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The ABA addresses these and other matters of inequity every day by working to improve access to justice. We know that 80 percent of the poor in the United States do not have adequate access to civil justice. We know that there's an unfulfilled promise under *Gideon v. Wainwright* to have adequate counsel in many criminal proceedings.

This year, through the new Commission on the Future of Legal Services, the ABA will be particularly focused on bridging the justice gap by developing new and innovative ways to provide legal services to the poor. The research shows that when the poorest of the poor—disproportionately persons of color—get an eviction notice, they assume, “Well, that’s just life. That’s what I deserve. That’s what happens to me.” They don’t realize that they have rights and can do something about those situations if they have access to our legal system.

We will work on these issues this year and through the year that my successor Paulette Brown is ABA president to try to bridge that justice gap so that more people have a fair shot.

We also will focus on issues involving disparities and discrimination in sentencing. Through the efforts of our Criminal Justice Section, Governmental Affairs Office, and other groups that are working on these issues, we will promote state and federal sentencing reform and advocate for laws to reduce the collateral consequences of incarceration. In many states, hundreds of laws prohibit people, once they’ve been released from incarceration, from ever being able to get certain licenses, qualify for student loans, and get a fair shake in reentering society in a way that they can live productive lives.

All of these are priorities of the American Bar Association. That’s our way of trying to do something to meet our obligations and our duties under *Brown v. Board of Education*.

Editor’s Note: On November 12, 2014, the South Carolina Supreme Court issued a final decision in Abbeville v. State of South Carolina, ruling for rural school districts in holding that legislators had failed for decades to ensure public school students from disadvantaged communities their opportunity to succeed.

Indie Lawyering: A New Model for Solo and Small Firm Practice

By Lucille A. Jewel

Lucille (“Lucy”) Jewel is an associate professor at the University of Tennessee College of Law and teaches courses in entertainment law, torts, legal writing, and professional responsibility. Prior to teaching, she litigated commercial cases at Wachtel Masyr and Missry LLP in New York City. She received her JD from Tulane University College of Law in 2000.

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Introduction

At this moment, solo and small-firm lawyers are in a position to capture zeitgeist¹ market and cultural trends and use new technology to design and deliver legal services that are both innovative and aligned with community values. Individual lawyers can deliver new legal products to niche markets that are linked to the sharing economy, community-based consumption, do-it-yourself (or DIY) practices, and social enterprise businesses. Unlike mass-produced legal products like LegalZoom or Rocket Lawyer, individual lawyers are in a position to innovate but also stay true to the service ideals that form the core of the lawyer's professional identity. Moreover, if individual lawyers can successfully harness technology in a novel way to deliver limited but individualized legal services to clients, this could help solve our current access-to-justice crisis.²

There are, however, several regulatory barriers that could get in the way of this new form of lawyering. For instance, Rule 5.5 of the Model Rules of Professional Conduct, which prohibits a multi-jurisdictional practice, hampers the development of niche markets, where success requires lawyers to cast a net and draw in clients from across jurisdictions. Because we are considering new legal products that consumers may not think they need, we might reconsider Rule 7.3's ban on direct solicitation. And finally, we should remodel Rule 5.4 to allow lawyers to join forces with non-lawyers to create businesses that take an interdisciplinary and more community-centric approach.

In addition to these regulatory barriers, the high cost of law school will prevent many graduates from embarking on an innovative solo practice. Only lawyers who graduate with a minimum amount of law school debt might be able to shoulder the risk of starting their own practice. As it stands now, the only lawyers who are able to graduate without law school debt likely come from wealthy backgrounds, or have high-paying non-law jobs while attending school part-time. If the indie lawyer model is only available to law graduates with pre-existing wealth (or the rare enabling job), then we might end up with a new style of law practice, but it would be by the privileged and for the privileged. This cultural and socio-economic limitation affects other aspects of indie culture as well. For instance, wealthy individuals have access to local, organic, and healthy food, while others live in "food deserts," where inexpensive and healthy food is difficult to find.

Socioeconomic diversity for this new style of practice would ensure that the indie model gets off the ground and impacts clients at all points on the economic spectrum. Moreover, the growth of the indie lawyer model will produce innovation in the individual practice of law, which will in turn improve the public's access to lawyers. Accordingly, we should consider adopting generous government-funded loan forgiveness programs that would incentivize lawyers to enter solo or small-firm practice, particularly in underserved areas.

The Setting

Imagine a leisurely Saturday morning in a typical American city. Walking through the downtown area, one might pass through a farmer's market selling produce from local farmers, then notice tourists exiting apartments rented through an online apartment sharing service. At the farmer's market, which is doing brisk business, one might choose to purchase a cup of fair trade coffee, a chocolate bar from an organization that gives a portion of its profits to help preserve an endangered animal species, or a

hand-crafted tamale from a food truck. Across town, high school students from the region are participating in a robotics meet-up, showing off the robots they have made in an after-school robotics program. Back at home, in the afternoon, one might access the Internet to view a cult Italian horror movie recently re-released by a specialty online video licensing company.

