v. Office of Disciplinary Counsel\*, 471 U.S. 626 \(1985\)](#); [\*Shapero v. Kentucky Bar Ass'n\*, 486 U.S. 466 \(1988\)](#); [\*Peel v. Attorney Registration and Disciplinary Comm'n\*, 496 U.S. 91 \(1990\)](#).

[FN7]. *Old and in the Way* at 1103 n.55. Professor Galanter's estimate is based on a couple of carefully acknowledged assumptions. He begins by noting that there are currently 3590 lawyers who staff programs delivering legal services to the poor; *id.* (citing Legal Servs. Corp., LSC Statistics (visited Feb. 6, 2000) <http://www.lsc.gov/press/pr<uscore>s1.htm>). After that, his estimate is based on educated guesswork; extrapolating from a 1984 survey of lawyers then engaged in “public interest” practice by assuming “somewhat optimistically, that the public interest sector grew as fast as the whole legal profession did in the intervening years.” *Id.* In my view, Professor Galanter's optimism about the growth of this segment of the Bar is unwarranted, because, as he demonstrates elsewhere in his article, the explosive growth in other segments of the Bar was propelled by economic forces entirely absent with respect to legal services and public interest organizations. Thus, although I am willing to assume that Professor Galanter's estimate is on target for the purposes of this essay, my guess is that it is inflated.

[FN8]. Legal Services Corporation, *Serving the Civil Legal Needs of Low-Income Americans: A Special Report to Congress* 12 (April 30, 2000) (hereinafter “*Special Report*”).

[FN9]. Compounding the problem, the Corporation has been subject to repeated legislative action that has severely limited the kinds of lawsuits and other activities its lawyers may bring. Omnibus Consolidated Rescissions and Appropriations Act of 1996, [Pub. L. No. 104-134, §504\(a\)](#)(16), 110 Stat. 1321-55-56. For instance, legal services lawyers may no longer bring class actions, or engage in litigation that challenges the constitutionality of welfare laws. See, e.g., [\*Velazquez v. Legal Servs. Corp.\*, 164 F.3d 757 \(2d Cir. 1999\)](#), *cert. granted*, (U.S. Nos. 99-603 and 99-960) (argued Oct. 4, 2000).

[FN10]. See *Special Report* at 12-13 (citing legal needs studies by a dozen states and concluding that about 80% of the legal needs of people eligible for legal assistance go unmet); Legal Services Corporation, *Strategic Directions*

2000-2005 at 1 (Jan. 2000) (estimating the same or greater level of unmet legal needs).

[FN11]. American Bar Association, *Legal Needs and Civil Justice: Major Findings from the Comprehensive Legal Needs Study* 23 (1994).

[FN12]. See Special Report at 13 (pointing out that, as recently as 1993, legal services programs were turning away 50% of eligible persons because of resource limitations, and observing that the level has now grown to 80%); *Old and in the Way*, at 1104 (recounting the steady and precipitous decline in funding for legal services programs).

[FN13]. At least the lawyers not affiliated with corporate law firms and not affiliated with legal services are theoretically available to serve them. But the economics of the small firm law practice today make it difficult for the un-rich to afford the services of small firm lawyers as well, as the illustration in the text shows.

[FN14]. See *Honig v. Doe*, 484 U.S. 305, 309 (1984).

[FN15]. 20 U.S.C. § 1400 *et seq.*; see *id.* § 1415.

[FN16]. See, e.g., *Cedar Rapids Community Sch. Dist. v. Garrett F.*, 526 U.S. 66, 76-80 (1999); *Irving Indep. School Dist. v. Tatro*, 468 U.S. 883, 892 (1984).

[FN17]. See *In re Arons*, 756 A.2d 867 (Del. Sup. Ct. 2000), petition for cert. filed, (No. 00-509) (filed Oct. 2, 2000).

[FN18]. This situation is reminiscent of Anatole France's observation in *Crainquebille*: “The law, in its majestic equality, forbids all men to sleep under the bridges, to beg in the streets, and to steal bread — the rich as well as the poor.”

[FN19]. *Agenda for the 1990s* at 1, referring, of course, to *Gideon v. Wainwright*, 372 U.S. 335 (1963), which held that indigent criminal defendants facing more than six months' incarceration are entitled to court-appointed counsel.

[FN20]. Starting salaries at large corporate law firms have skyrocketed to the point that they now routinely exceed \$150,000 for first year associates. The recent increases in associate salaries have led, predictably, to a decline in the amount of *pro bono* work firms take on. Many firms no longer “count” *pro bono* hours in calculating an associates annual billable hours, strongly discouraging associates from taking on non-profit matters. See Cameron Stracher, *Go Go Bono*, *The American Lawyer* 51 (December 2000).

