

Uber for Lawyers: The Transformative Potential of a Sharing Economy Approach to the Delivery of Legal Services

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INTRODUCTION

With the advent of the Internet and mobile technologies, numerous industries are now in the throes of radical transformations that are likely to cause dramatic change to such industries in the near future. Whether it is the car service industry or the hotel industry, the new “sharing economy” business model aims to connect consumers to providers in innovative ways that threaten the profit margins and even the viability of incumbent companies in these industries. By making services easier to access, and at times less expensive, companies in the new sharing economy are exploring new supply chains, marketing techniques, and models of distribution that are upending their respective industries and giving consumers a wider choice. This “Just in Time/Just Enough” model, one where consumers prefer to access services only when they are needed, and to access them from willing providers who have the ability to meet the need only when they have the capacity to do so, is one that is finding its way into a wide range of industries. But is it appropriate for all services in the service economy? This Article asks this question with respect to one particular industry: specifically, is a sharing economy Just in Time/Just Enough approach appropriate for the legal services industry?

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In other words, is “Uber for Lawyers” a viable business model for the legal profession?

But more than just addressing the question of whether such an approach is a viable option for the delivery of legal services moving forward, what this Article reveals is that features of the sharing economy have been components of the delivery of legal services for roughly two centuries. In fact, lawyers have delivered legal services through a sort of proto-sharing economy model for generations, just without the Internet or mobile technologies. Still, these technologies have the potential to transform the delivery of legal services, and services that look a lot like legal services, in new ways, ways that can mean greater access to legal assistance and information. They can also threaten the incumbent providers of legal services currently supplying such services in the market.

This paper explores the potential benefits and risks of utilizing a technology-enabled, sharing economy approach to the delivery of legal services. While not looking past the risks of such an approach, I first argue that a sharing economy approach to the delivery of legal services is one that the legal profession has deployed for some time already. Second, unlike other industries where sharing economy companies are running roughshod and somewhat unencumbered by regulatory oversight, the fact that the legal profession has displayed features of a sharing economy approach to the delivery of legal services means that the legal profession and those entities and institutions that oversee it have developed layers of consumer protections that are already in place. These protections are uniquely suited to address those components of the sharing economy that require special attention: i.e., the need to balance the manufacturing of trust and consumer protection through oversight without stifling innovation. As a result, because the legal services industry has developed an array of means for regulating the actions of legal services providers—actions that have exhibited sharing economy features for centuries—it is worth exploring the contours of a potential sharing economy approach to the delivery of legal services and the promise it holds for generating the types of benefits other sharing economy models are generating: namely greater access and greater affordability. What I attempt to argue here is that such an

approach can do this while also preserving consumer protection because of the well-established rules that have arisen for governing the practice of law. These rules are well suited to regulate a sharing economy approach to the delivery of legal services because the delivery of such services has exhibited sharing economy features for at least as long as there have been rules governing the practice of law.

With these issues in mind, this Article proceeds as follows. Part I explores the features of the new sharing economy. Part II asks whether some aspects of these features are already present in the delivery of legal services and looks at one entity in particular, LegalZoom, which is attempting to take steps toward delivering legal services through a sharing economy approach. While LegalZoom has progressed further than many of the other new, technology-enabled entrants to the legal services market in its size, scope, and reach, it is still evolving, and has not reached the full potential of a sharing economy approach to the delivery of legal services. In Part III, I explore some of that potential, and describe the components of such an approach. Part IV explains that the legal services industry is primed for a sharing economy approach because it already has in place well-established protections to guard consumers against the risks that are arising in the sharing economy generally. While some sharing economy platforms are struggling with issues of trust, liability, insurance, and oversight, the legal profession has grappled with these issues for generations and has put in place layers of protections and established institutions that can help to rein in improper and abusive conduct toward consumers. As a result, the legal profession is, perhaps, better suited for a sharing economy approach than some other sectors of the economy where sharing economy platforms are progressing in fits and starts. This is precisely because these other sectors have not created the types of norms and institutions that have developed over time to serve as a check on abusive conduct within the legal profession. Part V explores the potential benefits of a sharing economy approach to the delivery of legal services, including the potential benefits for expanding access to justice and improving lawyer job satisfaction. And lastly, Part VI attempts to address some of the questions and risks surrounding such an approach.

I. FEATURES OF THE SHARING ECONOMY

There are many terms that are used to describe what companies like Airbnb, Uber, Lyft, Etsy, eBay, TaskRabbit, etc. are doing. Is it “collaborative consumption”? The “peer economy”? For our purposes here, I utilize what Rachel Botsman, author of *What’s Mine is Yours: How Collaborative Consumption is Changing the Way We Live*,¹ has called the “sharing economy”: “An economic model based on sharing underutilized assets . . . for monetary or non-monetary benefits.”² Some of the key features of the sharing economy that might appear in a sharing economy approach to the delivery of legal services include the following: (1) a latent or otherwise underutilized supply of a good or service; (2) an independent workforce that does not fit within the traditional employer-employee relationship; (3) a matchmaking function—connecting consumer to willing provider directly—delivered through technology-enabled platforms; and (4) a need to balance innovation with regulatory oversight and a desire to instill consumer trust.³ As with a short-term rental in a spare bedroom in someone’s house or a ride in the backseat of someone’s car, in most sharing economy settings, these features amount to the delivery of “Just in Time” and “Just Enough” services. In the legal services context, a “Just in Time/Just Enough”

1. RACHEL BOTSMAN & ROO ROGERS, *WHAT’S MINE IS YOURS: THE RISE OF COLLABORATIVE CONSUMPTION* (2010).

2. Rachel Botsman, *The Sharing Economy Lacks a Shared Definition*, FAST COMPANY: CO.EXIST (Nov. 21, 2013, 7:30 AM), <http://www.fastcoexist.com/3022028/the-sharing-economy-lacks-a-shared-definition>; see also Christopher Koopman et al., *The Sharing Economy and Consumer Protection Regulation: The Case for Policy Change*, 8 J. BUS. ENTREPRENEURSHIP & L. 529, 531 (2015) (“[I]t is helpful to think of the sharing economy as any marketplace that brings together distributed networks of individuals to share or exchange otherwise underutilized assets.”) (citation omitted). For an overview of the debate over the definition of the sharing economy, see Daniel E. Rauch & David Schleicher, *Like Uber, but for Local Governmental Policy: The Future of Local Regulation of the “Sharing Economy”* 10-14 (George Mason Univ. Law & Econ. Research Paper Series, Paper No. 15-01, 2015), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2549919.

3. For a full discussion of the different components of the sharing economy, with a slightly different focus, see Raymond H. Brescia, *Regulating the Sharing Economy: New and Old Insights into an Oversight Regime for the Peer-to-Peer Economy*, 95 NEB. L. REV. (forthcoming 2016) [hereinafter Brescia, *Regulating the Sharing Economy*].

approach would share these features, which are described in greater detail below.

A. “Latent” Supply

One of the key features of the sharing economy is that it purports to put latent products and services to productive use. Two prominent examples of the sharing economy are Uber and Airbnb. While both certainly involve professional taxi drivers working on a full-time basis and industrial landlords making a portion of their apartments available to Airbnb clients, in theory, the purpose of both services is to enable homeowners and tenants with a spare room and workers in other industries who have a car and some spare time on their hands, to put that latent asset to productive use. The individual with a car can make some additional money on the side by serving as an Uber driver. The empty nesters who have some spare bedrooms, or the family with a *pied-à-terre* in a big city who is not making use of the apartment can all put that empty, unproductive space to use, bringing in income that would otherwise go to a company providing housing accommodations at a premium.

Of course I say “in theory” because this vision of the sharing economy, where providers of services are simply putting their otherwise unproductive assets to use to earn additional funds, is one that certainly applies to some of the providers in these sharing economy platforms, yet it is not all of them.⁴ Professional taxi drivers who find it hard to break into the cartel-like taxi industries in major cities, or landlords who try to skirt rent regulations by making their vacant apartments available for transient customers at a rate that far exceeds the legal rent for the apartment under local laws, are certainly taking advantage of the sharing

4. A recent study suggests that some significant portion of Airbnb hosts are multi-unit landlords renting out space for short-term visits and renting such space out for significant portions of the calendar year. John W. O’Neill et al., *From Air Mattresses to Unregulated Business: An Analysis of the Other Side of Airbnb*, AHLA (Jan. 2016), http://www.ahla.com/uploadedFiles/_Common/pdf/PennState_AirbnbReport_.pdf. Recently, Airbnb was criticized for possibly altering data on its hosts in New York City to perhaps mask this fact. Jay Hathaway, *Airbnb Accused of Purging NYC Listings to Make Its Numbers Look Better*, N.Y. MAG. (Feb. 11, 2016, 10:36 AM), <http://nymag.com/following/2016/02/Airbnb-accused-of-purging-1000-nyc-listings.html>.

economy platforms available to them. Depending on one's political persuasion and sympathies, one might see these latter examples as positive developments, instances where the weight of regulation is hampering the ability of the entrepreneur to function in the free market, or where important consumer protection laws are being skirted to the detriment of consumers generally and the broader economy. The point here is not to debate which vision of the sharing economy is accurate; rather, I wish to identify one component of sharing economy approaches: that they strive to put otherwise latent assets to use in productive ways.

B. *An Independent Workforce*

Although this is subject to debate and litigation, providers of services in the sharing economy are generally seen as independent contractors, not employees of the sharing economy platform. While this is still an unsettled issue in the law, providers that work through Uber or Lyft (another driving service), or who supply rooms, apartments, and houses, are not presently considered employees of the respective platform. Providers can thus work and participate in the sharing economy as much or as little as they want. If individuals who provide driving services have another job or jobs, they can make extra money during the times they are not otherwise working. Individuals with family commitments can work when they are free of those commitments. With Airbnb providers, they can determine the time that works best for them to make their accommodations available.⁵ The freelance spirit animating sharing economy platforms offers flexibility for service providers to engage with the platform at the times that work best for them.

Again, this works well in the idealized vision of the sharing economy. The notion that anyone with a car or a spare room can earn extra income by putting his or her latent assets to use is a noble one, one that is empowering for individuals and families who have such assets to offer in ways that are convenient for them. Unfortunately, in a U.S. economy that is unkind to unskilled and lower-skilled

5. See *How to Host*, AIRBNB, <https://www.airbnb.com/help/getting-started/how-to-host> (last visited Apr. 17, 2016).

workers, the decision to participate in the sharing economy may be one of necessity, and in markets that might be saturated with sharing economy services of a particular nature, the individual seeking to provide such services as his or her primary source of income may find it difficult to make ends meet or to earn a living as a part of the sharing economy.

The question of whether a freelance economy is good for workers is one that is subject to debate. Proponents of the sharing economy might point to examples of thousands of individuals who fulfill the idealized vision of the sharing economy,⁶ while detractors tell tales of woe for workers forced into the sharing economy by the diminished power of unions, the general decline in wages in lower-skilled jobs, and a weakened job market for higher paying jobs as a result of so-called sharing economy innovations.⁷ Sharing economy workers in California and elsewhere have sought protections as employees of the platform with which they are affiliated.⁸ In Seattle, Uber and Lyft workers are seeking recognition as a union, and a local ordinance seeks to support that effort.⁹ Issues surrounding the rights of workers aligned with

6. While research on the providers of services in the sharing economy is somewhat scarce, some early findings suggest that drivers for Uber tend to participate in that platform as a supplement to their other income and do so as a way to transition from one job to the next. Jonathan V. Hall & Alan B. Krueger, *An Analysis of the Labor Market for Uber's Driver-Partners in the United States* 12 (Princeton Univ. Indus. Relations Section, Working Paper No. 587, 2015). Similarly, in one market, New York City, Airbnb's data on providers suggests that the typical host acting through that service is a small homeowner or renter, who is renting out his or her only residence or part thereof, though this is subject to debate. Mike Isaac, *Airbnb Releases Trove of New York City Home-Sharing Data*, N.Y. TIMES (Dec. 1, 2015), http://www.nytimes.com/2015/12/02/technology/airbnb-releases-trove-of-new-york-city-home-sharing-data.html?_r=0.

7. For an analysis of the hardships the sharing economy causes American workers and proposals and policy responses to mediate these harms, see STEVEN HILL, *RAW DEAL: HOW THE "UBER ECONOMY" AND RUNAWAY CAPITALISM ARE SCREWING AMERICAN WORKERS* (2015).

8. For a discussion of the employment issues implicated by sharing economy platforms, see James Surowiecki, *Gigs with Benefits*, NEW YORKER (July 6-13, 2015), <http://www.newyorker.com/magazine/2015/07/06/gigs-with-benefits>.

9. Dave Jamieson, *Seattle Passes Law Allowing Uber Drivers to Unionize*, HUFFINGTON POST (Dec. 14, 2015, 6:25 PM), http://www.huffingtonpost.com/entry/uber-seattle-union_us_566f3e49e4b011b83a6c3b24.

sharing economy platforms will likely evolve as the platforms themselves evolve, extend their reach, and expand their worker base.¹⁰

C. *Marketing and Matchmaking Innovations Offered Through the Internet and Mobile Technologies*

Perhaps the most important innovation of sharing economy companies is that they benefit from the marketing and sales platform offered by the service. Uber, at its heart, is a mobile technology that connects drivers to riders in real time.¹¹ Airbnb is a service that connects customers with providers of housing services through an Internet-based interface.¹² By taking the marketing and matchmaking functions away from the providers, they can leverage the economies of scale possible through the global marketing platforms of the Internet and mobile technologies. The technology-enabled services take the responsibility of marketing and matchmaking away from the individual providers, meaning they can devote their efforts and energies toward providing the service they are offering. As a result, they can spend less and less time building their brand, marketing their services, and finding customers. The services offered through the Uber and Airbnb platforms relieve the service providers of this burden, allowing them to turn to more productive uses of their time and assets.

10. For an analysis of some of the policy issues posed by the sharing economy, see Orly Lobel, *The Law of the Platform* (Sept. 30, 2015) (unpublished manuscript) (on file with author). Recently, a coalition of labor and business leaders and representatives from foundations issued a collaborative statement regarding principles that should govern the new roles that workers play in the sharing economy, expressing the desire that innovation and flexibility in the delivery of goods and services should incorporate worker protections and the desire for employment stability. Cecilia Kang, *Coalition of Start-Ups and Labor Call for Rethinking of Worker Policies*, N.Y. TIMES: BITS (Nov. 9, 2015, 11:00 PM), http://bits.blogs.nytimes.com/2015/11/09/coalition-of-start-ups-and-labor-call-for-rethinking-of-worker-policies/?_r=0.

11. John Patrick Pullen, *Everything You Need to Know About Uber*, TIME (Nov. 4, 2014), <http://time.com/3556741/uber>.

12. *About Us*, AIRBNB, <https://www.airbnb.com/about/about-us> (last visited Apr. 17, 2016).

D. *The Need to Generate Trust While Fostering Innovation*

Any sharing economy approach seeks both to instill trust in the platform and its providers, and to insulate providers from a degree of oversight that will impose burdens on the delivery of services that will increase transaction costs and make the services too costly to provide. One of the driving forces in the sharing economy is that individual providers of goods and services should be able to make those goods and services available with only minimal oversight. With a car that passes state inspection, a driver's license, a relatively clean driving record, and insurance (which every driver must have already), one can become a driver for Uber.¹³ With a spare room (or couch, or inflatable mattress), one can become a host on Airbnb.¹⁴ Were we to start regulating car service providers, Airbnb hosts, artists on Etsy, and sellers on eBay like we regulate traditional providers in these industries, we would likely drive many providers out of the market.

The founders of sharing economy platforms insist that they are doing something in the economy that is different and more innovative than what traditional providers of goods and services offer, and as a result, they should be entitled to some leeway in how they and their networks conduct their business. They argue that they are good for society and are unlocking otherwise untapped resources that can be put to productive use, generating billions of dollars for the economies of the world.¹⁵ At the same time, consumers will not trust a platform or its providers if there is no oversight to ensure consumer protection, especially in such vulnerable relationships as driver-passenger and host-guest. While

13. See *Driving Jobs vs Driving with Uber*, UBER, <https://www.uber.com/driver-jobs> (last visited Apr. 17, 2016).

14. *How to Host*, AIRBNB, <https://www.airbnb.com/help/getting-started/how-to-host> (last visited Apr. 17, 2016).

15. See, e.g., *Airbnb's Positive Impact on Los Angeles*, AIRBNB, http://blog.airbnb.com/Airbnbs-positive-impact-in-los-angeles-2/?_ga=1.169364385.1889277233.1458405572 (last visited March 19, 2016); *Overall Economic Impact*, AIRBNB, http://blog.airbnb.com/airbnbs-positive-impact-in-los-angeles-2/?_ga=1.248945091.53167790.1460937155 (last visited Apr. 17, 2016) (describing multi-million dollar positive economic impact of Airbnb on one city, Los Angeles, CA).

every producer in the economy—whether it is the new economy or the very traditional one—must strive to gain consumer trust, actors in the sharing economy seek freedom from burdensome regulatory oversight because they claim they are bringing economic benefits through innovation, but this is precisely the type of oversight that can instill consumer trust.¹⁶ Indeed, the search to develop such trust through the right balance between regulatory oversight and freedom to innovate must be a critical component of sharing economy models, both today and moving forward.

While definitional issues surround the naming of the sharing economy, and different companies within the ecosystem display the features described above in unique ways, most companies in these markets appear to display these features in some form, and it is in these core elements of the sharing economy where its key innovations seem to reside. A sharing economy approach to the delivery of legal services would both incorporate these features while adapting them to the unique needs of the legal profession and those in need of legal services. What is interesting, however, is the extent to which many of these features already exist in the market for legal services. How these features might already exist in the delivery of legal services is the question I address next.

II. HOW THE LEGAL PROFESSION ALREADY DISPLAYS FEATURES OF THE SHARING ECONOMY AND THE WAYS NEW TECHNOLOGIES COULD IMPACT THE DELIVERY OF LEGAL SERVICES

Before embarking on a description of the features of a sharing economy approach to the delivery of legal services, which I undertake in Part III, it is worthwhile to describe the ways that the delivery of legal services in the United States already exhibits the features of sharing economy models. One of the most striking, yet underlying, features of the sharing

16. For a discussion of the ways that regulation can promote trust, see Clair A. Hill & Erin Ann O'Hara, *A Cognitive Theory of Trust*, 84 WASH. U. L. REV. 1717, 1755-58 (2006); Christopher R. Leslie, *Trust, Distrust, and Antitrust*, 82 TEX. L. REV. 515, 605-10 (2004).

economy in its present form is that the market for legal services has possessed elements of the sharing economy approach for decades, if not centuries.

A. *The Similarities*

If the key components of the sharing economy are that producers use their latent assets to serve others in an on-demand fashion; that they are freelancers rather than employees of these clients; that they utilize the Internet and mobile technologies to connect consumers to producers; and they strive to strike a balance between oversight, innovation, and trust: many of these key features—short of the technology—have been present in the delivery of legal services since the “modern” era of the legal profession. If we are to think of lawyers as hired hands, providing outsourced services, and using their time by serving multiple clients in accordance with those lawyers’ availability, one sees the features of the sharing economy as consistent with the model for the delivery of legal services that has been offered in the United States since the early Republic. Whether it is Abraham Lincoln, Clarence Darrow, Louis Liman, or Gloria Allred, the model of the provision of legal services has had features of the sharing economy for centuries. A lawyer, working as a solo practitioner or with a collection of lawyers in a firm, apports his or her time in an on-demand fashion to meet the needs of his or her clients. Certainly there are exceptions: e.g., when a lawyer assumes the role of in-house counsel for a private company, non-profit, or government entity; or is a lawyer whose sole service is to a single client. For the most part, however, the delivery of legal services in the United States has possessed features of the sharing economy since the early nineteenth century at least. What follows is a description of how components of a sharing economy approach already exist, and have existed, in the delivery of legal services for quite some time. I then discuss how one company, LegalZoom, incorporates features of the sharing economy in its delivery of legal services.