This description illustrates a number of zeitgeist cultural trends: the sharing economy (the apartment sharing program); interest in local and community based consumption (the farmer's market and the fair trade coffee); consumer desire for artisan or hand-crafted products (the tamale); social enterprise (the chocolate bar company that gives its profits to an environmental cause); long tail markets (the availability of the Italian horror movie online); and DIY culture (the robotics meet-up). All of these trends, taken together, can also be referred to as *indie* culture. Indie, a word borrowed from the music and film industry, is a shortened form of the word independent. In the entertainment industry, indie originally referred to products produced outside the confines of a large record label or film company. Now, it generally refers to products that are produced by individuals or groups outside the influence of large (usually corporate) institutions.

What Is an Indie Lawyer?

Does this everyday cultural experience have any relation to the practice of law? I argue that yes, it does. These trends support *indie lawyering*, a new style of individual lawyering where technology brings together the individual practitioner with individual clients to engage with legal problems in a new way. Part of the challenge in predicting future trends is that in the present, only the seeds are discernible. As explained below, however, there are already a few attorneys who exemplify the trend, and there are a few soon-to-be lawyers who plan to adopt this style of lawyering.

I refer to these lawyers as indie lawyers. Although solo practitioner is the traditional term for lawyers practicing on their own, indie is a better designation because the word embraces a liberating autonomy, individuality, and freedom from large-scale institutions. It is an alternative to the big-law approach to lawyering, but also a rhetorical choice that counters the negativity that is often directed at solo practitioners. In terms of status and prestige, solo practitioners are perceived to occupy the lowest rungs of the legal profession.³ Sociologist Jerome Carlin, who studied solo practitioners, summarized his conclusion that most solo practitioners “turned to the law as the easiest way to make a buck.”⁴ Popular culture instantiates this view with characters like Saul Goodman, the sleazy and greedy lawyer on the television series *Breaking Bad*.⁵ Although the image of the solo practitioner as a money hungry and unethical lawyer could be viewed as out of date, the stereotype persists in our culture.

The remainder of this essay will explain five integral zeitgeist trends that support the emergence of indie lawyering, describe the indie lawyer's ethos and style of practice, and then outline why we should remodel our ethics rules and adopt loan forgiveness programs that would enable this style of practice to flourish.

Five Zeitgeist Trends

Social enterprise, the sharing economy, DIY culture, consumer demand for artisan and craft products, and long tail markets, taken together, represent a cultural convergence with the capacity to support a new framework for the individual practice of law. These trends emphasize community, sharing, auton-

omy, independence, and an individualized approach to production, all concepts that can be applied to legal services. When we combine these cultural trends with lawyering, the result is a style of law practice that is refreshingly individual and independent. Indie lawyering is also centered on community and service, which closely aligns with the normative ideals of the lawyer as a public citizen,⁶ values that many fear we have lost.⁷

Social enterprise refers to dual-purpose businesses that endeavor to make money but also give back to the community. Well-known social enterprise companies include Toms Shoes, which donates a pair of shoes for every pair that is purchased, and Warby Parker, which does the same for eyeglasses. The Endangered Species Chocolate company donates ten percent of its net profits from sales of chocolate bars to an organization dedicated to preserving an endangered animal species. The social enterprise model has successfully captured consumers' concern over the impact their buying choices have on the greater community and the environment. Thus, the social enterprise trend is also visible in products touting their fair trade or sweatshop-free credentials. Finally, the popular trend of buying local products from community businesses is closely tied to the social enterprise model. Buying locally sourced products ensures that the money one spends goes back into the locality, rather than flowing to a far-flung institution with no community connections.

Most references to the sharing economy refer to new forms of commerce supported by Internet technology, which allows users to monetize surplus property under their control. Airbnb, the online apartment sharing service, and Uber, the mobile phone powered carpooling service, are two of the most well known sharing economy businesses. Last year, Forbes estimated the sharing economy generated \$3.5 billion dollars in income for its users.⁸

In a broader sense, the sharing economy also encompasses arrangements that allow people to jointly use property and collectively participate in business endeavors. Examples include co-ownership of residential property, shared child-care arrangements, shared ownership of cars, community gardens, food cooperatives, and worker cooperatives. This aspect of the sharing economy is grounded in the philosophy of the commons, the idea that shared ownership does not preclude efficiency in managing resources.⁹ This more expansive framing of the sharing economy also reflects post-recession economic realities – co-ownership of property allows one to save money and do more with less. Finally, like the social enterprise movement, there is a community focus here that rejects a winner-takes-all business model. The sharing economy's community focus is visible in the rising popularity of worker-owned cooperatives as a form for doing business.¹⁰

Similar to the values that underpin the sharing economy, the do-it-yourself trend emphasizes autonomy and self-reliance. The movement involves people making goods and technology products in their homes and garages. DIY production lessens dependence on mass industry, or even government infrastructure, for goods and technology. Although DIY culture is not new, it is undergoing a resurgence, observable in various "Maker" conventions happening around the country and in the new magazine *Make*,¹¹ which champions DIY practices.¹² With the Internet, DIY practitioners are able to form communities with each other and share information and advice for projects. Moreover, new technology like 3D printing makes it possible for individuals to produce things that once were the exclusive province of businesses and government institutions with access to large amounts of capital.