[FN21]. See generally Philip G. Schrag, *The Federal Income-Contingent Repayment Option for Law School Loans*, \_\_\_ Hofstra L. Rev. \_\_\_ (2001) (forthcoming).

[FN22]. See, e.g., *Clinton v. New York City*, 524 U.S. 417 (1988); *Raines v. Byrd*, 521 U.S. 811 (1997); *Metropolitan Washington Airports Authority v. Citizens for Abatement of Aircraft Noise, Inc.*, 501 U.S. 252 (1991); *Mistretta*

*v. United States*, 488 U.S. 361 (1989); *Bowsher v. Synar*, 478 U.S. 714 (1986); *INS v. Chadha*, 462 U.S. 919 (1983).

[FN23]. See, e.g., *Public Citizen v. Department of Justice*, 491 U.S. 440 (1989); *Young v. Community Nutrition Institute*, 476 U.S. 974 (1986); *INS v. Chadha*, 462 U.S. 919 (1983); *Public Citizen v. FTC*, 869 F.2d 1541 (D.C. Cir. 1989); *National Grain & Feed Ass'n v. OSHA*, 866 F. 2d 717 (1989); *In re Int'l Chemical Workers Union*, 830 F.2d 369 (D.C. Cir. 1987).

[FN24]. See, e.g., *Goldfarb v. Virginia State Bar*, 421 U.S. 773 (1975); *Virginia State Bd. of Pharmacy v. Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748 (1976); *Zauderer v. Office of Disciplinary Counsel*, 471 U.S. 626 (1985); *Wieder v. Skala*, 80 N.Y. 2d 628 (1992); cf. *Edenfield v. Fane*, 507 U.S. 761 (1993).

[FN25]. By the “Bar” I mean the institutions that run the profession; the ABA, integrated state bars, organizations (like the ABA) that engage in writing model rules of professional conduct, and entities that enforce the ethics rules and rules prohibiting the unauthorized practice of law.

[FN26]. *Phillips v. Washington Legal Foundation*, 524 U.S. 156 (1998).

[FN27]. The ABA is in the midst of a comprehensive review of the Model Rules of Professional Conduct, spearheaded by the Ethics 2000 Commission. See [http:// www.abanet.org/cpr/ethics2k.html](http://www.abanet.org/cpr/ethics2k.html) (visited December 15, 2000) (reporting on the Commission's work). Although the Commission debated whether it should recommend that *pro bono* be made mandatory, or that at least reporting of *pro bono* work be made mandatory, it rejected both proposals. See [http://www.abanet.org/cpr/e2k-mlove\\_article.html](http://www.abanet.org/cpr/e2k-mlove_article.html) (visited on December 15, 2000) (reporting on the debate on these issues).

[FN28]. ABA Commission on Nonlawyer Practice, *Nonlawyer Activity in Law-Related Situations: A Report With Recommendations* (Aug. 1995).

[FN29]. See *In re Arons*, 756 A.2d 867 (Del Sup. Ct. 2000), petition for cert. pending (U.S. No. 00-509, filed October 2, 2000). In *Arons*, the Delaware Supreme Court enjoined non-lawyer experts from assisting parents of disabled children in due process hearings under the Individuals with Disabilities Education Act, even though the Office of Disciplinary Counsel of the Delaware Supreme Court stipulated that they were competent to handle such hearings and that no lawyers were available to provide assistance. See also *In re Bachmann*, 113 Bankr. 769 (S.D. Fla. 1990) (disciplinary action against non-lawyer accountant who assisted debtor in filing a bankruptcy petition).

[FN30]. By way of illustration, the ABA's Ethics 2000 Commission — a blue ribbon panel appointed by the ABA to recommend changes to the ABA's Model Rules of Professional Conduct — is dominated by partners in corporate law firms and judges with former corporate law firm experience. Make no mistake, the Commission members are eminent jurists and practitioners. But insofar as their official biographies reveal, not a single member of the Commission has spent any portion of his or her career representing the poor or un-represented. Nor is any Commission member affiliated with a law firm engaged in legal services, civil rights or public interest law. See [http://www.abanet.org/cpr/e2k-commission\\_bios.html](http://www.abanet.org/cpr/e2k-commission_bios.html) (visited on December 15, 2000).