The most significant similarity between the sharing economy and the manner in which legal services have been delivered for centuries is this notion that providers are tapping into untapped resources to deliver services in an on-

demand fashion. Whether it is a spare room, a little down time with one's car, or that old collection of sports memorabilia that one wants to sell on eBay, central to the sharing economy approach is the notion that providers have available resources that can be put to productive use, if they can just find a willing consumer of these goods and services.¹⁷ On the legal services side—and this is true of any type of consultant—the attorney makes him- or herself available to an array of clients and serves them according to his or her capacity. Ideally, the lawyer will not want for work, and will have to turn down clients when his or her capacity is exhausted. He or she will monitor the work flow and—at least according to legal ethics requirements—should only accept cases to which he or she can devote a level of attention appropriate to ensure the provision of competent representation.¹⁸ Of course, finding this balance is always a challenge. Many lawyers will complain that they have too much work. Yet those in the constant hunt for clients complain that they need to maintain a steady stream of paying customers to “keep the lights on.” In theory at least, the pursuit of clients follows the sharing economy model: it seeks to exploit latent resources until a lawyer's capacity is filled with clients and work.

Another similarity between the sharing economy construct and the manner in which the legal profession has operated has been the need to develop and maintain the trust of the consumer. Indeed, since this is so central to the attorney-client relationship, an array of checks and balances have been put in place to ensure the attorney is deserving of trust and is being trustworthy.¹⁹ The purpose of these checks and balances is not just to protect the client in an individual

17. WORLD ECON. FORUM YOUNG GLOB. LEADERS TASKFORCE, CIRCULAR ECON. INNOVATION & NEW BUS. MODELS INITIATIVE, YOUNG GLOBAL LEADERS SHARING ECONOMY WORKING GROUP POSITION PAPER 3 (2013), <https://thecirculars.org/documents/04%20Sharing%20Economy%20Paper.pdf> (describing nature of sharing economy businesses).

18. Model Rules of Prof'l Conduct r. 1.3 cmt. 2 (AM. BAR ASS'N 2013) (“A lawyer's work load must be controlled so that each matter can be handled competently.”).

19. On the evolving role of trust in the attorney-client relationship, see Robert K. Vischer, *Big Law and the Marginalization of Trust*, 25 GEO. J. LEGAL ETHICS 165 (2012).

attorney-client relationship, but to ensure that the legal profession as a whole is deserving of consumer trust. Because of this, the profession has zealously guarded the monopoly role of the profession in the delivery of legal services and goes to great lengths to ensure that the general public and governmental authorities trust that lawyers are not abusing this power. To protect this unique role for the profession, lawyers, in collaboration with the courts and other governmental authorities, have put in place machinery for policing the profession and ensuring that there is at least the perception that lawyers hold a unique role in society and the power they possess is not being abused or exploited for unfair advantage or outsized personal gain.²⁰ While the specific components of this machinery will be discussed in subsequent sections, this type of exceptionalism, built up around the role of the attorney in society, is one constructed around the need to instill trust in the provider of these services: that she will not abuse her privileges, will meet the designated role in society, and that there is space for her to provide a particular type of service that she is uniquely qualified to provide. This unique position hinges on trust and the manner in which trust is instilled in an individual actor within the system and in the system as a whole.²¹

One of the seemingly unique features of the legal profession is that it seeks to both instill in individual clients and consumers a sense of trust in the system, yet insulate that system from more traditional forms of regulation and oversight.²² The main point of this tension is that lawyers

20. Leaders in the legal profession have long argued that the profession needs to police itself well in order to avoid outside interference. *See, e.g.*, AM. BAR ASS'N COMM'N ON PROFESSIONALISM, "...IN THE SPIRIT OF PUBLIC SERVICE:" A BLUEPRINT FOR THE REKINDLING OF LAWYER PROFESSIONALISM 56 (1986) ("If such [internal reform] is not taken, far more extensive and perhaps less-considered proposals may arise from governmental and quasi-governmental entities attempting to regulate the [legal] profession.").

21. *See* Chris Johnson, *Once You Enter This Family There's No Getting Out: Ethical Considerations of Representing Family-Owned Businesses*, 75 UMKC L. REV. 1085, 1085 (2007) ("The core policy concern of the of the Model Rules is to maintain the client's trust in attorneys as a means of protecting the integrity of the legal profession as a whole.").

22. *See* AM. BAR ASS'N COMM'N ON PROFESSIONALISM, *supra* note 20, at 56.

should be given a degree of latitude in how they represent their clients, and it is that latitude that is essential to the provision of effective, competent, and creative legal services.²³ It is unlikely that zealous representation, particularly against the government, would be possible in a world where lawyers were subject to rigid oversight by the same regulators against whom they were representing a client. One need not look beyond the tension that Judge Advocate General lawyers face in their representation of detainees at Guantánamo Bay in military tribunals and other proceedings to see how standing in opposition to regulators in the representation of a client can generate potential conflicts of interest. This could subject the lawyer to oversight that might place him or her in a position of “serving two masters”: not wanting to anger his or her regulators by acting as a zealous advocate for a client.²⁴

There is a degree of oversight at the front end of the industry, imposing significant barriers to entry, but then there is a lighter touch, permitting a degree of freedom and independence that lowers transactions costs and facilitates the provision of services in the manner in which the lawyer sees as appropriate and effective. There is a floor to the quality of those services—that the lawyer must provide competent services—but there is no heavy regulation of the profession like we see in many other industries, like, for example, banking, where many of the functions and activities of banks are placed under tight regulatory control and oversight. The point here is that the interplay between oversight, trust, and innovation is one that the legal profession and the sharing economy both share.²⁵

23. See *Strickland v. Washington*, 466 U.S. 668, 689 (1984) (“Any such set of rules would . . . restrict the wide latitude counsel must have in making tactical decisions.”).

24. For a discussion of the ethical issues military lawyers face in representation of Guantánamo detainees, see David Luban, *Lawfare and Legal Ethics in Guantánamo*, 60 STAN. L. REV. 1981 (2008).

25. I explore some of the ways the legal profession attempts to instill trust through regulation and oversight in greater detail in Part IV, *infra*.

B. *New Sharing Economy Features: Marketing, Information-Sharing, and Matchmaking Functions*

What is new about the sharing economy is its creative use of Internet and mobile technologies to connect consumers to producers directly, with the click of a mouse or a swipe or tap on a smartphone. While lawyers are beginning to harness this technology for on-demand services,²⁶ as described in Part II.C, a sharing economy approach to the provision of legal services would use the Internet and mobile technologies to market legal services, share information with prospective clients in a simple way, engage in some degree of triage to direct a client to the appropriate place along a continuum of legal services, and provide as-needed services depending on the complexity of the customer's problem. Through questionnaires and other interrogatory techniques, a legal services platform would look to sort clients according to their needs, the complexity of the matter or matters for which they seek assistance, and the appropriate level of services necessary to meet their needs. This would hinge on the client's capacity to utilize limited services effectively and the client's desire and ability to pay for different levels of service. Technological innovations will never displace some degree of navigational assistance that may be necessary for certain clients, but the platform's interface could manage some percentage of the sorting function, freeing up attorney and legal staff time to devote to more lucrative activities.

C. *How One Technology-Enabled Entity is Using Features of the Sharing Economy to Deliver Legal Services*

In many ways, short of the advances now available through the Internet and mobile technologies, a sharing economy approach is one the legal profession has deployed for centuries in the delivery of legal services. What's more, a technology-enabled, sharing economy approach offers innovative ways for delivering legal services that can make them more efficient, streamlined, and less expensive. In this

26. For example, the "Oh Crap App" can link clients to lawyers through a smartphone application, even as they are stopped at the side of the road in a traffic stop. OH CRAP APP, <http://www.oh-crap-app.com/> (last visited Dec. 21, 2015).

section, I look at how one pioneer in the delivery of technology-enabled legal services is already exploring the contours of the sharing economy.

There are many startup companies seeking to provide a range of services in the legal services industry: from companies like eBrevia,²⁷ which facilitates the use of machine learning; to Shake,²⁸ which uses technology to make contracting easier. Some companies are seeking to provide on-demand legal services like Avvo,²⁹ RocketLawyer,³⁰ JustiServe,³¹ and LawDingo,³² or document automation, like Ironclad.³³ Probably the most established of these companies is LegalZoom,³⁴ which has been in existence since 2000 and has expanded its operations since its early days to include attorney advice and lawyer referrals. This section provides an overview of how LegalZoom has harnessed technology to expand the availability of legal services to serve millions of customers. This company has evolved significantly over its fifteen-year existence, and perhaps is the one best positioned to provide a Just in Time/Just Enough approach to the delivery of legal services.

According to LegalZoom CEO, John Suh, LegalZoom is now in its third “chapter.”³⁵ The first of these chapters involved document automation, which LegalZoom still provides.³⁶ The second chapter has involved the creation of a system through which clients can obtain “legal plans” and have access to advice from lawyers in a network and pay on a monthly basis, often for interpreting legal documents that

27. EBREVIA, <http://ebrevia.com/> (last visited Apr. 17, 2016).

28. SHAKE, <https://www.shakelaw.com/> (last visited Apr. 17, 2016).

29. AVVO, <http://www.avvo.com/> (last visited Apr. 17, 2016).

30. ROCKETLAWYER, <https://www.rocketlawyer.com/> (last visited Apr. 17, 2016).

31. JESTISERV, <https://www.justiserv.com/> (last visited Apr. 17, 2016).

32. LAWDINGO, <https://www.lawdingo.com/> (last visited Apr. 17, 2016).

33. IRONCLAD, <https://ironclad.ai/> (last visited Apr. 17, 2016).

34. LEGALZOOM, <http://www.legalzoom.com/> (last visited Apr. 17, 2016).

35. Transcript of Telephone Interview with John Suh, CEO, LegalZoom, at 3 (July 8, 2015) (on file with author) [hereinafter Suh Interview].

36. *Id.* at 1-2.

may have been automated or even for identifying when a customer has a legal problem.³⁷ As Suh explains, this involves giving advice “on issues that really solve the fundamental question” that small businesses have, which is that they “don’t know if an issue is legal, don’t know what their options are.”³⁸ If they discover an issue that requires work beyond the scope of the legal plan, LegalZoom can make a referral “to lawyers within the network that can take on kind of longer term or more substantial projects.”³⁹ And that is where LegalZoom is headed as it enters its third chapter, which is still in development: having more means for customers to directly access lawyers.⁴⁰ In fact, according to Suh, LegalZoom hopes to have as many as 20,000 to 30,000 lawyers connected to LegalZoom in the next five years, which would form the backbone of its advice and referral system.⁴¹ Where now, according to Suh, LegalZoom is addressing seven percent of Americans’ legal needs, it hopes to get to twenty to thirty percent over the next two to three years.⁴²

LegalZoom has identified a few, core areas of legal services delivery and provides a range of means for meeting customer needs, from making forms available online to advice and assistance. It offers information and assistance on forming and running a company, on estate planning matters, and on some intellectual property matters.⁴³ The LegalZoom model has identified areas of law where written information, forms, and legal advice can serve a large number of clients. By specializing in a few, core areas, they can build economies of scale and bring the cost of services down considerably.

According to Suh:

[B]y pricing some of these very common and important legal needs at a very accessible price, often eighty percent lower than what a

37. *Id.* at 2-3.

38. *Id.* at 3.

39. *Id.* at 3.

40. *Id.*

41. *Id.* at 3.

42. *Id.* at 10.

43. *See* LEGALZOOM, *supra* note 34.

lawyer would charge, we ended up expanding the market by offering incorporation to folks that otherwise couldn't afford to incorporate, or getting a last will to folks that otherwise couldn't afford a last will. So, you know, in the early days, I'd say, were we an alternative to a lawyer? Yes, I think that was the public perception. But in many cases we addressed needs in the market for folks that otherwise would not have had access to it.⁴⁴

LegalZoom knows it is “never going to talk to Warren Buffett”⁴⁵ and will not handle bigger cases and large transactions.⁴⁶ According to Suh, LegalZoom does not focus on the top one percent of the population that can afford an attorney, or the fifteen percent of Americans that are below the poverty line, because there are “fantastic organizations focused on access to justice” for that population.⁴⁷ What LegalZoom is focused on, however, is the “eighty-four percent of Americans and the vast majority of small businesses that are in that in-between.”⁴⁸ According to Suh, “the legal industry has priced itself out of reach” for that portion of the population.⁴⁹ He adds, “[i]t's getting to the point where the average solo practitioner couldn't afford their own hourly rate.”⁵⁰

LegalZoom is able to reduce the prices it can charge its customers by becoming highly efficient in the delivery of services and harnessing the power of the Internet to bring in customers. This enables it to scale the delivery of services to exploit the efficiencies it has developed and reduce costs. By focusing on just a few areas of law, lawyers working with LegalZoom are able to become highly proficient in these areas, which means the lawyers can serve more clients because they spend less time researching new areas of law. As Mark Russakow, an attorney working with the Arroyo

44. Suh Interview, *supra* note 35, at 1.

45. *Id.* at 2.

46. Transcript of Interview with Mark L. Russakow, Attorney, Russakow and Tan, at 17 (Oct. 26, 2015) (on file with author) [hereinafter Russakow Interview].

47. Suh Interview, *supra* note 35, at 2.

48. *Id.*

49. *Id.* at 2.

50. *Id.*

Group, a LegalZoom-affiliated law firm, and has his own practice on the side, explains:

[W]e've done far in excess of 100,000 calls, more than 100,000 calls for sure. I have some attorneys that have done eight, nine thousand phone calls. Well, if you've done eight to nine thousand phone calls in the area of business and estate planning, I guarantee you, you are an expert in pretty much anything you could possibly dream up in business and estate planning. Same thing with our trademark people. Our trademark people at one point were doing twelve goods and services descriptions per day. That's the equivalent of doing twelve trademarks per day...[an] attorney...would be doing twelve of them in a month if you're lucky.⁵¹

These efficiencies then help LegalZoom increase its volume of customers and the services it offers through its affiliate lawyers.⁵² Suh summed up this approach, and the LegalZoom business model, as involving “[s]cale, lots of volume within a specialized area, high repetition, leveraging lawyers that are extremely well-versed in that particular field and developers that know how to codify the law within the technology so we can deliver the same experience each and every time.”⁵³ And technology enables all of this. According to Suh, “[w]e're really about technology-enabled lawyers. And we think that's the future.”⁵⁴

Another area where LegalZoom has a distinct advantage over its competitors, both virtual and real, is that it gains significant benefits due to the economies of scale it can leverage in its advertising. Because it serves clients across the United States, its network can benefit from large-scale advertising. It claims to be one of the largest radio

51. Russakow Interview, *supra* note 46, at 7. Similarly, according to Suh, when an attorney answers a call “for the tenth time or the fifteenth time” he or she “can answer that question in not twenty-five minutes but in fifteen minutes and your language is more precise and you understand the customer’s needs and it gets tailored.” Suh Interview, *supra* note 35, at 4

52. A key component of the LegalZoom approach is that these affiliate lawyers are independent contractors and are responsible for upholding their ethical obligations to the individuals they serve. Suh Interview, *supra* note 35, at 5.

53. *Id.* at 9

54. *Id.* at 3.

advertisers in the country and one of the largest television advertisers in the legal industry.⁵⁵

Attorneys affiliated with LegalZoom take advantage of the advertising strength and brand recognition of LegalZoom, while maintaining their own ethical obligations to the clients they serve. Suh describes this relationship, which is core to the business model for both LegalZoom and affiliated attorneys, as follows:

Obviously we work within a regulatory framework. We're very careful about the unauthorized practice of law and the corporate practice of law. That being said, there are many ways for us to help reshape the delivery of legal services working in partnership with lawyers where they are not our employees, they are not working directly for us, they bear the burden of the full ethical responsibility to do what's right by the customer and represent their needs to the fullest extent of the law. But we can still play a part in providing transparency in pricing, helping facilitate and remove friction points within the service or enabling people to access them in different ways because there's a big difference between us and most lawyers, small law firms, etc., if we have a brand that seventy percent of Americans recognize and trust.⁵⁶

Because of LegalZoom's advertising budget, brand recognition, and prowess, attorney time can be devoted toward service delivery rather than cultivating clients. As Russakow explains: "instead of going out and doing breakfast and speaking engagements and writing articles," as a way to attract clients, his firm can handle thousands of calls a month from clients coming to it through LegalZoom's powerful advertising channels.⁵⁷ According to Russakow, "I could go out all day long, every single minute of the day singing the praises of my law firm and it could not...in any way compare to having 3000 people call you monthly with legal needs It's just impossible."⁵⁸ He adds: "It's the power of the Internet. I cannot duplicate it."⁵⁹

What affiliated firms like Arroyo Group are doing, in addition to benefiting from the advertising muscle of

55. *Id.* at 7-8.

56. *Id.* at 5.

57. Russakow Interview, *supra* note 46, at 13.

58. *Id.*

59. *Id.* at 13.

LegalZoom, is offering their attorneys a different kind of approach to law firm practice. Since most of what the Arroyo Group attorneys do is provide legal advice over the phone, those attorneys do not have to come into the office every day and can telecommute. This offers very flexible schedules and allows the attorneys to work from the office or from remote locations, although, in the words of Mark Russakow, “no one shows up for Mondays.”⁶⁰ The Arroyo Group has nine full-time attorneys and another ten who work part-time, who handle roughly 3000 client calls a month.⁶¹ These attorneys can regulate their hours to meet their personal, professional, and financial goals. As Russakow explains:

There are some people [at Arroyo Group] that are making six figures and they're like twenty eight years old and they're not working past five. We have some people that are making the bare minimum salary and they don't want to do extra work. They just want to do their phone calls. We have a lot of people that need flexibility. We have one person that likes to travel a lot. And he doesn't want to . . . spend a lot of time doing extra work. Fine. We have some parents that have multiple children and they have to do their activities. They don't want to do a lot of work and they're happy to have the flexibility. We have some people that are single. They have no other responsibilities and they're here to eight o'clock on a Friday night and coming in on the weekends doing tons of work and they're making a boatload of money and driving BMWs.⁶²

Apart from offering affiliated attorneys flexible schedules, LegalZoom has much loftier goals, one of which is expanding access to justice for that segment of society that is in need of legal services, but priced out of access to such services or does not qualify for free legal assistance. According to Suh, LegalZoom serves a customer base that is “often in one of life's challenging moments and they don't know where to turn.”⁶³ What those customers need is “reasonably priced legal help.”⁶⁴ What LegalZoom tries to do is “create solutions that satisfy those needs. If you believe

60. *Id.* at 10.

61. *Id.* at 2-3.

62. *Id.* at 18.

63. Suh Interview, *supra* note 35, at 6.

64. *Id.*

fundamentally that democracy—if you look at this economy, you look at this democracy and you know what capitalism requires—it requires the rule of law; it requires people to be protected.”⁶⁵ If the law is “only for those who can afford it, then you’ve priced out eighty-five percent of the population . . . [and] democracy doesn’t function the way the founder’s intended.”⁶⁶

This LegalZoom approach was summed up by Russakow as follows: “a lot of people having access for a reasonable fee is a lot better than a few people that don’t have money trying to afford your expensive services.”⁶⁷

III. APPLICATION OF THE FEATURES OF THE SHARING ECONOMY TO THE DELIVERY OF LEGAL SERVICES

So far, this Article has identified key features of the sharing economy as access to latent supply, a freelance workforce, marketing and matchmaking innovations, and a need to balance innovation with regulatory oversight to develop consumer trust. To a certain extent, these features are already present, and have been present, in the market for legal services for generations. Many new entrants to the legal services market are also exploring ways to exploit technology to deliver legal services through approaches that bear many hallmarks of the sharing economy, with LegalZoom leading

65. *Id.*

66. *Id.*

67. Russakow Interview, *supra* note 46, at 2. As he explained further:

For like 300 bucks a year, a small business is able to get one attorney and to get advice on how to get a website dialed in so they don’t get sued by some crazy class action attorney and if they have some contractor that’s trying to sue them for something, they have someone to call. They’re getting a good value. You know, we’re getting a good value. They’re getting a peace of mind because that’s essentially what it is. “Hey, I have an attorney I can just call or actually just type on the Internet and it’ll get back to me really quickly.” Most people are very intimidated to go on the Internet and try and find an attorney and then have to drive to their office and come in and, you know, meet with some guy in a fancy suit and a big desk and give them 500 bucks. “I’m not going to do that.” That’s like getting a root canal. So we make money but we’re also really efficient at what we do.