Consumer demand for individualized, bespoke products is the fourth zeitgeist trend that connects with the indie lawyer model. Perhaps as a response to years and years of cookie-cutter mass production, consumers now demand unique and exclusive “one-of-a-kind” products. New production technologies coupled with Internet retail interfaces allow customers to customize a host of retail products such as shoes, artwork, even cereal.¹³ A walk through any grocery store reveals multiple products marketed as “artisan” or “hand-crafted.” The demand for hand-made craft items is further substantiated by the growth of the Etsy website, where sales have exceeded \$400 million, with 875 active shops.¹⁴ The desire for hand-crafted products may also reflect non-economic desires grounded in nostalgia – nostalgia for “a more materially substantive past.”¹⁵ In this way, the allure of hand-crafted products generates utopian images of community artisans making things, rather than the outsourcing of production to overseas factories that exploit their workers.

The long tail market phenomenon is the last interlocking piece of the foundation for indie lawyering. Long tail markets are niche markets made possible by the Internet. Internet retailers are not limited by shelf space and thus can afford to stock a much wider array of products than one might see at a bricks and mortar retailer. For instance, Wal-Mart only stocks the biggest blockbuster movies and top-40 artists. Amazon and iTunes, on the other hand, can afford to stock thousands upon thousands of media products. In a statistical chart of sales, the long tail refers to the end of the chart, indicating products that sell in very small numbers. The interesting thing about the long tail is that these small number sales add up to very big numbers in the aggregate.

Long tail markets flourish on the Internet because the Internet allows a wide net of potential purchasers. A niche product like *Suspiria*,¹⁶ a cult Italian horror movie from 1977, might not generate enough sales to justify it being stocked in a store or featured in a movie theater. However, it can generate enough sales if included in the inventory of an Internet retailer like Amazon, because that retailer can access potential purchasers from all across the country, and even the world.¹⁷

The Indie Lawyer’s Community-Centered and Sustainable Law Practice

How do these cultural and market forces, which I am collectively referring to as indie culture, relate to lawyering? Indie culture applies to lawyers in two ways. First, indie culture supports the emergence of a potential market for new legal products and a different style of law practice that uses technology to deliver customized client-centered legal services on a larger scale. Second, an indie approach to lawyering invites a reframing of the solo practice of law. This reboot of the solo practice of law emphasizes individual autonomy in a liberating way and enshrines the community service values that should form the core of a lawyer’s professional identity.

Lawyer Janelle Orsi is the prototypical indie lawyer. Her excellent but little noticed book, *Practicing Law in the Sharing Economy*,¹⁸ documents her law practice in the San Francisco Bay area of California with the aim of guiding other lawyers to develop similar practices. She maintains an individual practice¹⁹ and also manages a nonprofit, the Sustainable Economies Law Center.²⁰ Her law practice encapsulates the zeitgeist trends discussed above: social enterprise business models, the sharing economy, DIY culture’s emphasis on resilience, and consumer demand for individualized niche legal products.

Orsi's practice is primarily transactional. She helps individuals structure new collaborative transactions, grounded in the sharing economy. In many instances, she is helping clients capitalize upon efficiencies generated from sharing – the idea that one can benefit from having access to a thing without having to exclusively own it.²¹ Many of the legal arrangements that Orsi facilitates do not easily match up with pre-existing legal categories such as buyer/seller, landlord/tenant, or employer/employee. For instance, for traditional work arrangements, employment and agency law is sufficient to delineate the obligations of employer and employee. On the other hand, a collaborative approach to work, like a cooperative, requires different legal approaches.

In a broad sense, Orsi offers individualized legal products that allow consumers to restructure their lives and do more with less. Examples of these legal products could include agreements for joint ownership of property, the sharing of a car, sharing of childcare expenses, and operating businesses that take alternate forms.²² Orsi's model for law practice is not just theoretical and aspirational. She is making a successful living as a solo practitioner, helping clients create more resilient approaches to work and business with a goal of sending value back to the community.

Orsi's take on professional identity is also refreshing. She maintains that her goal is to make a reasonable living from a sustainable law practice model. For Orsi, a sustainable law practice can be found in the independent and autonomous practice of law, decoupled from traditional concepts of status and prestige. She views the lawyer's constant quest for status and prestige as a toxicity that harms the profession and clients.²³ In her book, Orsi argues that if lawyers could offer more legal services at a lower cost, this would ameliorate some of the access to law problem that so many middle-class and working-class Americans face.²⁴ But she concedes that lowering prices in this fashion would also diminish the status that lawyers have traditionally enjoyed in American society.²⁵ She also argues that the traditional way lawyers value and bill for their time produces "crushing pressure," which then might contribute to the high rates of mental illness and substance abuse among lawyers.²⁶ Orsi writes that "[t]here is nothing sustainable about spending the majority of your working hours feeling that you are not contributing to the world you want to live in."²⁷