[FN31]. Cf. [\*Miller v. Stuart\*, 117 F.3d 1376 \(11th Cir. 1997\)](#), cert. denied, [522 U.S. 1076 \(1998\)](#) (striking down on First Amendment grounds Florida rule prohibiting lawyers employed by accounting firms from “holding out” that they were attorneys).

[FN32]. See *In re Mark M. Hager*, No. 31-98, Report and Recommendation of the Hearing Committee, District of Columbia Court of Appeals, Board on Professional Responsibility (Nov. 30, 2000). In this case, a hearing panel proposed that harsh sanctions be levied against a plaintiff's lawyer for, among other things, accepting a settlement offer by attorneys for Warner-Lambert that obligated him “not to sue” the company “in the future, on behalf of any parties, in any forum, on any claims related to the effectiveness of” the product. Recommendation, at 14; see also *id.* at 5, ¶ 14. What is striking about the Hearing Committee's recommendation is not its conclusion that “[t]he violation [of Rule 5.6(b)] is so obvious that it merits no further analysis.” Rather, it is that the Committee does not even mention the possible culpability of the Warner-Lambert lawyer who proposed the settlement and induced the plaintiff's lawyer to accept it. It may be that the Warner-Lambert lawyer was not a member of the D.C. Bar, and the Hearing Committee was worried about overstepping its power. But even in that case, the Hearing Committee's recommendation could have underscored to D.C. Bar members their obligations under the rule.

[FN33]. Cf. [\*Ohralik v. Ohio State Bar Ass'n\*, 436 U.S. 447 \(1978\)](#).

[FN34]. [\*Moore v. National Ass'n of Sec. Dealers\*, 762 F.2d 1093, 1117 \(D.C. Cir. 1985\)](#) (Wald, J., concurring).

[FN35]. [\*Evans v. Jeff D.\*, 475 U.S. 717 \(1986\)](#).

[FN36]. *Id.* at 754.

[FN37]. See, e.g., Julie Davis, [\*Federal Civil Rights Practice in the 1990s: The Dichotomy Between Reality and Theory\*](#), 48 *Hastings L.J.* 197 (1997); cf. Stephen Gillers, [\*More About Us: Another Take on the Abusive Use of Legal Ethics Rules\*](#), 11 *Geo. J. Legal Ethics* 843 (1998); see also Statement of Southern Legal Counsel before the ABA's Ethics 2000 Commission at 1 n.2 (Sept. 13, 2000) (noting that a prominent civil rights firm in Florida “had to waive fees” in “four cases and significantly limit fees on two others” over a three year period). Some state courts have also barred sacrifice offers in certain circumstances. See, e.g., [\*Coleman v. Fiore Bros., Inc.\*, 552 A.2d 141, 145-46 \(N.J. 1989\)](#) (barring simultaneous negotiation of relief and attorneys' fees in consumer fraud cases where plaintiffs are presented by non-profit law firm); [\*Ramirez v. Sturdevant\*](#), 26 Cal. Rept. 2d 554, 556 (Cal. Ct. App. 1994) (barring simultaneous negotiation of relief and attorneys' fees where there is evidence of potential conflict between client and attorney). At least two Bar associations have restricted sacrifice offers. District of Columbia Bar Legal Ethics Committee Opinion No. 147, *reprinted in* ABA/BNA Lawyers' Manual on Professional Conduct, 901:3904; Los Angeles Bar Assoc., Ethics Opinion No. 445, *reprinted in* ABA/BNA Lawyers' Manual on Professional Conduct, 901:1702. Although some have suggested that the sacrifice offer problem can be avoided by plaintiffs' counsel obtaining an assignment of the attorney's fee claims, there are serious doubts about the enforceability of these agreements. See *Simultaneous Negotiation of Fees and Merits*, *reprinted in* ABA/BNA Lawyers' Manual on Professional Conduct, 41:1601, at 1608-09.



[FN38]. Lest there be any doubt, although this problem was brought to the attention of the Ethics 2000 Commission by public interest and civil rights organizations, the Commission has failed to propose any reform.

[FN39]. Keith Bradsher & Matthew L. Wald, *More Indications Hazards of Tires Were Long Known*, New York Times, A6 (Sept. 7, 2000); *see also Sealed Court Records Kept Tire Problems Hidden*, USA Today, A16 (Sept. 19, 2000); Bob Van Voris & Matt Fleischer, *Critics: Sealed Tire Deals Can Kill*, Nat'l L. J., A1 (Sept. 25, 2000). *See generally* Alan B. Morrison, *Protective Orders, Plaintiffs, Defendants and the Public Interest: Where Does the Balance Lie?*, 24 Rich. L. Rev. 109 (1989).