Id. at 6.

the way. Yet, by its own admission, even LegalZoom is still evolving. It is only serving a small percentage of the market and only in a few, limited fields.⁶⁸ Despite the fact that LegalZoom and other companies are using technology to make legal services more affordable and more accessible, are there ways that a legal services provider could bring all of the advantages and features of the sharing economy to bear in the delivery of legal services? Like home-sharing, ride-sharing, and other sectors where the sharing economy approach has thrived, a virtual platform for the delivery of legal services would function as an intermediary, reaching prospective clients, delivering some degree of services to them along a continuum of services based on their legal problem's relative intensity or complexity, and distributing tasks to willing actors in a network of service providers. This continuum would include information, brief advice, so-called "unbundled" services, and full representation. This Part explores how a sharing economy model—what an "Uber for Lawyers"—would look like. In short, such an approach, carried out by both a central intermediary and a network of willing and able providers, would do the following:

- First, it would classify a range of legal fields and determine how services could be provided within them, creating a continuum of services: delivering information, making available pre-prepared forms, providing brief advice and assistance, making unbundled services available, and offering full and direct representation.
- Second, it would deploy technology to engage in the sorting or triage of clients, identifying the proper location along the continuum where a prospective client would engage with the services offered.
- Third, it would deploy its legal practitioners and attorneys to prepare questionnaires and other means of assessing prospective clients' needs, while drafting model documents to make available to clients and training legal staff and attorneys to provide services along this continuum.

68. Suh Interview, *supra* note 35, at 2-3. For one, LegalZoom is providing services in limited fields. In addition, it is not providing full representation within the network.

- Fourth, it would use technology, through online, mobile platforms and traditional means, to advertise the availability of legal services.

- Fifth, it would create a provider network to serve clients along the continuum in a manner that best met the client's needs.

- Sixth, it would strive to generate trust in both the attorneys in the network but also the intermediary platform.

Each of these components is addressed below, with a particular emphasis on how an Uber for Lawyers approach would differ from the manner in which these functions are being carried out at present in the legal services industry. Before I discuss the components of this approach, I share some preliminary thoughts on the manner in which legal services are delivered in the contemporary American market, with a focus on sorting and triaging—i.e., identifying what needs to meet and how to meet them. This discussion helps to highlight some of the present distortions in the market that an Uber for Lawyers approach attempts to address.

At its heart, the sorting and triage function in legal services delivery is a product of the funds available to devote to legal services: not just the cost of services, but the funding available to offer them. For very few clients, money is no object, and those clients will pay a premium for top-notch legal services, even if those services may “guild the lily.” For most clients, at least those who can afford some form of legal services, they do not want to pay for any services they do not need. The market has a way of matching delivery of services to needs, often dependent on price, or, more likely, what the client can afford. For the low end of the market, where legal services are either provided by a non-profit provider, or not provided at all, the nature and level of services delivered is a function of the funding available to provide such services. Otherwise eligible clients—an overwhelming majority of individuals and families seeking assistance—are routinely turned away. Indeed, it is estimated that for every client of a grantee of the federal Legal Services Corporation (LSC), that

provider turns down four eligible applicants for services.⁶⁹ This is simply a question of the inadequacy of the funding available for such services. In such a system, money, income, and funding decide what services are offered and delivered. In a capitalist society, even one with a modern welfare state component that offers some level of free legal services, service delivery is a function of resources.

If service delivery is a function of resources, and funding is limited, resources should be devoted to where they can meet the most need in the most effective way possible. Whether it is a high-end client who wants to make sure his or her dollars are devoted only to necessary services, or clients on the lower end of the economic spectrum where resources are severely constrained, how funding is devoted to the delivery of legal services matters. For now, we can leave the monitoring of the delivery of services to the high end of the market to the side and trust that the consumers of such services are an effective check on waste in the system. On the low end of the market, however, since those services are either funded by tax dollars, or philanthropic funding that brings with it tax benefits, a degree of accountability for the proper allocation of such funding falls on society as a whole. This is not to suggest that there is waste in the non-profit legal services industry, only that it makes sense to think about the most effective means of delivery of such services: should we try to serve as many people as possible with some degree of services or should we serve only a limited number of clients and provide them full-service care? A Just in Time/Just Enough approach made possible by a sharing economy model for legal services attempts to thread the needle between some services for many and many services for some. It tries to match service to need, and it does that by striving to connect legal need to legal services in the most efficient and effective way possible. It would do that through

69. See LEGAL SERVS. CORP., DOCUMENTING THE JUSTICE GAP IN AMERICA: THE CURRENT UNMET CIVIL LEGAL NEEDS OF LOW-INCOME AMERICANS 14-16 (2009), <http://www.americanbar.org/content/dam/aba/migrated/marketresearch/PublicDocuments/JusticeGaInAmerica2009.authcheckdam.pdf> (reviewing studies conducted in various states showing that legal services offices can provide assistance to just one in five clients seeking assistance).

the six components already described, which are discussed, in turn, below.

A. *Classification of Legal Needs*

The sharing economy approach to the provision of legal services delivers such services across a continuum, starting with the provision of limited, information-based, and passive services, mostly over the Internet, and ending with the type of full-service representation characterized by the traditional attorney-client relationship, one in which the attorney provides a range of services to the client, including undertaking the responsibility for tailoring documents, contracts, and pleadings, as well as representation in negotiations, arbitrations, trials, and appeals. The other points along the continuum, depicted graphically below, include the preparation of fillable forms and/or checklists, the provision of brief advice, and unbundled legal services.⁷⁰

Table: The Legal Services Continuum



A sharing economy approach looks at the provision of services from two sides. First, what are the potential legal needs of clients? Second, what is the best way to deliver services to meet such needs in a Just in Time/Just Enough approach? Depending on the need, one can place it on the legal services continuum, determining where along that continuum the need can be addressed. The first thing to recognize with any sharing economy approach to the delivery of legal services is that not all legal needs can be met by making available legal information, forms, questionnaires,

70. For a description of unbundled legal services, see Fern Fisher-Brandveen & Rochelle Klempner, *Unbundled Legal Services: Untying the Bundle in New York State*, 29 FORDHAM URB. L.J. 1107 (2002) (describing and critically analyzing unbundled legal services models).

and know-your-rights guides, or through other forms of “passive” service delivery. At the same time, not all clients require full representation. The next section explores the next stage in a sharing economy approach to the delivery of legal services: the use of technology to conduct triage and assess the legal needs of prospective clients.

B. *Triage*

In order to discuss this second component, a quick review of the manner in which client matters are sorted and triaged in the contemporary American legal profession landscape is in order to highlight the fact that the current system is one calling out for reform. In the for-profit market for legal services, identifying legal needs is, at best, ad hoc, carried out primarily by prospective clients who first have to recognize that they have a legal need. If the client has accessed a lawyer in the past, he or she might reach out to the lawyer again, regardless of whether that lawyer handles the type of problem the client faces. In the event that the lawyer does provide those services, the client might retain the lawyer to handle that problem. If not, the lawyer will make a referral to another lawyer—perhaps in her firm, perhaps outside of it—who can handle the problem. Sometimes, the lawyer may simply refer the client to a bar referral service if the field is one where the lawyer does not know any other lawyers who handle such matters. If the client does not have a prior relationship with a lawyer, a friend may point him or her to a lawyer that friend used in the past. A prospective client may also have seen lawyer advertising in some form or may have gotten the name of a lawyer from court personnel or some other referrer. At bottom, this is an imperfect system. It relies on prior relationships and word-of-mouth, even as lawyer advertising has grown exponentially since the Supreme Court made outright bans on lawyer advertising illegal.⁷¹ Of course, all of this presumes the client’s ability to pay for services, and an ability to pay has its own “sorting” function.

Matching legal services to legal need is no less ad hoc in the not-for-profit context. First, the client needs to know he

71. *Bates v. State Bar of Ariz.*, 433 U.S. 350, 383 (1977).

or she has a legal need. Second, he or she needs to know of the availability of free legal assistance to meet the need. Third, he or she has to have the ability to contact the legal services provider. Fourth, that provider needs to have the expertise to meet the need. Fifth, the provider must have the available resources to provide representation to the individual. As if these components of the triage process were not significant hurdles for clients to overcome themselves, the reality of non-profit legal services practice often means the triage function involves additional components that make finding a lawyer even more difficult for those who cannot otherwise afford one.

Indeed, many legal services organizations—in an effort to streamline the triaging function so that they might handle requests for services in an efficient manner—have created processes that make it more difficult for a client to obtain representation. For example, in the legal services offices in which I have worked over the years, there were often specific windows of time during the week when a prospective client could call to receive assistance of a certain type. Callers contacting the office during the week outside of that window—let's say Tuesdays between 2:00 and 4:00 p.m.—would receive direction that they should call back during the specified weekly time. Such mechanisms were put into place so that legal staff were not required to be available at all times when the office was open to handle requests for assistance. By specifying a time during the week for triage and intake, an office could get a better handle on the rush of clients and attempt to make the matchmaking function more efficient. For the client, however, this could be a frustrating endeavor, especially when, should he or she call back during the appointed time and on the designated day of the week, the client could not get through the phone system, simply because there were so many other prospective clients trying to call at the same time.⁷²

Another triaging technique that a not-for-profit might try to deploy to streamline the intake process is to identify not

72. For a discussion of the challenges legal services providers face when making triage decisions about which cases to handle, see Paul R. Tremblay, *A "Very Moral Type of God": Triage Among Poor Clients*, 67 *FORDHAM L. REV.* 2475 (1999).

just specific types of cases it will handle, but also the procedural posture in which it will consider accepting a case for representation. For example, some legal services offices may refuse to handle a case in which a client is applying for disability assistance from the Social Security Administration until that client has been denied once for such assistance and is at the appellate stage of the process. With such cases, the office has made a decision that it will presume that clients can handle the initial application on their own, mostly because it is a fairly straightforward process and requires little more than filling out a basic form and gathering medical records that might establish whether an individual is eligible for such assistance. In addition to the relative ease associated with filling out the application, it is possible that some number of applicants will obtain disability benefits without representation, and it makes sense to devote resources to those clients who have a more difficult task to handle, like filing a disability appeal. Of course, some clients may get lost in the shuffle and not make it back to the legal services office once they lose their initial case. They could also make damning admissions during the application process that make it harder for a lawyer to defend the appeal moving forward.⁷³

Against the backdrop of these triaging functions is also, of course, the problem of insufficient funding to meet the significant need for legal assistance from low-income individuals and families, and the triaging function must always be viewed in light of this reality and understood against this backdrop. Any triage and intake an office undertakes is always limited by the funds available to meet the needs of the prospective clients that present themselves for services. In fact, not only are the triaging functions to be viewed against this reality, any outreach the office does to make the community aware of the services available must always take place under the shadow of limited resources. In one office in which I worked, I once made the suggestion that we should make information about our services available in

73. For an overview of some of the challenges pro se litigants pose for the legal system, see Russell Engler, *And Justice for All—Including the Unrepresented Poor: Revisiting the Roles of the Judges, Mediators, and Clerks*, 67 *FORDHAM L. REV.* 1987 (1999).

the housing court clerk's office where anyone facing an eviction would have to appear to interpose his or her answer. I posited that this was a critical point in the process: any tenant facing eviction, and who was trying to defend him or herself against it, would show up at the clerk's office. To me, it made sense that we would make our intake information available in the clerk's office so that anyone who wanted to apply for our assistance would understand how they could access our intake process. I thought this was an effective way to match information to need, so that anyone who might benefit from representation would have the information he or she would require to contact us. The response I received from my colleagues was negative and simple: if we increased the number of individuals attempting to access our services it would just increase the number of people we turned down, because it was not like we would have a concomitant increase in funding to meet the increased demand for our services.

The point in bringing up these instances where a not-for-profit might impose additional barriers to accessing the office's services, or not seek to increase applications for services, is not to criticize such practices, but, rather, to explain that the present matchmaking function—connecting clients in need with available legal services—is a complex one, one that does not necessarily serve to match those with the greatest need to services. Indeed, it is likely that those who are least able to access services because of a lack of awareness of their rights, physical or psychiatric disability, or an utter lack of resources (to conduct an online search for assistance, to get to a legal services office), are those who are also in the most desperate need of assistance. On the for-profit side, there is a similar mismatch between need and assistance, which, similarly, revolves around knowledge of the available services and the client's ability to pay for such services.

A more thoughtful and strategic approach to triage, one that is centered around getting critical information out to prospective clients at a time that is most beneficial to them and directs them to a means of finding a lawyer that can meet their needs, is one that can improve the process by which clients find lawyers who can serve them. The promise of a sharing economy approach is that it reduces the information asymmetries that impose barriers to access simply because

prospective clients are unaware of the availability of legal services. It would harness the power of the Internet and mobile technologies to channel prospective clients to a platform that helps them access the Just in Time/Just Enough services they require to address their legal needs. Prospective clients would receive information about the platform/portal through wide marketing, with particular emphasis on getting information to prospective clients where and when they most need it. For example, advocates have lobbied for and obtained pleading requirements in certain actions that impact low- and moderate-income parties disproportionately, like mortgage foreclosure cases, that require plaintiffs in such actions to provide information about how defendants can access housing counseling services, including mandating that plaintiffs, in their pleadings, provide such defendants with a list of available service providers, including legal service providers.⁷⁴ A sharing economy approach to legal services would seek to leverage these opportunities for getting information to prospective end-users of the portal at the appropriate moment so that they can access Just in Time/Just Enough services.

In addition to getting more information out to consumers about the availability of assistance, a sharing economy approach would match legal needs to where they could be met along the legal services continuum. It would classify the range of legal needs according to the manner in which the services they require to meet them would fit within the continuum. To a certain extent, legal services providers, on both the for-profit and not-for-profit side, carry out this function already. At present, however, the funds available to pay for services help determine the manner in which those services are ultimately provided: whether it is a paying client making a determination of the level of service he or she wants, or the non-paying client receiving services (or not receiving them as the case may be) depending on whether

74. *See, e.g.*, N.Y. REAL PROP. ACTS. LAW § 1303 (McKinney 2016) (requiring mortgagees in foreclosure actions to provide borrowers in default on their mortgage with information about available housing counsel services, including a list of available housing counselors and legal services providers). This provision was enacted into law at the height of the foreclosure crisis, in December of 2009, and took effect in January of 2010. 2009 N.Y. Laws 1384-1401 (2009).

funding is available to provide such services. A sharing economy approach emphasizes that legal services can be broken down into different types of service—information, brief advice, unbundled services, and full representation—and the main goal is not to match services to the funding available to pay for them, but, rather, to match level of service to need.

This requires breaking down legal services to their component parts, crafting a service delivery approach that pinpoints the explicit need for services and delivers a targeted response.⁷⁵ This approach starts with the functions that lawyers serve and delivers just those functions that are needed, in a manner that satisfies the client's need according to the appropriate position along the legal services continuum. It is critical to classify legal needs according to the type of services that can respond to them to ensure the most efficient and streamlined delivery of services possible. This is critical because the ability to make services more affordable by reducing the price of such services, thereby making them more affordable to more prospective clients, is central to the sharing economy approach to the delivery of legal services. Once needs are classified, and services are made available along the services continuum, matching need to service, the sharing economy approach then will develop the assets that can deliver services along the continuum. First, however, it will triage prospective clients to determine where along the continuum they will have their needs met, with a focus on satisfying those needs through the least effort possible.

In any law practice, evaluation of client needs through intake and triage is an essential gate-keeping function, one that ensures the ability to meet client needs, to match needs to expertise, and to respond in an effective and efficient way to those needs. The client who presents an emergency situation, or one where a statute of limitations is looming, must receive different attention than the client who has a more speculative concern, where there is no immediately

75. RICHARD SUSSKIND, *THE END OF LAWYERS?: RETHINKING THE NATURE OF LEGAL SERVICES* 43-44 (2008) (describing “decomposition” of legal work: the ability to break down delivery of legal services to its component parts to bring about better efficiency in the delivery of services).

pressing matter to address. The legal services provider must also think about its in-house competence to handle the matter and whether it has the resources to provide the services sought. If a provider is not competent to deliver the services, cannot develop the expertise or recruit the personnel necessary to handle the matter in a reasonable amount of time, or cannot handle the case in a competent fashion because she is already overcommitted, she should reject the case. Triage and intake play an essential role in connecting clients to services, in ensuring a firm has a supply of clients that can keep the firm viable, and can provide competent services to those clients in a timely and effective way. It is thus one of the most important functions a law office must execute, whether that office is a for-profit or not-for-profit entity. Indeed, in the not-for-profit context, the intake process is where prospective clients are sorted according to need, procedural posture of the case, and the potential merits of the client's position. It is at least arguable that the triage and sorting function is almost more important in a services-rationing context than one in which the firm is likely looking to provide representation, not turn clients away for fear of losing potential income, as in the for-profit context.⁷⁶

In the sharing economy context, the triage function plays a similarly critical role. It is through this function that a provider would identify where along the legal services continuum to place the client. This would require an assessment of a number of different factors. First, the provider would have to determine the type of matter with which the client needs assistance. Second, once the matter is identified, the provider would attempt to match the type of service that would help the client address the problem—brief advice, full representation, etc. Third, if less than full representation seems an effective means of delivering the service to the client, the provider would then have to assess the extent to which the client seems competent to utilize the information offered or the brief advice given to deal with his or her problem in an effective way. Today, these functions are

76. For a discussion of some of the ethical issues surrounding rationing of legal services, see I. Glenn Cohen, *Rationing Legal Services*, 5 J. LEGAL ANALYSIS 221 (2013); Tremblay, *supra* note 72.

routinely carried out in law offices across the country, but the ability and willingness of the client to pay for the services, or the availability of funding to meet the need, may dictate more than anything else the type of service that is ultimately offered to the client. A sharing economy model would more closely match services to need and deliver just those services that are necessary to address the need, depending on the client's capacity to benefit from them. Of course, even in this model, the client can always seek more and more involved services, again, depending on his or her ability and willingness to pay for them. But the presumption in the sharing economy approach is that a Just in Time/Just Enough response to the legal need would provide just the right level of services, at the appropriate time, to the appropriate client.

With a sharing economy approach, Internet-based and mobile interfaces will free up law firm staff to conduct much of the triaging function, creating a much less costly alternative to dedicating staff time to carrying out this work. Through interactive questionnaires and mobile apps, a prospective client can be guided through an assessment of his or her legal needs, always with the option to speak to an advocate (most likely through an online chat function), who can attempt to place the client's needs along the legal services continuum. The interactive features will also serve to provide some degree of information about the client's capacity for self-representation or to manage his or her legal needs through services on the less intensive side of the continuum. The triaging function will attempt to flag clients whose legal needs require full representation—like a serious driving offense such as Driving While Intoxicated—or where the client does not seem capable of handling his or her problem without representation. At that point, as in the contemporary approach to the delivery of legal services, the degree of representation the client will receive will be based on either the client's ability to pay or a not-for-profit provider's resources to meet the need.

C. *Developing Informational Guides*

A sharing economy approach to the delivery of legal services will provide essential information at critical times

when a prospective client seeks help with his or her legal needs and those needs can be met through the provision of informative guides, fillable forms, and step-by-step instructions for navigating a legal problem. This information will be made available through various media, but mostly over the Internet. A sharing economy approach utilizes these means of delivering legal services whenever possible. There may be significant costs associated with preparing such informational guides, and the provider that makes them available will have to remain vigilant and update them regularly and on an as-needed basis. But this approach makes products available over time, meaning they have a significantly “long tail.”⁷⁷ Assuming the information remains viable and responsive, the provider can make the information available and it can address many clients’ needs without them having to consult with an attorney. The cost of providing such services at the outset, and to maintain the information as current and responsive, can be amortized over time, reaping ongoing rewards as long as the information remains relevant, current, and effective. If clients continue to pay a modest fee for these services, at some point, the provider will capture the cost of creation and maintenance and will begin to reap a profit. In turn, these profits can underwrite other, more expensive aspects of the legal services continuum.

D. *Using Technology to Advertise*

It was only forty years ago that the U.S. Supreme Court, in the landmark decision in *Bates v. State Bar of Arizona*,⁷⁸ found that outright bans on lawyer advertising were unconstitutional and lawyer advertising was entitled to protection as commercial speech. The results of that decision are not just that we are now plagued with crass, late night advertising for attorneys who wish to handle any slip-and-fall case, but also that lawyer advertising cannot be false or

77. Chris Anderson posited that new distribution models expand the opportunities for “niche” markets; this so-called “long tail” could also appear in the dimension of time, where products have a longer “shelf life.” CHRIS ANDERSON, *THE LONG TAIL: WHY THE FUTURE OF BUSINESS IS SELLING LESS OF MORE* 6, 9-10 (2006).