Orsi's approach to the individual practice of law also emphasizes the client, whom she views as a collaborative partner for creating new arrangements that "will become the replicable blueprints for a new economy."²⁸ In billing and fee matters, she notes how the individual lawyer's autonomy allows her to make a reasonable living but also take into account a particular client's income limitations.²⁹ Orsi advocates that solo lawyers should emphasize collaboration and community in their practice, arguing that the synergy between a community-based law practice and the emerging sharing economy will help the lawyer grow her practice.³⁰ In Orsi's framework, a sincere focus on collaboration and community enables the individual attorney to retake her role in playing "a vital role in the preservation of society."³¹

By helping individual clients strengthen ties through new legal approaches to property ownership, business, and work, this kind of law practice revitalizes community-centered lawyering. In inspiring fashion, the work of the individual lawyer effectively merges community-building goals with the goal of making a living that all lawyers must have. This autonomous style of lawyering takes the lack of

prestige typically afforded to solo practice and turns it on its head. Indie lawyering also offers a liberating 180 degree turn away from the negative stereotypes that have previously been associated with solo practice. The indie lawyer model has the potential to resurrect Anthony Kronman's Lost Lawyer in the form of a community-centered public servant who dispenses professional wisdom for the benefit of his community, without becoming overly burdened with status-oriented pecuniary drives.³²

The growth of Orsi's trailblazing law practice may have been aided by her location – the densely populated and progressive-leaning San Francisco Bay Area of California. But indie lawyering has the potential to take off elsewhere in the United States. For instance, students at Michigan State Law School's visionary Reinvent Law program are developing projects that fit the indie lawyer mold. As a recent guest at a Reinvent Law workshop, I observed students present various legal business models that would utilize technology to deliver legal advice to educators, help independent film-makers structure their contracts, and provide privacy law advice to computer users. Another Reinvent Law student, Karen Francis-McWhite, has a plan to help individuals with achieving a homesteading lifestyle, emphasizing home ownership, self-reliance, sustainable consumption, urban farming, and generative energy practices (i.e., living off the grid).³³ Soon-to-be lawyers are designing new business models that embrace an independent, autonomous, and innovative approach to legal practice.

While Janelle Orsi describes the practice of law in the sharing economy as mostly transactional, it is possible for the model to thrive in a litigation context. Lawyers could harness technology to offer limited or unbundled legal services³⁴ to help clients with family law issues, small claims suits, debt-collection, or landlord/tenant disputes. Legal businesses using technology to deliver unbundled legal services already exist. For instance, Richard Granat, one of the pioneers in the Internet delivery of legal services, built a successful practice using computerized forms to help clients file uncontested divorces in Maryland courts.³⁵ Granat managed his Maryland-based business while living in Florida.

Because of its community-centered ethos, indie lawyering adds something new to the business model for the technological delivery of unbundled services. Indie lawyering gives clients a human face and a counseling model founded upon the Aristotelean concept of practical wisdom. In law, practical wisdom is the skill of seeing beyond formal legal categories and analyzing a problem armed with knowledge of the law but also with an emotional intelligence attuned to the non-legal, human aspects of the problem.³⁶ When Richard Granat operated his Maryland family law business, he spent 30 minutes a day reviewing the forms his clients submitted on his website.³⁷ Thirty minutes a day is not much time for practical wisdom to flourish. Many technological legal products are form-based – clients fill in the blanks and check various boxes. In some ways, technological law practice presents us with a de-humanized style of lawyering, algorithmic lawyering.

Indie lawyers can move beyond faceless forms and use technology to strengthen community bonds and provide individualized legal services. Online communities enjoy the same sense of belonging and human connection as traditional communities centered in a geographic place.³⁸ For instance, lawyers can use technology – email, Skype, texting, tweeting, online chatting – to counsel clients on various small legal issues, to help clients navigate the legal system as pro-se litigants, and build up knowledge in the community. Technology can be used to counsel clients in an individualized fashion. In this

sense, the indie model adopts a *bespoke* approach to legal services, even if those services are limited in scope. The indie model's individualized approach differs markedly from other technological legal services such as LegalZoom or Rocket Lawyer. Scholars have argued that the law is and should be moving away from a bespoke craft-based model because the individualized model is too cumbersome and expensive.³⁹ However, there is a strong counter-argument for preserving the individualized, craft-based model for lawyering, which is that individualized lawyering allows practical wisdom to flourish. It allows lawyers to do what we are supposed to do.

What Changes Would Further Help Fuel Indie Lawyering?

Changes to several rules of professional responsibility would help the indie lawyering model flourish. These ethics rules, as currently formulated, prevent lawyers from fully capturing long tail markets, limit a lawyer's ability to promote new legal products, and constrain the development of alternative forms of law businesses, which could adopt an interdisciplinary or social enterprise approach to legal services. In addition to these ethical rules, the high cost of law school presents a formidable obstacle to individual lawyer innovation. Accordingly, we should consider adopting government-funded loan forgiveness programs that might incentivize indie lawyering. I conclude this essay by reiterating the strong policy reasons that support initiatives to stimulate indie lawyering and transform the individual practice of law.