[FN40]. The model rules provide that a lawyer is empowered to disclose client confidences “to the extent that the lawyer reasonably believes” that such disclosure is “necessary” to “prevent the client from committing a criminal act that the lawyer believes is likely to result in imminent death or substantial bodily harm.” Rule 1.6(b)(1). One might wonder why the rule is limited to the prevention of a commission of a “criminal” act? After all, if the purpose of the rule is to protect the public from grievous harm, why should it matter whether the wrongdoer may be sanctioned for such an act only under our civil law system or, indeed, cannot be sanctioned?

[FN41]. For example, Senator Kohl introduced a “Sunshine in Litigation Act” in 1993 and 1995. *See* S. 374, 104th Cong., 1st Sess. (1995); S. 1404, 103rd Cong., 1st Sess. (1993). The bill would have mandated that federal courts first determine that information relevant to the protection of public health or safety would not be restricted by any protective order sealing information in discovery or in court records. The bill was roundly opposed by the business community. The bill was offered as an amendment to S. 1887 entitled the “judicial Improvements Act of 1996,” and although the amendment made it out of committee, it was jettisoned from the bill that was enacted into [Public Law 104-317](#). *See generally*, D. Jeffrey Campbell and Laura H. Thornton, *Protecting Your Client's Documents: Beyond The Conventional Protective Order*, 69(24) U.S.L.W. 2371 (Jan.2, 2001) (counseling corporate litigants on how to frame protective orders to survive collateral attacks).

[FN42]. Two recently decided cases show the starkly different treatment courts give to frivolous assertions in complaints and answers. *Compare Baker v. Dorfman*, 2000 U.S. Dist. LEXIS 12157 (S.D.N.Y. Aug. 22, 2000) (declining to impose Rule 11 sanctions on defense lawyer for asserting “clearly frivolous” defenses even though the requirements of the rule were otherwise met) *with Ultra-Temp. Corp. v. Advance Vacuum Sys.*, 194 F.R.D. 378 (D. Mass. 2000) (sanctioning plaintiff's lawyer under Rule 11 for filing frivolous complaint).

[FN43]. *See Hannah v. Glickman*, No. 94-3004 (D.S.D. 1994) (class action settlement on behalf of food stamp recipients who had improperly been denied benefits).

[FN44]. [Public Citizen Health Research Group v. Auchter](#), 702 F.2d 1150 (D.C. Cir. 1983); 796 F.2d 1479 (D.C. Cir. 1986); 823 F.2d 626 (D.C. Cir. 1987).

[FN45]. After canvassing the social science evidence on the quality of life for big firm practitioners, one commentator summed up the results as follows: they “were dead last in career satisfaction, dead last in being satisfied with the intellectual challenge of their work, dead last in being satisfied with the balance of work and family, and dead last in regarding their work as valuable to society.” Patrick J. Schiltz, *On Being A Happy, Healthy, And Ethical Member Of*

[\*An Unhappy, Unhealthy, And Unethical Profession\*, 52 Vand. L. Rev. 871, 939 \(1999\)](#) (citations omitted) (hereinafter “*Unhappy, Unhealthy, and Unethical*”). According to Professor Schiltz, the evidence is overwhelming that big firm lawyers are unhappy with their careers and unhappy with the culture of large firm life and its excessive focus on the financial aspects of law practice. *Id.* at 888-914.

[FN46]. I do not confine this point to public interest lawyers engaged in test case litigation. According to Galanter's statistics, lawyers engaged in direct legal services to individuals are far more content with their career choice than their corporate law firm counterparts. *Old and in the Way*, at 1109. Professor Schiltz points out that survey data contradicts the mythology that big firm practice is more challenging. [\*Unhappy, Unhealthy, and Unethical\*, 52 Vand. L. Rev. at 928-30](#). And the legal problems sole practitioners and small firm lawyers confront in their practice are just as complex and important as the problems corporate lawyers address. For instance, one Connecticut sole practitioner notched two important victories in the United States Supreme Court within four years. *See, e.g., Connecticut v. Doehr*, 501 U.S. 1 (1991) (landmark procedural due process case successfully argued to the Supreme Court by sole practitioner); *Heintz v. Jenkins*, 514 U.S. 291 (1995) (same practitioner successfully arguing case involving construction of the Fair Debt Collection Practices Act).

[FN47]. *Old and in the Way*, at 1094, 1107-1109; [\*Unhappy, Unhealthy, and Unethical\*, 52 Vand. L. Rev. at 872-881](#).