78. 433 U.S. 350, 384 (1977).

misleading. For prospective clients, having knowledge of the availability of an attorney to handle a case is helpful, and many, like my 12-year-old son, can recite the more memorable jingles—the “Better Call Sauls”—of the more aggressive advertisers among the legal profession. For lawyers, they are no longer resigned to hanging out a shingle and waiting for clients to show up. We are far removed from the mid-nineteenth century, when one commentator on the state of the legal profession at the time said that a lawyer who cultivated “habits of neatness, accuracy, punctuality, and dispatch, candor towards his client, and strict honor towards his adversary,” would find that his business “will grow as fast as it is good for him that it should grow.”⁷⁹

We are clearly a long way from cultivating habits of neatness that might grow a client base. Today, lawyers advertise in obvious places and in less obvious ones. They have websites and promote their services on television, the radio, and, yes, still by word of mouth, at cocktail parties, on the street corner, and in casual conversations in the checkout line in the supermarket. When I was a young attorney and representing tenants in housing court, I would receive countless calls from friends and friends-of-friends seeking advice on landlord-tenant matters in New York City, and unrepresented tenants would come up to me in court asking for advice. In large and small firms, the push for more client business is relentless, and many of the senior partners spend a great deal of their time trying to bring in new clients or expand the work the firm is doing for existing clients. Lawyers at the most prominent firms move laterally among firms based on the size of their “book”: the clients they can bring with them to the new firm.⁸⁰

In most sharing economy contexts, the Internet and mobile technologies have created a platform not just to

79. GEORGE SHARSWOOD, A COMPEND OF LECTURES ON THE AIMS AND DUTIES OF THE PROFESSION OF THE LAW, DELIVERED BEFORE THE LAW CLASS OF THE UNIVERSITY OF PENNSYLVANIA (1854), *reprinted in* AN ESSAY ON PROFESSIONAL ETHICS, 32 A.B.A. REP. 9, 132 (5th ed., 1907).

80. For a review of the practices of lateral partner movement during the most recent era of law firm expansion, see William D. Henderson & Leonard Bierman, *An Empirical Analysis of Lateral Lawyer Trends from 2000 to 2007: The Emerging Equilibrium for Corporate Law Firms*, 22 GEO. J. LEGAL ETHICS 1395 (2009).

connect consumers to willing providers, but also to be media through which providers can advertise their goods and services in a broad, but targeted, way. Broad, because the Internet, social media, and mobile technologies can push out advertising easily with little effort and at low cost. Targeted, because using new Internet-based techniques for finding consumers, like Google's "ad words" and targeting consumers who conduct certain searches, can identify consumers to receive advertising based on those searches. A simple search on Google for "starting a business" places LegalZoom as the first result of the search and then populates the banner advertising on my Facebook feed, also with advertising for LegalZoom, in minutes of conducting the search.⁸¹

Just as the Internet and mobile technologies have changed the dynamic of advertising and the revenue model of media outlets and have created greater access to consumer goods and services, they have also changed the way lawyers market their services and clients find lawyers. While many lawyers will lament the time and energy they typically expend "rainmaking," new modes of communicating and advertising make it easier to share information about a firm, communicate areas of specialty, and trumpet victories. Lawyers have taken to Facebook, Twitter, LinkedIn, and other social media outlets to market their services, raise the profile of their work, and highlight their areas of expertise. With a few key strokes and a web update, lawyers can promote themselves across a range of media outlets at virtually no cost, reaching anyone with whom they are already connected, or paying for promoted posts on Internet sites, social media outlets, and other venues, provided they stay within the bounds of ethical limits on attorney advertising.⁸² Advertising in this era is easier and less expensive than it has ever been, yet a new approach to advertising, one that uses sharing economy models, can

81. See FED. TRADE COMM'N, PROTECTING CONSUMER PRIVACY IN AN ERA OF RAPID CHANGE (Mar. 2012) (describing the new world of targeted advertising through social media and other technologies).

82. On the ever-evolving rules around attorney use of social media, see, for example, Michael E. Lackey, Jr. & Joseph P. Minta, *Lawyers and Social Media: The Legal Ethics of Tweeting, Facebooking and Blogging*, 28 TOURO L. REV. 149 (2012).

make attorney advertising and finding clients even easier, more effective, and less expensive for the attorney.

When new forms of advertising meet a sharing economy platform for legal services, the effectiveness of these new forms of advertising could help to reduce the time and energy a lawyer needs to spend finding, communicating with, and securing clients. A sharing economy platform could undertake the advertising, and do it in bulk, broadly, gaining from economies of scale. The platform would attract the client, drawing him or her in with simple messages like “find a lawyer at a price you can afford.” It would then perform the sorting/triage function described above, identifying where along the continuum of services to place the client. It would make an internal referral within the platform to an attorney who is a part of the platform’s network of attorneys. It would match clients according to their needs to the lawyers with the ability to meet those needs in an efficient and effective manner. Instead of creating a lawyer-client relationship based on random communications, word of mouth, or some other indirect means of matchmaking, to the extent a client is paired with a lawyer for either brief advice or more intensive, full-service representation, the sorting and triage function tailors the services provided not just to the needs of the client, but also to the most efficient and effective way to deliver those services.

E. *Creating a Provider Network to Serve Clients Along the Continuum*

In addition to developing the content that will deliver Just in Time/Just Enough services that are only information-based, a sharing economy approach would also develop a provider network that can serve along the legal services continuum, delivering brief advice, unbundled services, and full representation. This network would consist of attorneys who, if they are providing brief advice or unbundled services, specialize in those areas of law where attorneys can deliver services through such limited means. The network will also include lawyers who provide more traditional, full-service representation, when clients are either more inclined toward, and more comfortable operating in, that end of the continuum, or where the network cannot deliver effective and

competent services through limited representation in the form of brief advice or unbundled services.

Another aspect of the sharing economy approach is that lawyers and legal staff will develop deep expertise in a particular area or areas of law so that they can offer more streamlined services in a less costly way because they can spend less time researching each client's situation. With a well-developed sense of a field, a legal provider can respond to a client's needs based on that provider's deep base of knowledge. By developing a deep expertise in a narrow field or fields, the legal staff—whether lawyer or non-lawyer—would deliver Just in Time/Just Enough services in the field or fields in which he or she is an expert. As with the development of legal guides, there is certainly a cost associated with developing the expertise in a given field or fields, but the provider would amortize the costs associated with becoming an expert over time and could reclaim those costs as the fees obtained through the delivery of services begin to accrue. The long tail of legal services can help reduce the costs associated with providing those services, making them more affordable over time, which should mean they will be more available to a broader cross-section of society.

F. *The Core Challenge for Sharing Economy Approaches:
Building Trust*

One of the principal features of the attorney-client relationship is the trust that is central to that relationship. Admittedly, sometimes that trust is violated, and lawyers fail to perform in a competent matter, breach confidences, or steal from their clients. Several of the underpinnings of the rules of the profession are that lawyers must avoid conflicts of interest, maintain client confidences, and serve as competent (if not zealous) advocates in their clients' causes. The purpose of these features of the attorney-client relationship is not only to ensure that the lawyer can instill in her client the trust necessary to promote candor so that she can obtain the information and guidance she needs from the client in order to provide zealous advocacy on the client's behalf, but also to maintain the perception of the legal profession as a profession, one where a lawyer can be entrusted with the treasure, fates, and even, at times, the

lives, of his or her clients. Without this trust, in the lawyer, and in the profession, the role the lawyer fills in serving the client, and the value of the lawyer to society as a whole, is diminished. One can certainly debate the lofty pronouncements of the Preamble to the Model Rules of Professional Conduct that state that the attorney is essential to democracy.⁸³ Put in more self-interested terms, if the role of the lawyer is diminished in society, the lawyer may very well find herself out of a job, without a livelihood, and with loads of student loans to pay off.

Sharing economy providers, whether they are offering ride-sharing services, home-sharing services, or any other good or service in the sharing economy, like eBay, trust is no less essential. Vacationers need to know that the home they will stay in will be safe and that the host will not threaten them, steal their property while they are away, or take advantage of the vulnerable position their guests assume when they agree to reside in the host's home. Purchasers of ecommerce on sites like eBay and Etsy use intermediaries, like PayPal, to share credit card information, and such platforms attempt to assess the trustworthiness of the sellers on those sites to make sure they are upholding their part of the bargain in both the quality of the goods sold and the accuracy of the descriptions of such goods in the marketing materials on the site. When one gets in the back of an Uber car, one literally places his or her life in the hands of the driver.

One common feature across the sharing economy is that platforms need to generate trust: trust in the platform and, more importantly, trust in the providers. In the words of Nobel-prize winning economist Kenneth Arrow, “[v]irtually every commercial transaction has within itself an element of trust.”⁸⁴ Indeed, any economy runs on trust, backed by law: trust that a restaurant will not poison its customers, that a toaster oven will not explode after purchase, etc. We have a blend of barriers to entry, safety regulations and oversight, and *ex post facto* mechanisms, like tort lawsuits, that help police trust. In a sharing economy platform, one that

83. MODEL RULES OF PROF'L CONDUCT, *supra* note 18, pmb. para. 6.

84. Kenneth J. Arrow, *Gifts and Exchanges*, 1 PHIL. & PUB. AFF. 343, 357 (1972).

connects consumers directly to producers, in somewhat intimate interactions (e.g., car rides, hotel services), trust is both a central component of the relationship and is necessary to help consumers overcome a fear of getting into a relationship with a provider who could be dangerous. In a traditional relationship with a provider of goods or services, we can rely on that provider's brand as one that is trustworthy, in a robust enforcement regime to ensure quality and safety, and with tort law as a backstop for harmful interactions. In the sharing economy model, we may trust in the brand of the platform, but the "free agent" nature of the providers, where they are seen (by some) as independent actors and not directly an arm of the provider, results in some of the traditional mechanisms that can serve as proxies for trust—reliance on brand, assurances provided by a judicial system—being less helpful in promoting the type of trust necessary to engage the consumer.

If a vendor on eBay or Etsy repeatedly stiffes its customers, or if an Airbnb host harms his or her guest, or the guest is injured while staying at the host's home, and prospective customers hear of such poor interactions, it will drive people from the service. In other words, it will diminish the trust in the platform, which will, in turn, reduce the customer base or make customers less willing to utilize the service. Recent incidents of rapes and assaults of Uber customers,⁸⁵ a shooting spree in Michigan carried out by an Uber driver,⁸⁶ and an incident in which a guest at an Airbnb home was killed when a tree fell down while he was using a tire swing on the property (which had featured prominently

85. See, e.g., Lauren Gambino, *Uber Faces Lawsuit in US Over Two Alleged Sexual Assaults by Drivers*, THE GUARDIAN (Oct. 8, 2015), <http://www.theguardian.com/technology/2015/oct/08/uber-lawsuit-alleged-sexual-assaults-boston-south-carolina> (describing a lawsuit against Uber for assaults experienced by passengers of Uber drivers).

86. Peter Holley, *What the Michigan Shooting Spree Reveals About Uber's Background Checks*, WASH. POST (Feb. 22, 2016), <https://www.washingtonpost.com/news/the-switch/wp/2016/02/21/what-the-bizarre-nature-of-the-kalamazoo-shooting-says-about-ubers-background-checks>.

on the advertisement for the site),⁸⁷ have brought about calls for greater oversight of sharing economy providers. Airbnb, for one, has offered to provide blanket insurance for any customer that utilizes the platform and has encouraged customers to inquire whether hosts have their own insurance.⁸⁸

Airbnb, Uber, and eBay deploy user-generated reviews and have certain threshold requirements—though they are not very stringent—to both police existing providers and to serve as a barrier to entry to providers who are too great a risk to the end users and to the reputation of the platform as a whole.⁸⁹ After an engagement with a provider, a customer is asked to rate that provider and offer any reviews she has about the experience and the interaction, and, depending on the service, identify particular components of the interaction that are likely important to users in the future, such as the general friendliness and courteousness of the provider or the cleanliness of the car or home. In some platforms, like Uber and eBay, customers are asked to rate the provider along a numerical scale.⁹⁰ The average score the provider receives from his or her users is both advertised to potential customers and also used by the platform to weed out weaker

87. For an account of this incident, see Zak Stone, *Living and Dying on Airbnb*, MATTER (Nov. 9, 2015), <https://medium.com/matter/living-and-dying-on-airbnb-bff8d600c04#4xqhwrxl>.

88. See *Host Protection Insurance*, AIRBNB, <https://www.Airbnb.com/host-protection-insurance> (last visited Apr. 3, 2016).

89. See Olga Abramova et al., *Understanding the Sharing Economy: The Role of Response to Negative Reviews in the Peer-to-Peer Accommodation Sharing Network*, Twenty-Third European Conference on Information Systems (ECIS), Münster, Germany (2015), <https://balsa.man.poznan.pl/indico/event/44/material/paper/0?contribId=139> (describing use of user-generated reviews in the sharing economy). Recent research suggests that two-thirds of consumers trust online user reviews. *Global Trust in Advertising*, NIELSEN (Sept. 28, 2015), <http://www.nielsen.com/us/en/insights/reports/2015/global-trust-in-advertising-2015.html>.

90. For a description of Uber's review system, see *Safe Rides, Safer Cities*, UBER, <https://www.uber.com/safety> (last visited Apr. 3, 2016). For a description of eBay's user review policies, see *Community Content Policy*, EBAY, <http://pages.ebay.com/help/policies/member-created-content-ov.html> (last visited Apr. 3, 2016).

providers who receive less favorable reviews, banning them from serving on the platform.⁹¹

Some platforms also engage in some degree of gatekeeping and impose barriers to entry to providers. They require providers to meet certain minimum threshold requirements prior to allowing them to join the platform. Uber mandates that drivers are a certain age and have driver's licenses, a relatively clean driving record, and automobile insurance.⁹² Airbnb has few requirements other than the host verifying his or her identity and allowing a customer to search his or her social media profile.⁹³

There is no doubt that, like the legal profession itself, the sharing economy runs on trust, and any sharing economy approach to the delivery of legal services will also run on trust. The attorney-client relationship is one of great intimacy, and the stakes in many matters an attorney will handle are high. Clients must trust that their attorneys will advocate with zeal on their behalf, will avoid conflicts of interest, will not use secrets and confidences shared by the clients to the attorneys' benefit, and will provide at least a minimum level of competence in the services provided. But trust does not just factor into the relationships through which the attorney delivers services; it also requires a degree of trust to begin the relationship in the first place, with the decision of the client to bestow upon the attorney the trust necessary to undertake the representation, to guard secrets, to avoid conflicts, and to proceed with zeal.

How will the delivery of legal services through a sharing economy model promote trust—trust to draw consumers in and trust to keep them utilizing the platform? I explore in

91. For a discussion of user reviews in the sharing economy, see Bénédicte Dambrine et al., *User Reputation: Building Trust and Addressing Privacy Issues in the Sharing Economy*, FUTURE PRIVACY F. (June 2015), https://fpf.org/wp-content/uploads/FPF_SharingEconomySurvey_06_08_15.pdf.

92. For a description of the requirements for driving with Uber, see *Driving Jobs vs Driving with Uber*, *supra* note 13.

93. For a description of Airbnb requirements to serve as a host through the network, see *How to Host*, AIRBNB, <https://www.Airbnb.com/help/getting-started/how-to-host> (last visited Apr. 3, 2016); see also *What is Verified ID?*, AIRBNB, <https://www.airbnb.com/help/article/450/what-is-verified-id?cref=69795bd29> (last visited Apr. 16, 2016).

subsequent sections the extent to which barriers to entry to the legal profession are designed to foster trust, but a sharing economy approach will likely need to develop the same sort of trust that other sharing economy models try to generate and will utilize similar approaches in doing so. They will need to attract prospective clients to the platform and have those clients place their faith in the informational materials supplied through the system as well as the legal providers who supply the brief advice, unbundled services, and full representation. The platform will first need to engage in a degree of gatekeeping to make sure the legal providers are competent to offer the services they will supply and then will need to monitor the services offered to ensure that providers are meeting customer needs. The reputation of the individual lawyers is almost less important in this context than the reputation of the platform itself.

One way that a sharing economy approach to the delivery of legal services can build the trust it needs to engender is to utilize user-supplied satisfaction reviews of providers in a systematic and transparent way. While lawyers are fond of client testimonials and trumpet their victories, these are, at best, hand-selected and anecdotal. They never advertise their losses or the clients whom they serve poorly. In some instances, the professional oversight machinery utilizes public reprimand to give notice that a lawyer has violated a client's trust or his or her fiduciary obligations to a client or clients.⁹⁴ This "public shaming" is a form of oversight, and is designed not just to inform consumers that a particular attorney may have engaged in inappropriate conduct, but also to steer clients away from that lawyer, which has a deterrent effect on other lawyers; they do not wish to engage in the same sort of conduct that might result in a similar public critique that might cost them clients.⁹⁵ It also serves another "public relations" function: it shows the world the legal profession polices itself.

94. See generally MODEL RULES FOR LAWYER DISCIPLINARY ENFORCEMENT r. 10 (AM. BAR ASS'N 2002) (describing the types of sanctions that can be imposed on lawyers for misconduct).

95. See William W. Schwarzer, *Sanctions Under the New Federal Rule 11—A Closer Look*, 104 F.R.D. 181, 201-02 (1985) (describing the role of public reprimands in policing attorney misconduct).

A user-generated rating system that was more comprehensive—i.e., one which would aggregate and make public the reviews of legal providers within the system—would likely serve as a strong mechanism for generating trust in both individual providers and the platform as a whole. As with Uber, user-generated reviews could also serve to police the platform, weeding out providers who consistently score below a certain threshold. It could give feedback to providers along specific metrics—responsiveness to client questions, thoroughness of advice, ability to anticipate problems, etc.—that could help the provider improve on the services he or she provides. This sort of comprehensive and ongoing review, in real time, is something lawyers and legal providers rarely embrace in the contemporary legal services market. It could both help inform clients of the reliability, ability, and trustworthiness of the provider, while offering the provider an opportunity to improve the services he or she offers, to ensure the attorney is meeting client needs and expectations.

It goes without saying that customer review systems are imperfect. Uber drivers have complained about the stiff penalties for poor reviews, which can be generated based on spite or are inherently subjective.⁹⁶ In some ways, potential customers have to trust that the user-generated system itself will not be gamed, either for the benefit of the provider or to harm an otherwise effective one; will not be overly subjective; and will generate useful and actionable information.⁹⁷ Any system of user-generated reviews will need to be trustworthy, and platforms will need to give assurances to prospective customers of the value of the provider review system, perhaps by contracting with a third-party validator to conduct random tests of providers, to police reviews, and maintain the user-generated interface to ensure no

96. See Kat Kane, *The Big Hidden Problem with Uber? Insincere 5-Star Ratings*, WIRED (Mar. 19, 2016, 7:00 AM); Jack Smith IV, *Uber Drivers: The Punishment for Bad Ratings Is Costly Training Courses*, OBSERVER (Feb. 3, 2015, 2:25 PM), <http://observer.com/2015/02/uber-drivers-the-punishment-for-bad-ratings-is-costly-training-courses/>.

97. On the unreliability of user reviews, see G. Jeffrey MacDonald, *Is That Online Review a Fake?*, CHRISTIAN SCI. MONITOR (Oct. 18, 2012), <http://www.csmonitor.com/Business/2012/1018/Is-that-online-review-a-fake>.

interference with the system by the platform to provide overly positive reviews.⁹⁸

While many sharing economy businesses rely on user reviews to police rude provider behavior, poor accommodations, or other shortcomings in sharing economy exchanges, regulation and legal oversight of sharing economy businesses have both lagged behind the business models of many of these companies and also faced stiff resistance and challenges that the sharing economy is thriving precisely because regulation and government oversight is light in these corners of the economy. While many will debate the value of strengthened oversight over drivers-for-hire and spare rooms to rent, a sharing economy approach to the delivery of legal services finds itself squarely within a regulatory regime that provides an array of protections for consumers of Just in Time/Just Enough legal services, meaning the pre-existing regulatory infrastructure will help to generate trust—both in the provider and the platform.