Multi-Jurisdictional Practice: Rule 5.5(b) and Long Tail Markets

A long tail niche market can only happen if a large segment of consumers can be captured. For instance, a bricks and mortar store selling cult movies would be unlikely to thrive, except, perhaps, in a large, densely populated city.⁴⁰ In any given geographic location, the number of customers interested in viewing cult movies is likely to be small. But a cult movie store could thrive online, with no limit to shelf space and the ability to capture thousands of consumers around the world.⁴¹ In the aggregate, cult movie purchases from customers around the world add up to something substantial.

The same long tail market concept may hold true for law. Imagine that an entrepreneurial lawyer develops the idea of drafting inexpensive agreements that would memorialize various obligations and copyright rights for members of an unsigned band. If this lawyer could cast her net over the entire United States, there might be a viable market for this kind of service. But in any given US jurisdiction, there may be just a handful of consumers interested in such an agreement. One might also envision a niche market for litigation services, for instance, specialized *pro se* guidance services on debt collection matters. Low cost but customized legal services are only feasible if lawyers can operate on a large scale, which is only possible if they have access to the entire US population.

As currently drafted, however, Model Rule of Professional Responsibility 5.5(b) generally prohibits a lawyer licensed in one state from offering legal services in jurisdictions that he is not licensed in. Adoption by the states of this liberalized rule would allow indie lawyers to use technology to reach large segments of the US population, which would enable the capture of latent long tail markets.

To account for lawyers needing to know distinctions between the laws of different states, one approach might be to allow multi-jurisdictional practice for transactional work or limited litigation services. Expanding the geographic scope of the Uniform Bar Exam and reducing the amount of bar admission fees might be another workable approach.

Direct Solicitation: Rule 7.3(a) and Unlocking Latent Markets

Janelle Orsi's client base is situated in the San Francisco Bay area of Northern California, a densely populated area with a high cost of living and a progressive culture already attuned to approaches based on the commons, sharing, and social enterprise. Outside of progressive enclaves, most Americans may be unaware of the benefits that flow from new legal forms grounded in the sharing economy. If we expand indie lawyering to a litigation context, such as technology-enabled assistance for *pro se* litigants maneuvering within the legal system, there would be a need to directly approach clients with information about this kind of service. For this reason, we should rethink the prohibition on lawyers directly soliciting clients for legal services.

In order to bring potential latent markets alive, lawyers need to be able to directly sell the novel services that they have designed. Lawyers need to be able to make potential clients cognizant of how private-law services might improve their lives. For the most part, only the most elite segments of the population benefit from private-law agreements – high-level managers, executives, even tenure-track professors. Starting businesses and structuring work around a collaborative model (such as a cooperative) would allow greater segments of the American population to achieve the kind of security and certainty that has previously only been available to a few in our winner-takes-all society. Other clients could be unaware of how contractual arrangements might help them access the benefits of a property or service, without the burdens of exclusive ownership. Even in a litigation context, lawyers should be able to directly explain how they can help clients provide low-cost but individualized assistance with the legal system.

The aim of direct solicitation is to generate fee-paying clients, but there are other important collateral benefits. Directly conversing with potential clients would enable indie lawyers to maintain and build ties in the community. Face to face conversation creates a much stronger bond than advertising, perceived by most as gauche. Direct conversations also generate knowledge in the community, dispersing information on how the law can improve daily life and how one can successfully navigate the legal system. This knowledge-building function furthers important normative goals for the legal profession, the idea being that lawyers should “further the public's understanding of and confidence in the rule of law and the justice system.”⁴²

In the past, it was thought that direct solicitation was not necessary to acquire clients. The rationale was that lawyers would get clients based on their sterling reputation in the community. That rationale has been criticized as applying only to elite lawyers working in a large law firm setting.⁴³ And, we now live in a different era. Large law firms (and the secure jobs they used to provide) are on the wane and long-term client loyalty is a thing of the past. Daniel Pink's conclusion that “we are all in sales now” is absolutely true, especially in this context.⁴⁴

Currently, Model Rule of Professional Conduct 7.3(a) prohibits the direct solicitations of strangers when a significant motive for the solicitation is the lawyer's pecuniary gain. Thus, directly soliciting a client in an effort to build a sustainable law practice and make a reasonable living would run contrary to this rule. A better approach for this rule would be to discard the prophylactic prohibition and target the specific unethical conduct that should be eliminated. For instance, if the rule prohibited direct solicitation in circumstances involving fraud, misleading information, overreaching, or an intent to stir up frivolous litigation, a lawyer could still be disciplined for unethical solicitations.

Interdisciplinary Practice: Rule 5.4 and Progressive Law Business Forms

Rule 5.4 of the Model Rules of Professional Responsibility prohibits non-lawyers from taking an ownership interest or management role in a law business.⁴⁵ If an indie lawyer wanted to partner with a children's therapist to form a business focused on education law and psychological counseling for children with disabilities and emotional problems, the rule would not allow this. Rule 5.4 also would not allow lawyers to structure their businesses in a non-hierarchical way and provide all participants (administrative and professional) with an ownership interest and a vote in how the business is run. For socially minded lawyers trying to build sustainable businesses that provide value to all stakeholders, there is demand for progressive innovations for structuring law businesses.⁴⁶

Many have criticized Rule 5.4 for limiting the corporate practice of law and preventing law firms from utilizing private equity as a form of capital.⁴⁷ Beyond these economic issues, there is another reason we should consider reforming Rule 5.4. A liberalized rule 5.4 would enable the growth of community-centered and egalitarian law businesses grounded in both commerce and community. It would also allow different kinds of law businesses to emerge, which would bring value to clients in need. For instance, a hybrid law/counseling business would be useful in many different contexts – education law, family law, juvenile and criminal defense where substance abuse and mental health is an issue (as it often is).

The Cost of Law School: Loan Forgiveness for Indie Lawyers

In order for the indie lawyer model to truly get off the ground, we must consider the problem of law school cost. The high cost of law school and the student loan debt that flows from that cost will prevent many law graduates from considering this practice path. If one is burdened with over \$100,000.00 in student loan debt, there is very little incentive to become a progressive law entrepreneur. For this reason, states should consider adopting loan forgiveness programs, not linked to income, to incentivize lawyers to go and start solo practices in underserved areas – rural and urban.

This problem also reflects class and ethnic cultural differences. The progressive culture discussed in this essay – the sharing economy, buying local organic food at farmers markets, and drinking fair trade coffee from boutique coffee shops – is undeniably white, upper class culture. While elite individuals engage in feel-good (but expensive) consumption, many other people reside in “food deserts” where the only food available or affordable is fast food and junk food. The same critique could apply to lawyers who envision a new style of lawyering based on this culture. What other lawyers, besides those who are wealthy enough⁴⁸ to be able attend law school without taking out student loans, can undertake the risk of starting their own innovative practices? In order for the indie lawyer model to take off

and for these new legal products to be adopted by clients across all socio-economic spectrums, we must have diversity in the indie lawyer bar. Otherwise, indie lawyering could remain a style of lawyering practiced by lawyers from privileged backgrounds, appealing only to upper class clients. It would not, for the most part, help solve the access to justice crisis among middle-income and low-income segments of the population.

In order to address this policy problem, states might consider adopting loan forgiveness programs that would incentivize lawyers to start individual law practices in underserved areas, such as rural or low-income urban areas. In order for the incentive to work, the program must be generous. Loan forgiveness should not be income-based; if loan forgiveness were contingent on a continuous low income, that would disincentivize innovation. Loan forgiveness programs might also include up-front pre-payment of law school tuition and expenses. On the other hand, the program does not have to be inordinately large – funding ten to twenty attorneys would be a good start. Generous loan forgiveness programs already exist for doctors and dentists who choose to practice in underserved areas,⁴⁹ so it would not be such a radical idea to expand this type of program to law. Although there is the cost of maintaining such a program, the cost would be small compared with large-scale programs like the Legal Services Corporation.⁵⁰ Moreover, a loan forgiveness program would be more politically feasible than a large-scale collective solution such as a civil Gideon right, which is unlikely to ever get off the ground politically.

Conclusion

We should want the indie lawyer model to thrive for three reasons. First, the indie lawyer's services are craft-oriented and client-centered, they rely on the lawyer's professional wisdom, and they bring a human face to legal counseling. As our legal services market becomes more reliant on one-size-fits-all algorithmic computer programs and formulaic codes, we should encourage lawyering styles that utilize technology in an innovative way but that also maintain a human connection.

Second, the indie lawyer is innovative and entrepreneurial, but she also maintains a strong social conscience and commitment to her community. In a sense, this style of lawyering resurrects the community-centered lawyer who enters the practice of law not just for financial gain and social status, but also to return value to his community and society. In these cynical times, when many bemoan the influence of business on the practice of law, the indie lawyer approach offers a refreshing return to the profession's highest values.

Third, by bringing novel legal services to a potentially new class of clients, the indie lawyer can help bridge the access gap between lawyers and middle- and low-income clients. Concrete benefits flow from the private law or litigation services that the future indie lawyer might provide. There is value in giving middle-income and low-income clients access to the certainty and security that stem from private law agreements (cooperative employment arrangements, property sharing, etc.). And, if indie lawyers can harness technology to provide low-cost but individualized litigation assistance, this will alleviate the inefficiencies created by unrepresented individuals bumping into the corners of the legal

system. For these reasons, we should celebrate the emergence of indie lawyering and study how we might modify our professional regulations and advocate for legislative initiatives that would ensure that the trend takes root and grows.⁵¹