This overview of a sharing economy approach to the delivery of legal services shows not just how it would work, but also how such an approach would find itself situated within a pre-existing regime that can police efforts to provide services through it so as to ensure consumer protection while delivering effective and efficient services. Thus, a sharing economy approach to the delivery of legal services would stand to provide some of the consumer benefits from sharing economy models while offering a degree of consumer protection not available at present in other sectors of the sharing economy. The next Part provides an overview of the contours of consumer protections that make up the regulatory infrastructure guiding attorney conduct in the delivery of legal services. It further explores the notion that the legal services industry is a market in which a sharing economy model cannot just operate effectively, but can provide better, safer services than many other contexts in which sharing economy approaches are being utilized.

98. For a discussion of some mechanisms available to ensure the legitimacy of online reviews, see Radu Jurca & Boi Faltings, *Mechanisms for Making Crowds Truthful*, 34 J. ARTIFICIAL INTELLIGENCE RES. 209 (2009).

IV. THE PRE-EXISTING SYSTEM OF OVERSIGHT MAKES THE
LEGAL MARKET NOT JUST RIPE FOR A SHARING ECONOMY
MODEL, BUT BETTER-SUITED THAN OTHER MARKETS TO SUCH
AN APPROACH

Over time, the legal profession, courts, and legislatures have erected an array of controls over the delivery of legal services that have historically limited access to the profession and attempted to ensure a degree of consumer protection and recourse to those consumers harmed by improper conduct of attorneys. This array of controls include barriers to entry for service providers, limits on the unauthorized provision of services, codes of conduct to govern provider behavior, a means of disciplining improper conduct, an insurance regime to protect consumers, recourse for consumers through the courts and through tort liability, and a flexible and adaptable approach that strives to encourage innovation while providing consumer protection. Each of these components is discussed, briefly, and in turn, below.⁹⁹

A. *Barriers to Entry*

While lawyers did not need to do much to gain entry to the bar in the early nineteenth century, by the end of that century, calls for greater control over who would have the privilege of practicing law began the march toward the system currently in place, one in which attendance at an American Bar Association (ABA) accredited law school and passage of a bar examination are nearly universal requirements.¹⁰⁰ Although some states still recognize the route to the bar exam through an apprenticeship, this is a path that is rarely taken.¹⁰¹ These barriers serve several

99. For a full discussion of these individual components of the law governing lawyers, see Brescia, *Regulating the Sharing Economy*, *supra* note 3.

100. NAT'L CONFERENCE OF BAR EXAMINERS AND AM. BAR ASS'N SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, COMPREHENSIVE GUIDE TO BAR ADMISSION REQUIREMENTS, at vii, ix (2015), http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/2015_comprehensive_guide_to_bar_admission_requirements.authcheckdam.pdf.

101. See Robertson B. Cohen, *An Alternative to Law School: The Apprenticeship Model*, COLO. LAW., May 2009, at 83, 83-84 (describing the apprenticeship track

functions, the most important of which is to attempt to ensure one achieves a degree of skill, training, and competence prior to obtaining the ability to practice law. While many critique the effectiveness of these barriers, they do serve to require a certain degree of study, rigor, and skill development that is useful in the practice of law (though that, too, is subject to debate). In the end, these barriers to entry, coupled with character and fitness requirements, serve a “gate-keeping function” that attempts to winnow out individuals who are incapable of displaying a minimal degree of competence and a basic understanding of a range of legal subjects (depending on the variations in the scope of the different states’ bar examinations).¹⁰²

As a result of this well-entrenched system for creating and guarding the barriers to entry to the legal profession, a sharing economy approach to the provision of legal services has a ready-made system for assessing individuals for their fitness to provide competent legal services. Thus, in the legal services industry, we have in place a means to overcome one of the challenges other industries face as new entrants seek to provide services using a sharing economy approach: a pre-existing system for assessing the fitness of a provider to offer such services in a competent manner. Whether one agrees with this approach, thinks these barriers are ineffective or too high, or believes they are in service of preserving the monopoly of the legal profession on the practice of law—this is beside the point, and many have already debated these issues.¹⁰³ For our purposes, it is enough to recognize that the legal profession contains barriers to entry that are designed—imperfectly perhaps—to serve a gatekeeping function; one that is supposed to permit only those who can

in several states where individuals who combine some traditional course of study with a period in an apprenticeship setting are permitted to sit for the bar exam).

102. *See id.* at 86.

103. For an example of forays into the debate over the proper scope and reach of regulation of the legal profession, the barriers to entry contained therein, and the role of lawyer self-interest in maintaining them, see RICHARD L. ABEL, *AMERICAN LAWYERS*, 249-76 (1989). *See also* DEBORAH L. RHODE, *IN THE INTERESTS OF JUSTICE*, 143-83 (2000) (noting role of lawyer self-interest in attorney regulation).

provide competent professional services to have the permission and authority to do so.

B. *Unauthorized Practice of Law*

Another means of policing the practice of law, one which serves as a complement to barriers to entry to the profession, are restrictions on the unauthorized practice of law,¹⁰⁴ referred to by the acronym “UPL.” These restrictions, found in state law, typically do two things. First, they define what the “practice of law” is. Then they restrict the practice of law only to those admitted to practice in the state. There is no fixed definition across jurisdictions for what the practice of law is. Nevertheless, states define the practice of law and prohibit its unauthorized practice. For new entrants into the legal services market, many have faced challenges raising questions regarding the extent to which they are engaged in the unauthorized practice of law and thus in violation of UPL statutes. For the most part, these challenges have been unsuccessful, with entities like LegalZoom fending them off with only minor changes to its business practices.¹⁰⁵ Nevertheless, LegalZoom has accepted the fact that when it connects customers to providers who will offer more in-depth services, the lawyers who provide those services must be licensed to practice law in the jurisdiction in which they are practicing.

Once again, the point here is not to debate the wisdom of UPL statutes or the different approaches states may take to defining the practice of law and the unauthorized practice of law.¹⁰⁶ Rather, this brief overview of the approach states take in policing the practice of law is meant to show how, like with bar admission generally, the legal profession has a pre-

104. MODEL RULES OF PROF'L CONDUCT r. 5.5 (AM. BAR ASS'N 2013).

105. For a discussion of LegalZoom's history with Unauthorized Practice of Law charges, see Raymond H. Brescia et al., *Embracing Disruption: How Technological Change in the Delivery of Legal Services Can Improve Access to Justice*, 78 ALB. L. REV. 553, 583-85 (2015) [hereinafter Brescia et al., *Embracing Disruption*].

106. For a recent analysis of the effect of UPL statutes on access to justice, see Deborah L. Rhode & Lucy Buford Ricca, *Protecting the Profession or the Public? Rethinking Unauthorized-Practice Enforcement*, 82 FORDHAM L. REV. 2587 (2014).

existing regime for ensuring that those who carry out the practice of law are authorized to do so. This oversight infrastructure is another reason the practice of law is primed for a sharing economy approach to the delivery of legal services; there are layers of protection in place to ensure consumers of legal services receive such services only from those who are competent and authorized to provide them, placing the legal profession far ahead of other industries where sharing economy platforms are operating and experiments in service delivery are underway.¹⁰⁷

C. *Codes of Conduct*

Another means of guiding attorney conduct is the promulgation of codes of conduct for lawyers, which generally emanate from bar associations and are ultimately adopted by the courts or integrated bars in particular states. Unlike other sharing economy contexts, where providers operate with little guidance from the sharing economy platforms or regulators, these codes of conduct offer detailed (though flexible) guidance to attorneys on the bounds of ethical conduct. Although they do not spell out the conduct to undertake in every situation in which an attorney might find him- or herself, they offer direction to attorneys as to the expectations for conduct along broad principles, in loosely defined contexts. Even this general guidance is far more than the provider receives in most sharing economy settings.¹⁰⁸

As with the barriers to entry described above, attorney codes of conduct serve as evidence that the legal profession is further along than most sharing economy platforms in terms of the guidance these codes give both providers and consumers of the type of conduct one can expect from

107. Although LegalZoom's website claims that it is not providing legal services, and, presumably, does not intend to create an attorney-client relationship with a consumer utilizing the platform, attorneys at the Arroyo Group appear to be practicing law and providing legal services to their customer/clients. An assessment of the extent to which LegalZoom itself is engaged in UPL violations is beyond the scope of this Article. For a discussion of the interaction of UPL statutes and organizations like LegalZoom, see Brescia et al., *Embracing Disruption*, *supra* note 105, at 581-87.

108. For a discussion of the inadequacy of sharing economy codes of conduct, see Brescia, *Regulating the Sharing Economy*, *supra* note 3, at 59-63.

attorneys. This signifies that the legal services sector can overcome some of the challenges other sharing economy platforms face when it comes to providing clear guidance to providers and consumers alike when they come together for the delivery of services through the platform.

D. *Discipline*

With the power to license often comes the power to strip an attorney of his or her license. State disciplinary machinery, the courts, and integrated bar associations have the authority to regulate entry into the profession but also to police attorneys engaged in the practice of law to ensure that they are complying with their ethical obligations.¹⁰⁹ While sharing economy models have some degree of customer-generated content—customer reviews and complaints to the platform’s organizers that might result in a particular provider being removed from the platform—there are few formal mechanisms, like the disciplinary machinery that operates to provide a check on the legal profession, for regulating sharing economy providers.

This backstop function is another way that the legal profession has at its disposal a means to regulate the functioning of the practicing bar, to protect consumers by weeding out lawyers (admittedly, after the fact) who engage in conduct below the norms set by the profession. While many sharing economy platforms use other means to police provider conduct, mostly by “crowdsourcing” provider actions through customer reviews, the legal profession has a well-developed system for overseeing attorney conduct to ensure practicing lawyers maintain a certain threshold compliance with ethical standards once they are admitted to practice and engage in the practice of law. As a result, this function is another example of the ways the legal profession has a well-developed—and some might say sophisticated—method and system for policing attorney conduct, which places it far

109. On the history of disciplinary authority, see Leslie C. Levin, *The Case for Less Secrecy in Lawyer Discipline*, 20 GEO. J. LEGAL ETHICS 1, 10-21 (2007). For a review of the different sanctions imposed by courts in select reported cases from state and federal courts, see Judith A. McMorrow et al., *Judicial Attitudes Toward Confronting Attorney Misconduct: A View from the Reported Decisions*, 32 HOFSTRA L. REV. 1425, 1466-71 (2004).

ahead of other industries where sharing economy approaches are taking hold.

E. *Insurance*

Another issue with which sharing economy platforms struggle in their effort to foster the trust necessary to attract customers is whether to provide insurance through the platform or require providers to have their own insurance. Uber requires its drivers to have liability insurance, though this is a requirement imposed on them by state law, and all drivers—Uber or non-Uber—must have such insurance.¹¹⁰ Uber also has insurance policies covering an array of issues to protect drivers, their passengers, and others involved in accidents with Uber cars.¹¹¹ Airbnb has begun providing a blanket insurance policy to cover Airbnb customers in the event the host has no insurance, but it recommends that all hosts have their own liability coverage as well.¹¹² The purpose of offering insurance is to give customers some degree of assurance that, should they suffer some harm at the hands of the host or driver or other provider in the sharing economy, either by their action or inaction, they will have some recourse and can tap into insurance policies protecting them from some degree of risk.¹¹³

While some sharing economy platforms require insurance by virtue of the nature of the service being provided (like ride-hailing services), few sharing economy platforms insist that their providers offer insurance. Contrast that with the legal profession. Here, while malpractice insurance is not mandatory, it is strongly recommended. Recently, the ABA suggested that states encourage lawyers to have insurance, and some states are even adopting requirements that attorneys must disclose

110. *Driving Jobs vs Driving with Uber*, *supra* note 13.

111. Nairi, *Insurance for Ridesharing with Uber*, UBER: NEWSROOM (Feb. 10, 2014), <https://newsroom.uber.com/insurance-for-uberx-with-ridesharing>.

112. *Host Protection Insurance*, *supra* note 88; *The \$1,000,000 Host Guarantee*, AIRBNB, <https://www.airbnb.com/guarantee> (last visited May 22, 2016).

113. See Ron Lieber, *A Liability Risk for Airbnb Hosts*, N.Y. TIMES, Dec. 6, 2014, at B1 (describing Airbnb's strategy in offering secondary insurance to hosts).

when they are not covered by insurance.¹¹⁴ Similarly, some states require lawyers to contribute to a fund that protects the clients of uninsured attorneys.¹¹⁵ In these ways, the legal profession has developed a system where malpractice insurance is commonplace, if not nearly ubiquitous, and even strives to protect the clients of attorneys who forego insurance in the event those clients have claims against their uninsured attorneys.¹¹⁶

Thus, while sharing economy platforms are considering ways to instill customer trust in providers by exploring different approaches to the insurance question, the delivery of legal services through a sharing economy platform can benefit from the fact that the profession has in place an insurance regime that looks for ways to promote insurance coverage for consumers harmed by attorneys. With a robust lawyer malpractice industry, coverage disclosure requirements in some states, and some states having funds to protect clients with no recourse to compensation through other means, the legal profession has developed a comprehensive approach that strives to protect clients from the improper acts of attorneys.

Regardless of whether the sharing economy can learn from the legal profession's strategies for protecting consumers and fostering customer trust (through, for example, promoting insurance, requiring disclosure of coverage, and collecting a tax on providers to cover those without insurance), the legal profession itself has developed these approaches to foster that trust and protect clients, meaning that it has in place protections that make it ripe for a sharing economy approach to the delivery of legal services.

114. See *State by State, Mandatory Malpractice Disclosure Gathers Steam*, A.B.A., http://www.americanbar.org/publications/bar_leader/2003_04/2804/malpractice.html (last visited Apr. 17, 2016).

115. See, e.g., *Who We Are: The Fund's Mission*, N.Y. STATE LAWYERS FUND FOR CLIENT PROTECTION, <http://www.nylawfund.org/who.html> (last visited May 22, 2016).

116. For a discussion of the manner in which the legal profession handles attorney malpractice insurance, see Brescia, *Regulating the Sharing Economy*, *supra* note 3, at 47-49.

F. *Legal Liability and Recourse Through the Courts for Breaches of Duty*

A well-developed body of case law has emerged assigning tort and breach of contract liability to lawyers who fail to uphold their ethical obligations to their clients.¹¹⁷ Breaches of such obligations can include failing to recognize and exercise client rights, embezzling funds, violating the confidentiality of the client, failing to avoid conflicts of interest, etc.¹¹⁸ These principles of liability offer clients a means of recourse through the courts along well-worn theoretical paths. Unlike the sharing economy, where providers, customers, and platforms are still exploring the boundaries and the means of holding actors responsible for improper conduct (indeed, they are even trying to understand what improper conduct is in these contexts), clients of attorneys practicing in the United States have clear recourse through the courts when lawyers engage in ethical breaches.

The regime has developed a measured legal response for these arrangements that might involve vicarious liability, lawyer-to-lawyer referrals, joint representation arrangements, and incidents where one attorney or firm takes on the responsibility for supervising a second attorney or firm.¹¹⁹ In other words, it has developed a sophisticated response to the ways in which lawyers are presently organizing themselves to provide legal services and the ways they might do so in the delivery of such services through a sharing economy model. While other sharing economy platforms are still exploring ways to handle the new and innovative arrangements typical in the sharing economy, the tort regime of legal malpractice is primed to provide oversight over the new relationships that might arise on sharing economy platforms for the delivery of legal services.

117. See, e.g., Note, *Malpractice Suits Against Local Counsel or Specialists*, 68 VA. L. REV. 571, 576 (1982).

118. See, e.g., Benjamin C. Zipursky, *Legal Malpractice and the Structure of Negligence Law*, 67 FORDHAM L. REV. 649, 662-79 (1998) (describing elements of legal malpractice).

119. See, e.g., *Malpractice Suits Against Local Counsel or Specialists*, *supra* note 117.

G. *Flexibility and Adaptability*

Another, final component of the regulatory infrastructure governing the practice of law is its flexibility and adaptability. Attorney codes of conduct and barriers to entry are developed over time in the states, in national and state bar associations, through the courts, and, to a lesser extent, in federal and state legislatures. The regulation of the legal profession thus flows from many sources, which can cause some confusion at times, but also means that experimentation and adaptation can come from many corners of the regulatory landscape. While the profession itself, and the bodies that regulate it, may be seen as conservative, slow to change, and rigid, change does happen. It is seen in the development, over time, of new approaches to attorney advertising, discussed earlier. It is also seen in the creation of rules governing attorney use of social media to advertise, conduct discovery, and search for clients.¹²⁰ Most recently, evidence of this adaptability is apparent in the rules governing barriers to admission, as more and more states are choosing a uniform bar exam.¹²¹ While some states will likely hold out against it, it is anticipated that in the coming years a majority of states will adopt such an approach to the bar examination, a long-revered (or despised) rite of passage for attorneys where individual state bodies once held fast to the right to devise their own exams. Admittedly, change comes slowly in the law governing lawyers, but it does tend to come, as realities of practice, the needs of consumers, and the market for legal services lead to first, experimentation by different regulatory bodies, and then widespread adoption.¹²² What this means is that regulatory oversight of the legal profession is, over time, flexible enough to permit innovation and some degree of experimentation with sharing economy models moving forward.

120. For an overview of the evolution of attorney ethical rules regarding social media which are still evolving, see Jasmine V. Johnson, *Completing the Map: The Next Step in Guiding the Ethical Use of Social Media by Legal Professionals*, 28 GEO. J. LEGAL ETHICS 597 (2015).

121. See Karen Sloan, *ABA Endorses National Exam*, NAT'L L.J., Feb. 15, 2016, at 1, 5.

122. See Brescia, *Regulating the Sharing Economy*, *supra* note 3, at 34-36.

This recounting of the mechanisms that exist to regulate the legal profession is by no means a defense of this system. It has its shortcomings and critics of the system are legion. Nevertheless, no one would argue that there is no system or that there is no guidance for lawyers, consumers, and the courts to assess when an attorney has breached his or her ethical obligations and should be subject to discipline or made to compensate a client wronged by the attorney's inappropriate conduct. As such, unlike other sharing economy contexts, a system exists to police the provision of legal services. In this way, there is a pre-existing regulatory backdrop against which experiments in Just in Time/Just Enough approaches to the provision of legal services can run, with less risk that consumers will be harmed in the process, which is a luxury other sharing economy platforms do not enjoy.

V. RISKS AND OPPORTUNITIES OF A SHARING ECONOMY MODEL FOR THE PROVISION OF LEGAL SERVICES

A series of challenges plagues the sharing economy as it expands and its platforms and actors threaten incumbent entities in the markets in which such new entrants are taking hold. I have mentioned some of these: the need to develop trust; the need to ensure providers are offering safe products and the services they supply do not place consumers in danger; the need for some degree of regulatory oversight, but oversight that does not threaten the core economic innovations these platforms are undertaking; and some means of recourse should consumers suffer harm at the hands of providers through these platforms. In a sharing economy approach to the provision of legal services, these challenges are no less evident. One of the main benefits of utilizing a sharing economy approach in the provision of legal services, however, is that the legal profession has faced these challenges in the past (partly because, as stated above, it has contained sharing economy features for centuries). Because of this history, it has developed a balance of *ex ante* protections as well as *ex post facto* mechanisms for policing attorney competence and conduct, and thus has in place some

ways of addressing the regulatory challenges that sharing economy approaches have surfaced.

A technology-enabled, sharing economy approach to the delivery of legal services can improve the provision of legal services for both consumers and the legal profession. First, it holds out the promise of reducing cost to the consumer, enhancing accessibility of legal services, and improving access to justice. Second, it holds out the possibility that it will make lawyer marketing and “rain making” easier, give lawyers greater flexibility in their work schedules, and help them achieve better work-life balance. Third, and most importantly, unlike other entrants into the sharing economy, the legal profession has a pre-existing machinery for monitoring entry into the field, for policing abuses, and for disciplining bad actors. This pre-existing infrastructure is perhaps the most important reason that the legal profession is ripe for a sharing economy approach, and it is what sets this industry apart from others where such approaches are testing the limits of existing regulatory and administrative regimes. While there are certainly potential downsides to a sharing economy approach to the delivery of legal services, this Part will focus on the potential positive effects. Part VI will focus on the potential negative effects of such an approach.

A. *Certainty and Reduction in Costs*

An essential promise of the sharing economy approach to the provision of legal services is that it will make the delivery of such services less expensive. This promise has the potential to have a profound impact on access to justice for middle- and lower-income Americans. Moreover, by supplying Just in Time/Just Enough services, a sharing economy approach holds out the possibility of disrupting the entire legal services market, resulting in significant changes in the way services are delivered to clients throughout the economic spectrum.