Endnotes

1. Zeitgeist refers to “the spirit of the time.” Zeitgeist definition, DICTIONARY.COM, <http://dictionary.reference.com/browse/zeitgeist?s=t>.
2. See Deborah Rhode, *Access to Justice: An Agenda for Legal Education and Research*, 62 J. LEGAL EDUC. 531 (2013) (“More than four-fifths of the individual legal needs of the poor and a majority of the needs of middle-income Americans remain unmet.”)
3. Leslie C. Levin, *Preliminary Reflections on the Professional Development of Solo and Small Firm Practitioners*, 70 FORDHAM L. REV. 847, 847-848 (2001).
4. Jerome Carlin, *Introduction to the 1994 Edition* of JEROME E. CARLIN, *LAWYERS ON THEIR OWN* xi (Quid Pro Press 2011) (1962).
5. BREAKING BAD (AMC 2008).
6. “As a public citizen, a lawyer should seek improvement of the law, access to the legal system, the administration of justice and the quality of service rendered by the legal profession.” MODEL RULES OF PROF’L CONDUCT, Preamble [6] (2014).
7. See ANTHONY KRONMAN, *THE LOST LAWYER: FAILING IDEALS OF THE LEGAL PROFESSION* (1993).
8. Tomio Geron, *Airbnb and the Unstoppable Rise of the Share Economy*, FORBES (Jan. 23, 2013), <http://www.forbes.com/sites/tomiogeron/2013/01/23/airbnb-and-the-unstoppable-rise-of-the-share-economy/>.
9. See generally, CHARLOTTE HESS AND ELINOR OSTROM, *UNDERSTANDING KNOWLEDGE AS COMMONS* 4 (MIT Press 2006).
10. See Janelle Orsi, *The Sharing Economy Just Got Real*, SHARABLE (Sept. 16, 2013), <http://www.shareable.net/blog/the-sharing-economy-just-got-real>.
11. MAKE, makezine.com (last visited Sept. 19, 2014).
12. See Dale Dougherty, *The Maker Movement*, 12 INNOVATIONS: MAKING IN AMERICA 11 (2012); PETER H. DIAMANDIS & STEVEN KOTLER, *ABUNDANCE: THE FUTURE IS BETTER THAN YOU THINK* 10 (2012).
13. Arlene Weintraub, *Is Mass Customization the Future of Retail?*, ENTREPRENEUR.COM (Nov. 12, 2013), <http://www.entrepreneur.com/article/229869>; Elizabeth Spaulding & Christopher Perry, *Having It Their Way: The Big Opportunity in Personalized Products*, FORBES (Nov. 5, 2013), <http://www.forbes.com/sites/baininsights/2013/11/05/having-it-their-way-the-big-opportunity-in-personalized-products/>; Terry O’Reilly, *Have It Your Way: How Mass Customization is Changing Marketing, Under The Influence*, CBC RADIO (Mar. 1, 2014), <http://www.cbc.ca/undertheinfluence/season-3/2014/03/01/have-it-your-way-how-mass-customization-is-changing-marketing-1/>.
14. DANIEL H. PINK, *TO SELL IS HUMAN: THE SURPRISING TRUTH ABOUT MOVING OTHERS* 31 (2012).
15. Susan Luckman, *The Aura of the Analogue in a Digital Age*, 19 CULTURAL STUD. REV. 249, 255 (2013) (internal citation omitted).
16. SUSPIRIA (International Classics 1977).
17. *Suspiria*, AMAZON.COM, <http://www.amazon.com/Suspiria-Jessica-Harper/dp/B00005ASOI>.
18. JANELLE ORSI, *PRACTICING LAW IN THE SHARING ECONOMY* (2012) [hereinafter ORSI, *PRACTICING LAW IN THE SHARING ECONOMY*].