Streamlining the marketing and delivery of legal services will make such services less expensive to provide. First, through the advantages of economies of scale—the platform can advertise itself, rather than having individual lawyers or firms engage in their own advertising—as well as new modes

and channels of advertising, attorneys can “outsource” the advertising function at a fraction of the expense, not just in the actual cost of advertising, but also in the time lawyers can devote to the provision of services as opposed to finding clients. More importantly, a sharing economy approach looks to focus the delivery of services not from the client’s perspective (i.e., determining what clients need and then figuring out how to meet the need), but rather, from the services that will be provided. It focuses attorney and legal staff energy on the direct, income-generating services as opposed to the indirect—and time-consuming—cluster of actions surrounding marketing, rainmaking, client development, etc.

A second way that a sharing economy approach to the delivery of legal services can help reduce the cost of legal services is by making certain services available through the delivery of information, forms, and how-to and know-your-rights guides. While there is some cost associated with preparing these materials and ensuring they correspond to changes in the law as they arise, once a provider expends the resources to prepare the material, the resulting income generated by the provision of the service is realized and can ultimately not just reimburse the provider for the cost of preparation and maintenance, but can begin to turn a profit. With the initial investment in funds, the materials can pay for themselves and their maintenance, and generate profit that can be turned into the preparation of more materials.

Third, a sharing economy model limits the amount of initial training and then ongoing continuing legal education required of the provider. In this model, the provider hones her knowledge of a particular legal niche. Once again, while there is some cost associated with developing the expertise, when the provider becomes an expert in a particular area or areas of law, she can provide services in that area with relative ease, with some “knowledge maintenance” and keeping abreast of changes in the law. The provider can then deliver services within her areas of expertise with little preparation or research, until she faces a question she has not seen before. The cost of developing and maintaining knowledge is thus reduced because the field or fields in which a provider serves is/are fairly narrow. Once an expert, service delivery by a provider is streamlined in such a way that the

provider can focus on the income-generating function—the dispensing of advice or the provision of unbundled or full-service representation—as opposed to developing expertise in a new area of law.

In these ways, the Just in Time/Just Enough approach reduces the cost of the delivery of legal services. It does this by focusing legal provider time on the income-generating functions of the work: preparing informational material and guides and delivering a range of services. It starts not with the client need, but by developing expertise in an area and finding clients that require a lawyer to meet that need. It hones expertise in meeting that need and does not stray from the development of the expertise in that area so as to minimize the costs associated with understanding a given field or legal problem.

Perhaps the most important benefit that a new model for the delivery of legal services will generate is the promise that consumers will see both greater certainty, as well as a reduction in the cost of such services. Provided these services meet a certain threshold level of quality, guaranteed by the regulatory infrastructure of legal ethics discussed above, a reduction in the cost of legal services is an unmitigated benefit to the consumer. It is without question that reduced costs will mean more potential customers will seek out legal services where they were facing their legal problem (or not facing their legal problem) without the benefit of an attorney. It is also likely that individuals who were paying higher rates for attorneys in the market will shift their allegiance to sharing economy providers if they believe the services are of sufficient quality to meet their needs. While this may not be a positive development for those lawyers who are losing clients to sharing economy providers, as long as the quality is comparable, or at least sufficient, the reduction in the cost of legal services is a clear benefit for consumers.

B. *Improving Accessibility*

In addition to benefits that come to consumers through the reduced costs associated with the provision of legal services, because of the Internet, sharing economy legal services would be easy to access. While many law firms use the Internet, social media and traditional marketing

methods to advertise their services, attorneys associated with a sharing economy platform would have their advertising done for them through the platform, which would have a broader, deeper, and more extensive reach than any one attorney or collection of attorneys would tend to have on his or her own. With centralized advertising that channels customers to a single point of entry and then directs them to attorneys in the network, sharing economy legal services hold out the promise of significant benefits from economies of scale and the brand recognition that mass marketing on behalf of the platform can generate. Just like the artisans who produce items for sale on Etsy, or the retailers that market through Amazon, sharing economy lawyers who operate on a sharing economy platform would benefit from the large-scale advertising and knowledge of the platform's brand that would follow.

In addition to the benefits for lawyers because they do not have to spend as much time rainmaking in the pursuit of clients, the sorting and triaging of legal needs that can occur through a sharing economy approach has other benefits. Potential customers can seek to have their legal needs met through a simple portal that does the subject matter sorting that a prospective customer might have difficulty doing on his or her own. A potential client may not know precisely what legal need he or she has and may not be able to tell from a particular firm's website whether that firm is able to handle the client's case. On a sharing economy platform, a simple interface could help guide the client through the online sorting and triage process to help identify the legal need the client has and match him or her to the right service he or she requires. The mass-marketing efforts of the sharing economy platform would help build brand recognition and send user traffic to the site. The platform would then match potential customers with the best avenue for meeting their needs. Few lawyers are capable of engaging in this type of national mass marketing a sharing economy platform can undertake.¹²³

123. One analysis estimated that LegalZoom would spend over \$10 million in television advertising in 2015, ranking it the fourth largest in terms of ad dollars nationally in this form of advertising among firms analyzed, though it is unclear whether this study assessed all law firm advertising or just what it described as that carried out by "trial lawyers." U.S. CHAMBER INST. FOR LEGAL REFORM, TRIAL

That mass marketing brings customers to the platform and matches them to the appropriate level of service. For the typical lawyer or law firm, advertising and sorting can be costly and labor intensive. In a sharing economy model, it can be done nationally and, for the most part, virtually, freeing the lawyer and legal staff from the cost and burden of engaging in these efforts.

While a sharing economy platform might work well for the lawyer because it reduces the cost associated with advertising and sorting of claims and needs, it is also easier for clients to use, and the brand recognition it can generate means clients have a source to which they can turn when they have a legal need. One of the most significant barriers to the accessibility of legal services, after costs, is that clients do not know where to turn for an attorney who might meet their range of legal needs. On a sharing economy platform, a prospective client would turn to the platform to help assess the client's needs and direct him or her to an appropriate level and type of service. Making services easy to access holds out the promise that prospective clients will be more willing to pursue legal representation or assistance by seeking it through a sharing economy platform.

C. *Potential for Improving Access to Justice*

One of the most striking features of the market for legal services is that an overwhelming majority of low-income Americans face their legal problems without a lawyer. According to Deborah Rhode, it is “estimated that more than four-fifths of the individual legal needs of the poor and a majority of the needs of middle-income Americans remain unmet.”¹²⁴ What is worse, many Americans fail to address their legal needs. While low-income families can encounter two to three legal problems a year, only one-fifth of these

LAWYER MARKETING: BROADCAST, SEARCH, AND SOCIAL STRATEGIES 7 (Oct. 2015), <http://www.instituteforlegalreform.com/uploads/sites/1/TrialLawyerMarketing.pdf>.

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

problems are addressed through the assistance of counsel.¹²⁵ Similarly, according to an ABA survey, “two-thirds of the civil legal needs of moderate-income consumers were not taken to lawyers or the justice system” for assistance.¹²⁶ A legal needs study conducted in Maryland found that nearly three-quarters of middle-income citizens face their legal problems without a lawyer.¹²⁷ The U.S. Legal Services Corporation (LSC) offers funding to non-profit legal services providers across the country, but its funding has been slashed in federal budget fights at different political moments over the years, with dramatic cuts occurring in just the last few years.¹²⁸ These recent cuts meant that LSC-funded legal services providers eliminated 241 full-time attorney positions.¹²⁹ The dramatic gap in funding for legal services providers means that federal-funded entities like LSC-grantees turn down nearly one million cases a year because of a lack of funding to provide representation in such cases.¹³⁰

This significant “justice gap”—the mismatch between the supply of quality, affordable, or free legal services and the need for such legal services from low- and moderate-income communities—means there is a market ripe for sharing economy models, models that can reduce the cost of legal services and, as a result, make legal services available to more Americans.¹³¹

125. *Id.* at 534.

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

127. *Id.*

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

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

130. CTR. FOR AM. PROGRESS, CLOSING THE JUSTICE GAP: HOW INNOVATION AND EVIDENCE CAN BRING LEGAL SERVICES TO MORE AMERICANS 9 (2011), http://cdn.americanprogress.org/wpcontent/uploads/issues/2011/06/pdf/prose_all.pdf.

131. There is also a pressing need to meet the promise of full access to justice. Recently, the National Conference of Chief Justices and the Conference of State Court Administrators affirmed their support for “the aspirational goal of 100 percent access to effective assistance for essential civil legal needs.” See Resolution 5, Reaffirming the Commitment to Meaningful Access to Justice for All, Conf. of Chief Justices & Conf. of State Court Adm’rs, <https://www.ncsc.org/~/>

The main barrier to meeting the legal needs of low- and moderate-income Americans is the cost of legal services, whether it is the cost associated with providing funding to non-profit legal services providers that serve individuals up to 125% of poverty (the limit set by LSC guidelines),¹³² or the out-of-pocket costs associated with paying for a lawyer should an individual or family exceed those guidelines. Innovations in the delivery of legal services hold out the promise of reducing the costs associated with providing certain legal services. If this is the case, more low- and moderate-income Americans might receive legal representation due to the reduced costs associated with new, technology-enabled legal services delivery mechanisms.¹³³

While it is possible that new models of legal services delivery can reduce the costs of representation in certain fields, it is not clear that the legal needs of low- and moderate-income Americans can easily be met by sharing economy approaches. First, some of the services that companies like LegalZoom have identified as fitting the low-touch (and low-cost) model, like preparation of living wills, powers of attorney, and applications for provisional patents, are not the most pressing issues low- and moderate-income individuals and families face. That is not to say that these services are not needed in lower income communities, it is just that they might not be the first issues that members of

media/Microsites/Files/access/5%20Meaningful%20Access%20to%20Justice%20for%20All_final.ashx.

132. 45 C.F.R. § 1611.3(c)(1) (2015).

133. It is also possible that a sharing economy approach would enable lawyers to gather information about common policies and practices that adversely impact a large number of consumers and bring actions to help stop or prevent such practices, by leveraging the “Big Data” that the new accessibility to legal services might generate. In recent years, evidence uncovered in several mortgage foreclosure actions revealed the nefarious practice of “Robo-Signing,” which resulted in settlements with five of the largest U.S. banks equaling over \$25 billion, some of which went on to fund foreclosure prevention services. See David Streitfeld, *From This House, a National Foreclosure Freeze*, N.Y. TIMES, Oct. 15, 2010, at A1; *National Mortgage Settlement Summary*, NAT’L CONF. OF STATE LEGISLATORS, <http://www.ncsl.org/research/financial-services-and-commerce/national-mortgage-settlement-summary.aspx> (last visited Mar. 19, 2016) (describing allocation of settlement funds, including toward the provision of legal services).

these communities identify as being the most important legal needs for which they require representation. Assistance with an eviction or foreclosure, a social security case, or consumer debt, would likely rank higher on their hierarchy of legal needs.¹³⁴ At the same time, assistance that can help entrepreneurs launch small businesses in low- and moderate-income communities can serve as a critical engine of economic growth and opportunity in such communities.¹³⁵

If there is some degree of mismatch between those services offered today through sharing economy legal services delivery models and the wide legal needs of low- and moderate-income communities, some experimentation is required in the areas of legal need prevalent in these communities if a sharing economy approach is to help close the justice gap, where legal needs outstrip the availability of low-cost or no-cost representation. If the main barrier to ensuring Americans have access to justice through available and affordable legal services is cost, whether because of a lack of funding for not-for-profit legal services offices or a lack of availability of low-cost legal services being offered to higher-income Americans whose income means they are ineligible for free legal assistance, mechanisms that reduce

134. Advocacy promoting a right to counsel in civil cases has most recently focused on a limited right to counsel in cases in which fundamental rights are at stake, as opposed to seeking a right to counsel in all civil cases. For example, on August 7, 2006, the ABA House of Delegates unanimously passed a resolution regarding the civil right to counsel which provided as follows:

[T]he American Bar Association urges federal, state, and territorial governments to provide legal counsel as a matter of right at public expense to low income persons in those categories of adversarial proceedings where basic human needs are at stake, such as those involving shelter, sustenance, safety, health or child custody, as determined by each jurisdiction.

ABA Resolution on Civil Right to Counsel, 15 TEMP. POL. & C.R. L. REV. 507, 508 (2006).

135. For a discussion of the role of lawyers in promoting urban economic development, see Scott L. Cummings, *Mobilization Lawyering: Community Economic Development in the Figueroa Corridor*, in CAUSE LAWYERS AND SOCIAL MOVEMENTS 302, 302-30 (Austin Sarat & Stuart A. Scheingold eds., 2006); Susan R. Jones, *Supporting Urban Entrepreneurs: Law, Policy, and the Role of Lawyers in Small Business Development*, 30 W. NEW ENG. L. REV. 71 (2007).

the cost of legal services will necessarily make such services available to more Americans, regardless of whether they are receiving such services free of charge or for a fee.

At present, however, the legal services offered through already existing sharing economy channels like LegalZoom do not address the most pressing legal needs of low- and moderate-income Americans. The remaining gap between need and service justifies experimentation with sharing economy models by non-profit providers, providers seeking to offer “low bono” assistance to low- and moderate-income communities, and sliding-scale fee arrangements based on ability to pay.¹³⁶ Much of this experimentation will require funding, however, or public-private-educational institution partnerships that explore new models of technology-enabled legal services delivery that brings sharing economy approaches to meeting the legal needs of low- and moderate-income communities.¹³⁷

D. *An Untethered Workforce with the Potential for Greater Job Satisfaction*

Recent press accounts have highlighted what some have called oppressive working conditions at the Internet retail giant Amazon. For warehouse workers¹³⁸ and white collar

136. For a description of a so-called “low bono” approach to the delivery of legal services, see Luz E. Herrera, *Rethinking Private Attorney Involvement Through a “Low Bono” Lens*, 43 LOY. L.A. L. REV. 1, 39-48 (2009). For a discussion of the role of the private practitioner in the pursuit of access to justice, see Russell Engler, *Access to Justice and the Role of the Private Practitioner*, 24 KAN. J.L. & PUB. POLY 554 (2015).

137. LSC has launched the Technology Initiative Grant Program to help fund this sort of innovation in technology-assisted access to justice initiatives, but this is just a fraction of the funding LSC offers, and, as with all LSC funding generally, resources are limited. See *Technology Initiative Grant Program*, LEGAL SERVS. CORP., <http://www.tig.lsc.gov/grants-grantee-resources/our-grant-programs/tig> (last visited Mar. 19, 2016).

138. Dylan Matthews, *The Real Amazon Scandal Has Nothing to Do with Its White-Collar Workers*, VOX, <http://www.vox.com/2015/8/17/9166035/amazon-warehouse-worker-conditions> (last updated Aug. 17, 2015) (compiling press accounts of harsh working conditions at Amazon warehouses).

workers,¹³⁹ press stories have made it seem like Amazon is not a great place to work. Whether it is long hours in oppressively hot warehouses¹⁴⁰ or a backbiting, aggressive culture where workers receive emails at all hours of the day and night, and staffers cry at their desks,¹⁴¹ workers in this new economy company seem to face fairly extreme working conditions. Of course, this is not the stereotype of the Internet company, where workers are supposed to come to work in flip-flops, take breaks to face off on the company foosball table, jet around the “campus” on Segways, and take naps in personalized sleeping pods throughout the day. In the legal profession, the stories of Amazon’s work culture likely hit close to home.

Many lament that as the legal industry has become more focused on pursuing profits, lawyer quality of life and the feeling that one is working in a profession—a calling—has diminished. Overall lawyer job satisfaction is low.¹⁴² Substance abuse is high within the profession.¹⁴³ Young lawyers and others new to the profession become disaffected and many must make a choice between the grueling hours demanded of newer attorneys and the demands of family life.¹⁴⁴

Some point to the business model of many firms for this disconnect between job satisfaction and the craft of

139. Jodi Kantor & David Streitfeld, *Inside Amazon: Wrestling Big Ideas in a Bruising Workplace*, N.Y. TIMES (Aug. 15, 2015), http://www.nytimes.com/2015/08/16/technology/inside-amazon-wrestling-big-ideas-in-a-bruising-workplace.html?_r=0 (discussing working conditions of white collar workers at Amazon).

140. Matthews, *supra* note 138.

141. Kantor & Streitfeld, *supra* note 139.

142. For an overview of lawyer job satisfaction studies, see Jerome M. Organ, *What Do We Know About the Satisfaction/Dissatisfaction of Lawyers? A Meta-Analysis of Research on Lawyer Satisfaction and Well-Being*, 8 U. ST. THOMAS L.J. 225 (2011).

143. G. Andrew H. Benjamin et al., *The Prevalence of Depression, Alcohol Abuse, and Cocaine Abuse Among United States Lawyers*, 13 INT’L J.L. & PSYCHIATRY 233, 240-43 (1990).

144. For a discussion of issues related to work-life balance in the legal profession, see Deborah L. Rhode, *The Profession and Its Discontents*, 61 OHIO ST. L.J. 1335, 1357-58 (2000).

lawyering. For many firms, profits are generated by putting lower-level associates to work at a grueling pace, charging their work to clients at a rate higher than those lawyers' pay. The profits generated by these staffing patterns help pay the higher salaries of the more senior lawyers. And not all associates can make partner and enter the upper echelon of the firm. The pace of work for the junior attorneys has a winnowing effect, narrowing the class of attorneys who will ultimately make it through the rite of passage of junior associate to achieve the brass ring of the partnership.¹⁴⁵

In the not-for-profit world, the hours can be no less grueling. Some lawyers take positions in this sector with the hope that they might have a life outside of the office, yet find their hours are no different from working in a for-profit venture and they might "take their work home with them" in the sense that the psychic toll of representing criminal defendants, children in abuse and neglect proceedings, or fighting evictions, can spill over into those precious few non-working hours they might enjoy.

A sharing economy model holds out the promise that lawyers engaged in a Just in Time/Just Enough approach will have greater control over their time, will be able to direct more of the hours spent at work toward serving clients, and will be able to gain expertise in an area of law. First and foremost, what the sharing economy model does for the lawyer is that it enables him or her to make a determination of the right balance of work time to personal time. In a sharing economy approach, the lawyer can be converted almost to "piece work": he or she can work as much or as little as she likes (assuming there is enough work to go around), can partner with other lawyers to share the time responding to customer calls and inquiries, and can manage the flow of work. Just as an Uber driver or an Airbnb host can make an assessment of how much he or she wants to work, or have strangers in the home or the backseat of his or her car, the lawyer affiliated with a sharing economy platform can choose the hours that fit his or her schedule. As some sharing economy outlets are exploring, telecommuting is also possible in this approach, meaning that lawyers can reduce time

145. For a discussion of the "pyramid" model of firms, see SUSSKIND, *supra* note 75, at 278-79.

spent in cars or on public transportation getting to and from an office, can be home when the children are home from school with greater ease, and do not have to worry about finding an emergency sitter when a child has to stay home with a fever. This gives the lawyer a great deal of autonomy over his or her work life, and he or she can decide when and how to plug in and go to work.

A second way that the sharing economy approach will impact lawyer well-being is that lawyers will become experts in a particular field or fields so they can respond quickly to questions that present themselves in such areas of law. They will develop an expertise and a sense of the legal landscape. They will thus develop mastery over their chosen fields.

Third, for lawyers in the sharing economy, their work can take on a purpose: they can understand that they are meeting unmet needs, helping clients face their legal problems in an efficient and affordable way, and not making great personal sacrifices to do so. It is likely that the remuneration will be less, but, it is also likely that at least some lawyers would trade some level of income for greater job satisfaction. What is more, lawyers in a sharing economy platform will likely have more client contact, will extend services to people who otherwise would not be able to afford them, and will help people deal with the forces that are impacting their lives in real and meaningful ways as opposed to working as a “hired gun” for faceless corporations fighting over a billion dollar deal or lawsuit where the lawyers may care little about the ultimate outcome of the matter.