19. LAW OFFICE OF JANELLE ORSI, <http://www.janelleorsi.com/> (last visited Sept. 19, 2014).
20. SUSTAINABLE COMMUNITIES LAW CENTER, <http://www.theselc.org/> (last visited Sept. 19, 2014).
21. ORSI, *supra* note 16, at 13-20.
22. *See id.* at 1-13.
23. *Id.* at 22-24.
24. *Id.* at 22.
25. *Id.*
26. *Id.* at 22-24.
27. *Id.* at 24.
28. *Id.* at 25.
29. *Id.* at 36.
30. ORSI, *supra* note 6, at 37.
31. *Id.* at 25 (quoting MODEL RULES OF PROF'L CONDUCT, Preamble [13]).
32. *See* KRONMAN, *supra* note 5. Obviously, as I argue below, the indie lawyer is unlikely to thrive if she is overly burdened with an excessive amount of student debt from attending law school. It would be naïve to tout this altruistic style of law practice without also seeking a solution to the excessively high cost law school. As I set forth below, reducing the cost of law school is one option. But states might also consider loan forgiveness programs, similar to what has been done for doctors and dentists who choose to practice in areas where medical and dental care is scarce. Such a program would incentivize lawyers to start a law practice in underserved areas or for underserved clients.
33. *See* Karen Francis-McWhite, BUILDING MIHOMESTEAD, <http://www.gofundme.com/BuildingMi-Homestead>.
34. *See* MARK H. TUOHEY II ET AL., MODEST MEANS TASK FORCE OF THE ABA SECTION OF LITIGATION, HANDBOOK ON LIMITED SCOPE LEGAL ASSISTANCE (2003), available at <https://apps.americanbar.org/litigation/taskforces/modest/report.pdf>.
35. Stephanie Francis Ward, *Richard Granat: Internet Obsessive*, A.B.A. J. LEGAL REBELS (Aug. 24, 2009), available at http://www.abajournal.com/legalrebels/article/internet_obsessive.
36. *See* KRONMAN, *supra* note 5, at 41-44 (Aristotle conceived practical wisdom as being a “virtue of character” and the “excellence of the person who deliberates well about personal or political affairs”); R. Michael Cassidy, *Character and Context: What Virtue Theory Can Teach Us About A Prosecutor’s Ethical Duty to Seek Justice*, 82 NOTRE DAME L. REV. 635, 649 (2006) (citing ARISTOTLE, NICOMACHEAN ETHICS bk VI, ch. 13, at 189 (Christopher Rowe trans. Oxford 2002) (“Deliberation toward any end is cleverness; deliberation toward a good end is practical wisdom.”)).
37. Ward, *supra* note 33.
38. *See* MARY CHAYKO, PORTABLE COMMUNITIES: THE SOCIAL DYNAMICS OF ONLINE AND MOBILE CONNECTEDNESS (2008).
39. RICHARD SUSSKIND, THE END OF LAWYERS 29-32, 237, 247 (2008) (arguing that the craft oriented approach to law is ending); Gillian K. Hadfield, *Legal Infrastructure and the New Economy*, 8 I/S JOURNAL OF LAW & POLICY 1, 39-40 (2012) (arguing that the craft oriented approach to law is too cumbersome and expensive).
40. But even in densely populated New York City, Kim’s Video, the longstanding cult video store, could not survive. Tesssa Stewart, *The Last Kim’s Video and Music Location Will Close This Summer*, THE VILLAGE VOICE (Apr. 21, 2014), http://blogs.villagevoice.com/runninscared/2014/04/kims_video_music_closing.php.

41. Tristan Swanwick, *Brisbane Cult Movie Store Trash Video Reborn as On Demand Internet Service*, COURIER MAIL (Nov. 21, 2011), <http://www.couriermail.com.au/business/virtual-rerun-for-cult-video-icon/story-fn7kjcme-1226200606970?nk=b70a3658fe17d298091ad6f85efc3d81>.
42. MODEL RULES OF PROF'L CONDUCT, *supra* note 4.
43. JEROLD S. AUERBACH, *UNEQUAL JUSTICE, LAWYERS AND SOCIAL CHANGE IN MODERN AMERICA* 41-42 (1976).
44. PINK, *supra* note 12, at 9, 19.
45. MODEL RULES OF PROF'L CONDUCT R. 5.4 (2014). Rule 5.4 prohibits lawyers from sharing legal fees with a nonlawyer [5.4(a)]; giving nonlawyers an ownership interest in a law business [5.4(d)]; and forming partnerships with non-lawyers [5.4(b)].
46. *See, e.g.*, ORSI, *supra* note 16, at 38-51 (describing various attempts to create law office collectives, low-profit law businesses, and law offices run on a cooperative model).
47. Hadfield, *supra* note 37, at 55-57; Gillian K. Hadfield, *The Cost of Law: Promoting Access to Justice Through the (Un)Corporate Practice of Law*, 38 INT'L REV. OF LAW & ECON. 43, 54-55 (2014); Larry E. Ribstein, *The Death of Big Law*, 2010 WISC. L. REV. 749, 788-789, 803-804 (2010); Larry E. Ribstein, *Lawyers as Lawmakers: A Theory of Lawyer Licensing*, 68 MO. L. REV. 299, 314 (2004); Stephen Gillers, *What We Talked About When We Talked About Ethics: A Critical View of the Model Rules*, 46 OHIO ST. L. J. 243, 268 (1985); Stephen Gillers, *A Profession, If You Can Keep It: How Information Technology and Fading Borders Are Reshaping the Law Marketplace and What We Should Do About It*, 63 HASTINGS L. J. 953, 1007 (2012).
48. Or, a student might be credentialed enough to receive a generous scholarship to a law school. These credentials also correlate strongly with wealth. *See* Richard H. Sander, *Class in American Legal Education*, 88 DENV. U. L. REV. 631, 663, 667 (2011).
49. *See* *Loan Forgiveness Programs*, ASSOCIATION OF AMERICAN MEDICAL COLLEGES, https://services.aamc.org/fed_loan_pub/index.cfm?fuseaction=public.program&program_id=40.
50. *See* Mauricio Vivero, *From "Renegade" Agency to Institution of Justice: The Transformation of Legal Services Corporation*, 29 FORDHAM URB. L.J. 1323 (2002) (describing the budgetary issues impacting the Legal Services Corporation, conceived in the 1970s as an institution that would help ameliorate access to justice problems for low-income individuals).
51. The issues in this essay are addressed at greater length in an article to be published by the Southern Methodist University Science and Technology Law Review.

The High Cost of Efficiency: Courthouse Tech and Access to Justice

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