As the interview with Mark Russakow referenced earlier suggests, the sharing economy approach to the delivery of legal services has the potential to improve lawyer job satisfaction by giving the lawyer greater control over his or her working hours while still making a decent living, having the ability to develop expertise in an area, and finding greater meaning in his or her work. As author and recovering lawyer Dan Pink points out in his work *Drive: The Surprising Truth About What Motivates Us*,¹⁴⁶ intrinsic motivation, which is much more durable and leads to greater job

146. DANIEL H. PINK, *DRIVE: THE SURPRISING TRUTH ABOUT WHAT MOTIVATES US* (2011).

satisfaction than extrinsic rewards like money, hinges on an individual obtaining the three main “nutrients” for job satisfaction and motivation: mastery, autonomy, and purpose.¹⁴⁷ Lawyers in a sharing economy model can achieve greater mastery over a subject matter area, have greater autonomy over their work, can maintain a better work-life balance, make a choice to sacrifice financial rewards for a more flexible schedule, and can pursue a purpose in the law that goes beyond the pursuit of profit. They can become experts in a given domain and help “real” people with “real” problems rather than sorting out a billion dollar fight between two multi-national corporations. While I recognize that this view may be more than just a bit Pollyannaish, I take up some lingering concerns about the de-professionalization of legal services and fears of lower job satisfaction in the next Part, together with other concerns.

VI. ADDRESSING THE RISKS ASSOCIATED WITH A SHARING ECONOMY APPROACH TO THE DELIVERY OF LEGAL SERVICES

This Article, so far, has argued that the legal profession has developed an impressive and malleable infrastructure for protecting consumers from some of the shortcomings that often arise in sharing economy settings. As a result, the legal profession is in a better position than most sectors to protect against some of the greatest concerns that sharing economy approaches raise: the lack of protections for consumers, an inability of existing legal structures to adapt to the needs of innovative approaches, etc. Because of this, and because of the current functioning of the legal profession, it is an industry that is primed for balanced disruption based on a sharing economy approach, perhaps more so than other industries where such approaches are taking hold. Indeed, the economics of the profession mean that many prospective consumers are priced out of existing service delivery models, meaning new models could challenge incumbents, while the legal profession already has in place responses to some of the most irksome regulatory shortcomings of existing sharing economy models. What this Part explores are both the shortcomings and the risks inherent in a Just in Time/Just

147. *Id.* at 78-79.

Enough approach to the delivery of legal services, the extent to which the existing consumer protection infrastructure can respond to such risks, and whether this infrastructure needs to adapt in any way to accommodate and neutralize any of these risks.

A. *It Is Not Always Easy to Identify and Classify Legal Needs*

The main promise of a sharing economy approach is that services will become more accessible when they are identified and classified, and then placed along a continuum of legal services delivery, meaning a client need will be matched with the appropriate service to meet that need, whether it is the delivery of information and guidance, brief advice, unbundled assistance, or full service representation. For a sharing economy approach to work, it would require that client needs are matched to the type and level of service that will address those needs appropriately and thoroughly. This will often take place through technology—either the Internet or mobile interfaces—that walks a client through a series of questions to determine the scope of his or her legal need and attempts to gauge the client's ability to receive (and process) information, assessing what level of service the client needs and can afford, and the extent to which he or she can handle the matter without further and more in-depth assistance.

There are obvious risks inherent in such an approach that threaten the viability of the model. A client can get key information about his or her case wrong. He or she can misunderstand a question during the classification process and input an incorrect answer. The questions could not be specific enough to identify all of the possible components of the client's problem such that it might misclassify the client's need or miss a critical issue directly relevant to the client's problem.

An appropriate response to these risks is for legal services providers to develop classification systems that are not only sophisticated but also easy to use. They should incorporate an option for the consumer to speak to a live counselor at any time (perhaps for a modest but waivable fee). Alternatively, if the customer does not seem capable of responding accurately to the questionnaire, or the client's

answers during the classification process raise red flags about the client's capacity for self-representation, a website navigator can help the client respond to questions about his or her legal needs. Some cases are easy to classify, or a field is one in which, through a comprehensive understanding of the law, an effective triage system is possible. In the tax field, computer-assisted tax preparation is likely the norm, for tax preparers as well as those who prepare their taxes on their own. Whether it is through Turbo Tax or a company like H&R Block, many tax returns are now prepared through computer programs that deploy an interrogatory format.¹⁴⁸ These programs take the responses to the questions and synthesize them in the preparation of tax returns. Through a careful dissection of the tax code and an understanding of the full range of potential permutations that might arise in client cases under it, the tax field is an area where even complex matters can be translated into a user-directed interface built on an interrogatory format.

Ultimately, a sharing economy approach will experiment in the creation of systems that can classify legal needs and assist consumers to formulate their responses to their legal problems, depending on the complexity of their legal needs and their own ability to face such problems without an attorney. Platforms for the delivery of legal services will need to develop these systems with a constant eye toward correction, iteration, and modification, to ensure that the systems correctly classify and sort client needs and target appropriate Just in Time/Just Enough services to meet those needs.

B. *Legal Services Are Not Easily Commoditized*

What has happened in the field of individual federal, state, and local taxation is that, through technology, the provision of tax assistance has become commoditized. Commoditization occurs when a product or service becomes so commonplace that one can obtain it from different

148. On the prevalence of the use of computer programs by paid tax preparers, see Rodney P. Mock & Nancy E. Schurtz, *The TurboTax Defense*, 15 FLA. TAX REV. 443, 456 (2014).

suppliers without being able to differentiate between those suppliers' products.¹⁴⁹ Milk, sugar, and gasoline are common examples of products that have become commoditized. In order for a sharing economy model in the delivery of legal services to work, the services offered through the model must become commoditized: what matters is that services are offered that are adequate (i.e., "Just Enough" services) to meet the need in a streamlined fashion. When one wants a will drafted, a lease prepared, or a contract executed, what one wants, typically, is simply to ensure his or her rights are protected. To turn to the tax preparation context, while some will want to explore creative ways to lower their tax bills, the deductions and tax advantages many can gain given their income and economic activity will be so low that the most they can hope for is to ensure they follow the law, take what basic deductions they can exploit, and avoid penalties.

The same is likely true of many common legal needs. An array of common lease terms appear in many leases in a jurisdiction, with some nuance and customization around the margins. Landlord-tenant disputes over rent payments are typically fairly straightforward, hinging on lease terms, whether a tenant is current in his or her lease obligations, and whether there are conditions in existence in the premises that violate the warranty of habitability. Small businesses often require little more than fairly straightforward assistance incorporating and choosing between a range of corporate forms and standard incorporation documents. With small estates, one can use standard form trust and estate documents to handle the majority of legal needs.

What this brief review of the complexity of some legal fields suggests is that those areas where legal needs remain mostly unmet—i.e., where low- and moderate-income people face many of their legal needs without a lawyer—are likely the fields where the matters have less complexity and are more easily commoditized, i.e., broken down into simple, straightforward approaches that can be pre-packaged and easily executed. It is in these areas where a sharing economy

149. According to the Merriam-Webster dictionary, commoditization occurs when a good or service is "widely available and interchangeable with one provided by another company." *Commoditize*, MERRIAM-WEBSTER ONLINE, <http://www.merriam-webster.com/dictionary/commoditize>.

approach is most viable, precisely because the services required are often simpler than in those corners of the market where complexity and customization not only reign, but can be seen as anathema to commoditization.

C. *Clients Do Not Always Know When They Need Legal Services*

Another problem that a sharing economy approach would face is that low- and moderate-income consumers do not always know when they have a legal problem and might not always have an awareness of their need for consultation with an attorney. While asymmetries of information may exist that mean a consumer does not know he or she has a legal problem, a fairly larger issue is asymmetry of access. A homeowner may not know of the name of a lawyer with whom he or she can consult to obtain information or guidance when facing a mortgage foreclosure. Perhaps a lawyer handled the closing on the home (and may have been supplied by the mortgage lender). The promise of a Just in Time/Just Enough system for the provision of legal services is that it will offer greater access, with a continuum of interventions and a range of pricing options. Through more aggressive advertising than is common in low- and moderate-income communities, a sharing economy model would raise its profile among low- and moderate-income consumers, offer reasonable rates for less intensive interventions, and offer guidance to prospective clients, helping them sort out whether they even have a legal problem for which legal assistance is necessary. It can help consumers understand the legal processes they may face and when intervention is necessary.

In one online foreclosure guide offered by a New York-based non-profit, an interrogatory interface helps end-users understand not just the foreclosure process but also their place within the timeline of a case, to understand what types of documents to expect from their lender, and when they need to formulate a legal response to the action.¹⁵⁰ While many

150. See *Welcome to the Foreclosure Guide*, EMPIRE JUST. CTR. (Sept. 16, 2014), <http://www.empirejustice.org/issue-areas/consumer/mortgage-lending--foreclosure-prevention/foreclosure-guide.html?referrer=https://www.google.com>.

consumers may not know when they face a legal problem, a sharing economy approach would help consumers overcome asymmetries of both information and access. It can make ready access to legal information a reality, and consumers can obtain this information to not just determine what type of responses are appropriate in a given situation, but also whether the consumer even has a legal problem in the first place. With more ready access to medical care through the Affordable Care Act, health care consumers are more likely to access health care for routine questions, checkups, or when something does not feel right, potentially staving off more serious problems or nipping them in the bud. The same can be true of a legal issue. With more ready and affordable access to legal information and assistance, a consumer will know whether he or she has a legal problem earlier in the process. Such access will help consumers identify legal problems and obtain the information—and perhaps the representation—needed to respond to them in a timely fashion.

D. *It Is Hard To Know How Much Is “Just Enough”*

Lawyers are constantly plagued with the question: how much is enough? When money is no object, this does not pose a problem. A lawyer can put as much work as he or she feels is necessary to achieve the client’s objectives. Of course, money is almost always an object, and savvy, bottom-line-conscious clients raise concerns about “over lawyering” a matter: providing the client with services he or she does not think are needed. While no lawyer can ever—or should ever—guarantee a client a successful outcome to his or her case, what the lawyer can do is ensure that he or she has provided, at a minimum, competent services to put the client in the best position to achieve his or her desired result. Many lawyers do not stop, and should not stop, at providing just competent services. Lawyers should always strive to represent their clients with zeal and to provide assistance to their clients to the best of their ability. One of the shortcomings of the contemporary approach to the provision of legal services, even one where clients are more cost conscious than ever, is that it produces asymmetries of access, however, and far too many clients go without representation.

In the contemporary model, lawyers devote their energies toward solving client problems. The level of service is not always dictated by client need, but rather, by the client's ability to pay. In the non-profit context, the ability to meet client needs is governed by the funding available to meet those needs and, far more often than not, consumers are left without representation because the funds are not available to meet client demand. In both contexts, what is "enough" legal representation is governed by the funds available to meet the need.

In the sharing economy model, while the availability of funds to pay for services will certainly have a role to play in the delivery of services, what will take a more prominent role is matching services to meet needs. The approach will make available a pre-packaged array of services, one that is designed to fully satisfy a client's particular needs, based not on the client's ability to pay, but rather, on his or her level of need, the complexity of the case, and the ability of the package of services to address the presenting legal problem. Virtual client triage and interviews will identify the presenting legal problem and direct the client to the level of service he or she needs to address the problem. While a client might wish to obtain more intensive services along the continuum, based on his or her ability to pay, the pricing structure of those services will be transparent, and the client will understand how much he or she will have to pay to obtain those services. At the same time, if the problem is properly diagnosed and the client receives a package of services that can satisfy his or her needs, the client likely will not need to pursue more involved, and more expensive, services.

For "bet the farm" litigation, well-heeled clients probably will not want to constrain their attorneys—assuming money is no object. But such situations are rare. It is not often that attorneys are free to expend as many resources as they have at their disposal to solve a client's problem. As a lawyer gains more expertise in a field, he or she should know when "enough is enough," and understand the field sufficiently to manage his or her resources in such a way to resolve the client's problem effectively and efficiently.

In the Supreme Court's decision in *Jones v. Barnes*, the Court found that a lawyer had provided effective assistance

of counsel despite the fact that he had chosen not to include all of the arguments his client had asked him to prosecute on appeal.¹⁵¹ The lawyer had chosen just a few to present in his briefing on the case and even appended the client's own brief, which laid out a range of additional arguments, to the lawyer's brief.¹⁵² The court found that part of the lawyer's role was to assist the court in finding the strongest arguments and presenting those rather than including all "colorable" claims and letting the court sort them out.¹⁵³ The majority opinion stated that "[e]xperienced advocates since time beyond memory have emphasized the importance of winnowing out weaker arguments on appeal and focusing on one central issue if possible, or at most on a few key issues."¹⁵⁴ It went on to quote a law review article written by Justice Robert Jackson as follows: "Multiplicity hints at lack of confidence in any one . . . [E]xperience on the bench convinces me that multiplying assignments of error will dilute and weaken a good case and will not save a bad one."¹⁵⁵ In other words, the Court was saying, in effect: "give us enough, but not too much."

As a new and young legal services attorney, just on the cusp of competence, I made a motion to dismiss in an eviction case. I believe I interposed perhaps twelve grounds for why the proceeding should be dismissed. Unsure of any particular defense, I wanted to make sure the judge had some basis to hand my client a victory. When I received my opponent's opposition papers to the motion, and after doing a little more research, it dawned on me which arguments were the real winners. In my reply papers, I winnowed it down to two main arguments: the ones I thought were enough to win the case. When the judge issued his decision on the motion, dismissing the case, he relied on the narrower claims made in the reply papers, basing his decision on the first of the arguments I had

151. 463 U.S. 745, 749-50, 54 (1983).

152. *Id.* at 748.

153. *See id.* at 752-53.

154. *Id.* at 751-52.

155. *Id.* at 752 (alteration in original) (quoting Robert H. Jackson, *Advocacy Before the United States Supreme Court*, 25 *TEMPLE L.Q.* 115, 119 (1951)) (internal quotation marks omitted).

made, while adding that he would also dismiss on the second if he had to, though it was not necessary.¹⁵⁶

When I discuss *Jones v. Barnes* with my students, I also recount this vignette from my experience in practice. I tell my students that the moment in my case where I saw the issues clearly and knew what I had to do to win the case—doing just enough, and not too much—was the moment I became a lawyer. I also reference contemporary pop culture and liken it to the scene in *The Matrix*, where our hero, Neo, played by Keanu Reeves, fulfills his potential and “sees the Matrix”: when he is able to appreciate the perceived world for what it is and learn to manipulate it at and to his will.¹⁵⁷

Just as the attorney in *Jones v. Barnes* needed to do just enough, but not too much, a lawyer in a sharing economy approach will strive to provide a level of service that meets the client’s needs. This is the quintessential task of the lawyer. He or she should understand the craft enough to realize what services to deploy to address and solve the client’s problem. This requires a skillful and thorough diagnosis of the problem, a correct assessment of the legal responses needed to address the problem, and a deft application of those responses to resolve the problem. With a desire to apply Just in Time/Just Enough logic to a client’s legal problem, the lawyer will utilize his or her training and skills to address the problem not just effectively but also efficiently. Understanding the correct level of skill and resources to apply to a problem should be the lawyer’s task and the client, unless money is no object, should not have to pay to “over lawyer” a case. The attorney, applying his or her craft, should understand what is needed and when, and the client should benefit from the timely and surgical application of legal skills and resources.

Of course, legal advocacy is not surgery, nor is it formulaic, where a lawyer inputs components of the equation to get a certain result. Indeed, if it was, we would not need lawyers for many matters, just as TurboTax has put tax

156. Indeed, to support the point that one ground was sufficient to dismiss the case, the court added the following quote, “[o]ne arrow, if fatal, is fatal enough,” citing *Inland Props. Co. v. Union Props., Inc.*, 98 N.E.2d 444, 445 (Ohio Ct. Com. Pl. 1951).

157. *THE MATRIX* (Warner Bros. Pictures 1999).

preparation in the hands of many Americans, displacing many accountants (or freeing up countless hours otherwise spent in frustration). Rather, it is an unpredictable field subject to the whims of judges, the proclivity of adversaries to be combative or cooperative, and sometimes the capriciousness of juries. Still, lawyers can diagnose a certain percentage of legal problems fairly easily and deploy a fairly standard array of responses and tactics to resolve the clients' problems. As the lawyer becomes an expert in a field, the ability to streamline the delivery of services grows. There will always be outliers and cases that do not fit within well-worn advocacy responses. These cases call for a more intensive application of legal services, directed toward the right hand side of the legal services continuum. Nevertheless, a Just in Time/Just Enough approach requires the lawyer to exercise his or her craft, to sort the simple cases from the more complex, and direct the appropriate resources and responses to where they are needed most. In other words, it calls for the lawyer to be a lawyer.

E. *Will Commoditization "De-Professionalize" the Profession and Make Lawyer Work Less Rewarding?*

If lawyering becomes commoditized, will lawyers become de-professionalized? If the lawyering process is broken down into its components parts, and, like Adam Smith's pin factory workers,¹⁵⁸ lawyers are plugged into different parts of the legal supply chain, will it mean their work will become less meaningful, less rewarding, and no longer part of a profession? But if the low rates of lawyer job satisfaction, the complaints of many that they are resigned to chasing clients and profits, and the argument that the legal profession, in the words of Anthony Kronman spoken over two decades ago, is in "danger of losing its soul,"¹⁵⁹ tell us anything, it is that the profession is already at risk of de-professionalization. Today, the state of the legal profession is one in which lawyers are already feeling less positive about their roles,

158. ADAM SMITH, *THE WEALTH OF NATIONS* 3-4 (Barnes & Noble 2004) (1776).

159. ANTHONY T. KRONMAN, *THE LOST LAWYER: FAILING IDEALS OF THE LEGAL PROFESSION* 1 (1993).

and the high rates of depression among attorneys¹⁶⁰ mean that they are not likely feeling very positive about the future outlook of their careers.

While a sharing economy model is no panacea for these ills, it holds out the prospect that lawyers will be able to gain mastery over a subject matter area or areas, some degree of autonomy over their work, and a purpose to it that accepts the profit motive but offers greater accessibility as another goal. Lawyers will spend more time speaking to clients and providing meaningful assistance to them that can really address their legal needs. They will spend less time searching for and cultivating clients. They will become experts in a particular field, through study, practice, and fielding questions from clients. For those who choose to do so, they can forego some compensation for greater flexibility in their work schedules. This flexibility will enable them to find a work-life balance that accommodates their professional and personal needs.

At the same time, I do not pretend that this analysis is the last word on whether a sharing economy approach will make lawyers engaged with the practice of law in this way love their jobs. My discussions with one attorney from LegalZoom deserve deeper analysis; the point of this Article is not to test those allegations. I will leave that to others. My point here is to begin a conversation about the extent to which lawyers offering legal services through a sharing economy approach might find their work more rewarding—personally, professionally, and financially—than current options available to them.¹⁶¹ Is it possible that such an approach might lead to some of the types of job settings in which some new lawyers are finding themselves, like contract work or document discovery, that can bring with them less job satisfaction and diminished financial rewards? Yes, it is possible. Are there ways sharing economy providers

160. Benjamin et al., *supra* note 143, at 240-42.

161. For a discussion of lawyer job satisfaction in light of recent changes in the market for lawyers, see Ronit Dinovitzer & Bryant G. Garth, *Lawyer Satisfaction in the Process of Structuring Legal Careers*, 41 LAW & SOC'Y REV. 1 (2007). The piece, admittedly, was written before the most recent economic downturn but still has some insights into factors that influence lawyer job satisfaction.

of legal services might explore opportunities to improve the job satisfaction of their attorneys, like offering these lawyers the chance to dedicate a portion of their time to projects they find more interesting and rewarding, like pro bono work, impact litigation, or law reform initiatives that might flow from their core work?¹⁶² Absolutely. These would all serve as components of a sharing economy experiment that seeks to make legal services more affordable and accessible for the consumers and more rewarding, on many levels, for the providers.

F. *Will a Sharing Economy Approach Make Legal Services Less Expensive to Deliver?*

A core promise of the sharing economy approach is that it will make legal services more affordable, and, in turn, more accessible to a broader spectrum of the consumer market. By making services more affordable, it will appeal to a broader segment of the population, allow a higher number of consumers to access legal services, and generate more revenue. A sharing economy business plan would hinge on the commoditization of services: the ability to make services available along the legal services continuum described earlier, through a Just in Time/Just Enough approach. Without the ability to deliver services in a more affordable and accessible fashion, a sharing economy approach will not live up to its promise.

A cautionary tale is that of the company We the People (WTP). WTP began operating a website as well as a network of storefront offices. Consumers could access an array of forms through the WTP site and would fill them in for later review by WTP employees. These services were offered at a fraction of what an attorney might charge for assistance completing such forms. At its peak, WTP had over 1000

162. Famously, employees at Google are supposedly permitted to work up to twenty percent of their paid time on projects that interest them, and one product of such efforts includes the creation of the ubiquitous email service Gmail. Whether this is still an option at Google is subject to some debate. See Christopher Mims, *Google's "20% Time," Which Brought You Gmail and AdSense, Is Now as Good as Dead*, QUARTZ (Aug. 16, 2013), <http://qz.com/115831/googles-20-time-which-brought-you-gmail-and-adsense-is-now-as-good-as-dead>.

stores in thirty states.¹⁶³ The business model has collapsed, however, as the company has learned that the preparation of forms took longer than expected and was more labor intensive than its pricing structure allowed.¹⁶⁴ In 2010, WTP filed for bankruptcy and now boasts just thirty-two offices in six states.¹⁶⁵ The apparent failure of WTP's business model suggests that cost-saving measures in the delivery of legal services are risky: streamlining processes can possibly fail to make the delivery of services cost-effective or they can render those services ineffective. A sharing economy approach would need to accomplish several ends: that the services offered will be competent as well as cost-effective, less expensive, and more accessible than traditional legal services.

A sharing economy approach would accomplish these objectives in four critical ways. First, by focusing on the provision of expert services delivered efficiently by lawyers and legal staff with deep knowledge and expertise. Second, by ensuring legal staff are engaged in direct, income-generating activities. Third, by producing informational products that will generate long-term profits at minimal cost. Fourth, by providing early intervention in the life cycle of a legal matter so as to avoid larger, more expensive problems. I will discuss these strategies, in turn, below.

1. Expert Services

As the interviews with LegalZoom CEO John Suh and attorney Mark Russakow suggest, attorneys working through a sharing economy model develop deep expertise in a legal field or fields. While there is certainly a period of training and "ramping up" that is required to be an expert in any field or fields, once a lawyer works in those fields, he or she has the opportunity to develop a thorough knowledge of the area of law, making the delivery of legal information and advice easier and more cost-effective. The lawyer no longer has to research every client problem because he or she has likely seen it before and knows how to address it. The lawyer

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

164. *Id.* at 24-25.

165. *Store Location Directory*, WE THE PEOPLE, <http://www.wethepeopleusa.com/store-directory> (last visited Apr. 2, 2016).

can spend more time advising clients and less time researching unfamiliar areas of law. Of course, the lawyer will likely face new questions and new twists as he or she dispenses advice to new clients. The amount of time the lawyer has to spend handling such new issues will diminish over time as he or she develops a deeper and more comprehensive knowledge of his or her fields of expertise. In the for-profit world, the client typically pays for this research, if he or she can afford it. In the sharing economy model, the lawyer can try to charge the client for the time spent researching legal issues, but, instead, will most likely absorb that cost to keep costs down per client, and amortize it over time, meaning that the costs will be reclaimed as the lawyer sees more clients with a similar problem or question. By developing this deep understanding of a field or fields, the lawyer can deliver services at a lower cost because he or she needs to spend less time engaged in research and can spend more time serving clients directly, because he or she has at her disposal ready access to knowledge as well as his or her own expertise in the field.

2. A Focus on Income-Generating Services

Similarly, just as a lawyer who can deliver services based on his or her own deep well of knowledge of and familiarity with a given area or areas of law can spend more time engaged in income-producing activities by delivering services rather than engaging in research when faced with a question outside the lawyer's field, with the strength of the sharing economy platform's marketing muscle behind him or her, the lawyer can spend less time trying to identify and cultivate clients. While many lawyers engaged in private practice spend some portion of their time recruiting potential clients, the sharing economy model develops its own brand and engages in broader advertising to markets that might be more difficult for a small firm or solo practitioner to reach. By tapping into broader markets—the great sea of unrepresented low- and moderate-income Americans—and making services more affordable and more accessible, a sharing economy approach takes the client development function mostly away from the lawyers and legal staff, enabling them to direct their attention to service delivery: i.e., where there is more of a direct connection between a

lawyer's actions and the income he or she can generate from such actions.

3. Developing Income-Generating Informational Materials

Sharing economy lawyers and legal staff will also spend their time developing informational guides, know-your-rights materials, and interactive means of providing readily accessible assistance to the consumer at a fraction of the cost of even brief advice. Once the provider prepares the material and makes it available, the costs are fixed, even if it must monitor changes in the law or new issues that arise to ensure the material incorporates and accommodates such changes. As with the legal research of novel issues that arise in practice, the costs associated with the preparation and monitoring of informational materials can be amortized over time. As consumers access materials, they will pay a relatively small fee to do so. A provider will prepare materials based on his or her knowledge of a field depending on an assessment of the types of services that are reducible to an informational guide and which will likely generate sufficient consumer interest. The provider will seek revenue from customers for those materials sufficient to compensate it for the resources expended to prepare them. Once that point is crossed, and the revenues match the cost of preparing the materials, any subsequent payments are profits for the provider, even allowing for some of those profits to cover the cost of updating and tailoring the materials to address new and evolving issues.

In some ways, the resources expended in the preparation of forms can also operate as a loss leader for the sharing economy platform. Even when pre-prepared materials may not generate sufficient income to compensate for the time spent in preparing and maintaining them, they can also serve to attract customers to the more intensive end of the legal services continuum. Customers may have their basic questions answered through the information-based interfaces of sharing economy platforms, but they may find that they have more specific questions they cannot answer through those interfaces. They will have honed their questions, however, and can access just those services they

need. This might mean that they will use fewer services (if money were no object) than they otherwise might access as a result of getting at least some of their questions answered through information-based resources available on the platform. At the same time, there is likely some segment of the population that would not communicate with a lawyer in any way simply because of a fear that the cost would be prohibitive. Platforms could also experiment with giving away information for free, in the hope that clients would be impressed by the service and encouraged to turn to the platform as their needs grow more complex.¹⁶⁶ By giving prospective customers an array of options, and meeting at least some of their needs through low-cost and easily accessed information, it could lead clients to seek to pay for other services that are not as easily addressed through the mere provision of information alone. These clients might never become clients without an easy-to-access platform that addresses at least some of their needs in a more affordable fashion.

4. Early Intervention Is More Cost-Effective

What often happens to low- and moderate-income individuals is that their legal issues spiral out of control, where a simple fix, early on, can help minimize the risk of more significant problems down the road. A tenant who has a recurring problem of poor housing conditions in his or her apartment could seek out brief advice and assistance, probably through a simple information exchange, about how to encourage the landlord to make the necessary repairs. This interchange may generate a formal letter or some other notice to the landlord that will trigger a warranty of habitability defense (which often requires notice to the landlord of the condition). The receipt of the formal notice might encourage a landlord to make the necessary repairs. If the landlord does not, it will at least establish the notice requirement of the defense, helping to lay the groundwork for the tenant to raise the warranty as a defense should his or her landlord take the tenant to court. The tenant will also receive information about his or her right to withhold rent (in

166. For a discussion of “free” as a business model for generating profits, see CHRIS ANDERSON, *FREE: THE FUTURE OF A RADICAL PRICE* (2009).

accordance with local rules governing the warranty of habitability). This may invite the landlord to bring an action, but it will get the landlord to take notice. Armed with information about holding one's rent in escrow pending the outcome of the landlord-tenant matter, the tenant will be in a markedly better position to secure the conditions, and defeat the nonpayment action that may follow, than he or she would have been absent the legal guidance.

What a sharing economy approach strives to achieve is better preventive care. When consumers have easier and more affordable access to legal guidance, they can not only try to avoid small legal problems from spiraling into more serious ones, but they can also learn of ways to protect their rights should the situation escalate into a more serious problem.

While in practice, I worked with a large tenant association in the Peter Cooper Village/Stuyvesant Town development on the East Side of Manhattan. When a new owner had purchased the development (in the largest residential real estate deal in U.S. history, paying over \$5 billion), the tenants feared—with good cause—that the new landlord would pursue every avenue to clear rent regulated tenants out of the development so that it could charge market prices for the rental apartments (which might double or even triple the amount the landlord could charge for rent). In anticipation that the landlord would make an array of different legal claims in an attempt to evict the tenants, the tenant association gathered at a local public school where legal information could be shared with them. At this meeting, I was able to tell hundreds of tenants in a single afternoon how they could marshal the evidence necessary to establish their right to the rent regulated apartments. For example, regulated apartments in New York City are supposed to serve as the primary residence of the tenant and a tenant who cannot prove he or she resides in the unit for over 180 days out of the year can face a non-primary residency challenge. Since gathering documentary proof of one's actual residency can be a challenge, and housing court cases in New York City are summary proceedings that move much more quickly than a typical case and in which there is no discovery without leave of court, a tenant who had not thought about how to develop his or her proof of residency might face an

eviction action and not have the ability to prove primary residency. I informed all of the tenants to start thinking about what kind of evidence they could gather—and to start gathering it as best they could—in the event the landlord brought an action against them. If it did so, the tenant would be prepared. For some tenants, when they received correspondence from the landlord that they were going to face a non-primary residency challenge, many could simply show the landlord's lawyers the evidence the tenants had gathered—voter registration information, automobile registration records, even gym attendance records—and the landlord would not proceed with the action. This preventive assistance helped stave off some number of non-primary cases, cases that can be complex and labor intensive, with the tenant's home on the line.¹⁶⁷

A sharing economy approach utilizes the preventive care model of the provision of health care to make legal assistance more accessible and affordable so that consumers will have at their disposal the opportunity to access legal advice and even representation at a point where the matter with which they are dealing might be more easily managed and less costly to confront. Appropriate legal guidance, in a Just in Time/Just Enough approach, can facilitate meaningful and accurate assistance to consumers that helps them avoid having to rely on (or not rely on as the case may be) far more expensive legal interventions. The promise a sharing economy approach offers is that it will enable prospective clients to access legal services in such a way that might help them prevent their legal problems from growing to a point where legal assistance will be too costly to utilize. An accessible, affordable platform for the delivery of Just in Time/Just Enough services will likely encourage more consumers to access services sooner than they would otherwise (if they did at all), allowing the client to minimize some problems and avoid more complex problems altogether. In these ways, more accessible and affordable services, offered earlier in the life cycle of the legal problem, will help

167. For a recounting of the Peter Cooper Village/Stuyvesant Town campaign, see Raymond H. Brescia, *Line in the Sand: Progressive Lawyering, "Master Communities," and a Battle for Affordable Housing in New York City*, 73 ALB. L. REV. 715 (2010).

address the problem and prevent some problems from getting more complex and too costly to resolve.

5. A Final Note on Affordability and Access

I began this section by saying that services through the sharing economy platform would have to be competent as well as cost-effective, less expensive, and more accessible than traditional legal services. By making them less expensive, however, that does not mean that they will not meet a threshold level of competence, let alone excellence, or that other practical barriers to such services will not threaten to impede low- and middle-income people from gaining access: like the Digital Divide that keeps some portion of the population, because of income, resources, or geography, from hi-speed broadband Internet access;¹⁶⁸ or the lack of formal access to banking services many take for granted, like a credit card, which is typically needed for an Internet-based exchange of goods and services. Any sharing economy approach to the delivery of legal services, if it has as one of its goals expanded access to justice, will have to also overcome some of these practical barriers, while ensuring that Just in Time/Just Enough services are not an inferior product.

G. *Will a Sharing Economy Approach Diminish Attorney Employment Opportunities?*

Will a new, sharing economy model for the delivery of legal services have an adverse impact on attorney employment prospects? Will the lawyers of today, and those who aspire to be lawyers tomorrow, face a daunting job market, and will a sharing economy approach reduce the income lawyers can earn? While it is difficult to say with any certainty what the job prospects and incomes of tomorrow's lawyers will be if the legal profession is disrupted by a sharing economy approach to the delivery of legal services, one thing is certain: the legal profession is in the midst of a reset, one that might or might not be permanent. Recent law

168. Symposium, *Bridging the Digital Divide: Equality in the Information Age*, 20 CARDOZO ARTS & ENT. L.J. 1, 2 (2002).

graduates have seen their job prospects improve slightly over the last year, but that might be a function of fewer law students entering, and graduating from, law schools than in previous years.¹⁶⁹ Law firm profits in many sectors are down. And some prominent law firms have failed spectacularly in recent years. Will a sharing economy approach to the delivery of legal services continue this downward trend, or will it produce something else? Will it unlock the latent legal market such that those currently underserved, if they are served at all, by the legal profession will finally have their legal needs met? At a time when employment opportunities for new lawyers are down considerably, it is simply unconscionable that there is also a tremendous need for lawyers. There is just not an ability to pay for them or to fund non-profit providers to hire them.

In economics, the theory of Induced Demand suggests that making a good or service available to a market can sometimes increase the demand in that market by engaging with previously dormant consumers, encouraging them to purchase the good or service where they might have seen it as priced out of their reach before. This phenomenon is seen by some in transportation planning, where a highway is expanded and, paradoxically, traffic congestion worsens because more drivers take to the road.¹⁷⁰ It can also arise in the health care setting, where it known as Physician-Induced Demand: i.e., where doctors might promote particular medical procedures.¹⁷¹

169. Mark Hansen, *Good News for New Lawyers: Fewer Grads Mean Better Job Prospects, Report Shows*, A.B.A.J. (Apr. 29, 2015, 4:30 PM), http://www.abajournal.com/news/article/job_market_for_new_law_grads_is_improving_data_shows.

170. Peter J. Hills, *What is Induced Traffic?*, 23 TRANSP. 5, 7-8 (1996) (describing phenomenon of induced traffic). The theory is not without its skeptics. See, e.g., Peter Bonsall, *Can Induced Traffic Be Measured by Surveys?*, 23 TRANSP. 17 (1996) (questioning the methodology of measuring the phenomenon of induced demand in the transportation setting).

171. For a discussion of Physician-Induced Demand, see Jerry Cromwell & Janet B. Mitchell, *Physician-Induced Demand for Surgery*, 5 J. HEALTH ECON. 293 (1986). See also Atul Gawande, *The Cost Conundrum: What a Texas Town Can Teach Us About Health Care*, NEW YORKER, June 1, 2009, at 36, 38 (noting practices of physicians in one town that were promoting unnecessary and costly medical procedures for personal enrichment).

Is it possible that the theory of Induced Demand will affect the job prospects of today's and tomorrow's lawyers? There is no question that a latent legal market exists of low- and moderate-income consumers who presently face their legal problems without a lawyer, primarily because they cannot afford one, or, what is also likely, that they do not know how or where to access one. The sharing economy approach to the provision of legal services attempts to overcome both of those barriers to access. It seeks to lower the cost of such services yet raise awareness about their availability. It also would strive to make legal assistance easy to access and as cost-effective as possible, providing Just in Time/Just Enough services. At present, there is a largely untapped body of potential customers who are priced out of the market for legal services. And until it is tried, it is not like there are viable alternatives for serving this population and expanding access to justice.

CONCLUSION

In his landmark work, *The Innovator's Dilemma*, Harvard's Clayton Christensen has developed a theory of disruptive innovation that suggests that a common way through which change in a market occurs is when incumbent providers of a good or service offer their wares in the market in a way that actually exceeds the needs as well as the ability to pay of a large segment of the customers within that market. When that happens, new entrants into the market challenge the dominance of the incumbents by offering less expensive product or service alternatives that more closely match the needs and the ability to pay of the "lower end" of the market. The incumbents tend to forego the lower end of the market in pursuit of strategies that target the customers who are still willing to pay more for the product or service the incumbent offers. Slowly, the innovations that the new entrants offer, those that lower prices or tailor their products or services to better match the needs of the market, begin to attract a larger and larger segment of the market until the

incumbents are edged out, and the new entrants come to dominate the market with their “Just Enough” services.¹⁷²

Finding fields where disruptive innovation can take hold is not hard. One needs to identify markets where incumbent providers of goods and/or services are charging more than customers want to pay and possibly providing more services than customers want or need. It is hard to argue that the legal services field in the United States is not a market that exhibits these characteristics. Even on the high end of the legal services market, clients have been complaining for decades about the high cost of services and that firms are over-lawyering the cases, placing associate attorneys on matters to carry out tasks that paraprofessional staff can handle, like proofreading or document production. On the lower end of the market, clients simply cannot pay the costs associated with the provision of many forms of legal services. On the non-profit side, clients can pay nothing, and even higher income segments of society—the working poor and lower middle class—have little spare income to devote to hiring an attorney, even when the consequences of facing their legal problems without an attorney can be dire.

A Just in Time/Just Enough approach to the delivery of legal services, which lowers costs and fine tunes the matchmaking function by connecting clients to just the legal services they need, holds out the promise that providers can meet the needs of a wider segment of the market. In turn, just as in the Innovator’s Dilemma model, it is possible that these sharing economy providers will slowly work their way upmarket, bringing their service delivery innovations to new fields, meeting the needs of clients with a greater ability to pay, ultimately disrupting the entire market. If the

172. For an overview of the theory of disruptive innovation, see generally CLAYTON M. CHRISTENSEN, *THE INNOVATOR’S DILEMMA: THE REVOLUTIONARY BOOK THAT WILL CHANGE THE WAY YOU DO BUSINESS* (2011). Christensen notes that disruptive innovation begins at the lower end of a given market and slowly works its way into the mainstream, displacing incumbents. For a more recent description and summary of the theory, with a particular assessment of its application to the phenomenon of the Uber car service platform, see Clayton M. Christensen et al., *What is Disruptive Innovation?*, HARV. BUS. REV., Dec. 2015, at 44. For a critique of Christensen’s theories of disruptive innovation, see Jill Lepore, *The Disruption Machine: What the Gospel of Innovation Gets Wrong*, NEW YORKER, June 23, 2014, at 30.

Innovator's Dilemma approach is applicable to the legal services market, however, true disruption will take place first on the lower ends of the market. Those looking to disrupt the practice of law would start here, at the lower ends of the market, and a sharing economy approach attempts to do just that. It would do this by both reducing cost and bringing greater certainty to that cost.

A sharing economy approach to the delivery of legal services stands a decent chance of unlocking the potential of a new platform for the delivery of these services while tapping into the latent legal market through the delivery of efficient and cost-effective services. Unlike other sharing economy settings, the legal profession has a robust infrastructure already in place to ensure that the provision of legal services through a sharing economy platform conforms to critical ethical principles that govern the practice of law, while providing a pre-existing system for regulating and policing attorney misconduct. For these reasons, the legal profession is ripe for the type of disruption sharing economy models are bringing to other settings, yet has the types of protections in place to provide a suitable degree of consumer protection. Indeed, it is this type of protection that is still emerging and being fought over in other sectors of the economy where sharing economy experiments are presently evolving. The legal profession is a field where similar experiments can run, but run on a test track that is well worn and well defined, yet flexible by design. The unique nature of the legal profession, including a complex web of barriers to entry, codes of conduct, insurance mechanisms, disciplinary machinery, and recourse through the courts, serves to police the appropriate bounds of attorney conduct. While other sharing economy sectors are struggling to develop guard rails and other protections to guide conduct, protect consumers, and instill trust, the legal profession has developed such means, over centuries, to accomplish such ends. As a result of these forces, a Just in Time/Just Enough approach to the delivery of legal services is perhaps a more natural fit than some other sharing economy experiments, one that promises the benefits of the sharing economy, while protecting consumers from some of the risks such an approach can generate.

What is more, short of a massive influx of government and philanthropic funds—in the billions of dollars—to improve access to justice for low- and moderate-income Americans, at present, there are no notable alternatives that can deliver legal assistance to these populations in such a way that will meet the desperate need. Moreover, the steady erosion of lawyer job prospects, and the low level of lawyer job satisfaction, both call out for new strategies and new approaches to the delivery of legal services, ones that might offer lawyers greater autonomy, mastery, and purpose over their work. Unlike other sharing economy settings, a sharing economy approach to the delivery of legal services is one where a range of sophisticated, comprehensive, yet flexible protections is presently in place to insulate consumers from provider misconduct. As a result, such an approach presents an excellent opportunity to improve access to justice, while ensuring consumer protection. Given that new modes of delivering legal services will likely also open up new opportunities for lawyers to exercise their skills and their craft, such an approach might also serve the ends of improving lawyer job satisfaction and perhaps even their employment prospects.