REGULATING ACCESS TO JUSTICE: THE ARIZONA EXPERIENCE

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To the Associate Vice President for Research and Dean of the Graduate School:

I am submitting herewith a thesis written by Donna Hooper entitled "Regulating Access to Justice: The Arizona Experience." I have examined the final copy of this thesis for form and content and recommend that it be accepted in partial fulfillment of the requirements for the degree of Master of Arts, with a major in government.

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REGULATING ACCESS TO JUSTICE:
THE ARIZONA EXPERIENCE

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This study traces the development of the independent paralegal movement, summarizes the literature, uses Arizona as a case study to evaluate trends, and makes recommendations about incorporating paralegals into the legal services system to increase access to justice for all. The study is based on a review of printed sources, an investigation of case law and statutes, and a series of interviews with players in the Arizona controversy. The policy decision as to whether to allow nonlawyers to perform legal tasks must balance the public's right to choose with the potential for harm. While the Arizona case reveals a minimum of harm has resulted from allowing independent paralegal practice, the system functions without regulation and therefore affords little protection from incompetence. The Arizona case demonstrates that nonlawyers can perform routine legal tasks; but could be improved by implementing more state regulation, such as a registration system.

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Chapter 1

Introduction

The process of understanding, interpreting, and applying the law involves skills critical to life in twentieth century America. Who has access to this process and who is entitled to participate in it are pressing public policy questions. As Deborah Rhode observes, "No issue is more central to the contemporary American legal profession than how to define itself as a profession: who's in, who's out and why" (1996, 710). In the 1930s, with the enactment of unauthorized practice of law statutes, it became illegal for anyone except licensed attorneys to perform tasks labeled by the profession as legal services (Auerbach 1976, 300; HALT 1988; Stevens 1983, 178). However, over the past several decades, the movement towards nonlawyer practice has become a serious factor in the legal service industry (HALT 1987; Justice 1991; Munro 1990; Podgers 1993; Rhode 1996; Talamante 1992), with states proposing a wide variety of solutions to the problems encountered in the regulation of the unauthorized practice of law (Bielec 1999; Justice 1991; Munro 1990; Talamante 1992).

Currently Arizona provides a unique case study for this topic because independent paralegals may provide legal services directly to the public without the supervision of an attorney. In Arizona, independent paralegals have become a part of the "who's in" in the

legal services profession (Greenberg 1992; Kruetzer 1994; Leonard 1990; Pocock 1993; Podgers 1994; Shely, 1994 ,1998a, 1998b).

In 1984, the State Bar of Arizona was listed as one of the state agencies to be terminated by July 1, 1984 under a "sunset law."[1] As a result of this sunset process,[2] the State Bar Act was repealed, including the provisions of that act that made the unauthorized practice of law a misdemeanor. While the Arizona Supreme Court Rules continue to prohibit such conduct,[3] the unauthorized practice of law is no longer a crime. At present, Arizona's sole regulation of the unauthorized practice of law lies in the Supreme Court Rules. The general rule simply states that one may not practice law without a license; however, exceptions allow nonlawyers to practice under specific conditions.[4]

As a result of the sunset law, "independent-minded paralegals and legal secretaries" have been opening businesses known as document preparation and paralegal businesses.[5] Currently there is no regulation of independent paralegals in Arizona. Independent paralegals obtain information from clients, prepare documents for divorces, compile and file bankruptcy papers, compose wills and become involved in delivering legal services in many other areas. Independent paralegals differ from traditional paralegals because an attorney does not supervise their work. While independent paralegal businesses are no longer illegal in Arizona, the issue is still highly debated by those who oppose nonlawyer practice in the legal service industry (Metz 1997; Calle

1994; Shely 1998a). Ultimately, the purpose of this study is to attempt to answer the following research question: **Does Arizona's approach serve as a positive model for independent paralegals providing competent, affordable legal services to the public?**

The American System

The law impacts every American's life in matters as diverse as resolving domestic problems, buying and selling property, making wills, probating estates, guarding against discrimination, making contracts, resolving disputes between neighbors, protecting property rights, enforcing environmental rules, ensuring worker safety and rights, and regulating the relationships between landlords and tenants. Rare is the person who does not at some point in his or her life require access to legal services.

An important principle in the American system of government is that no one should be denied justice. While justice can mean a guarantee of equal treatment, there is no society that is known to "equally distribute shares of justice" (Friedman 1977, 67). However, a society can define for itself a minimum share of justice, just as it can set a minimum income, minimum health care, and so forth, with the idea that everyone is entitled to receive this minimum. The minimum can be defined in terms of basic rights and fair redress of grievances (Friedman 1977, 67). "In the American system of government, those wrongly harmed seek and find redress through the judicial system"(Talamante 1992, 87). There is a presumption of fairness in the advisory process and an ideal that seeks adequate provision of legal services to all that need them

(Auerbach 1976, 4). Therefore, the question is: Has a minimum share of justice been achieved in the United States (Friedman 1977, 67)?

Unlike civil cases, representation in criminal cases has been based on the Sixth Amendment[6] to the United States Constitution, which guarantees the right to counsel in a criminal trial. A series of United States Supreme Court decisions applied the Sixth Amendment to all states via the due process clause of the Fourteenth Amendment[7] (Zemans 1987, 2:636; Nagel 1972, 47). "First for capital cases in which the death penalty was threatened (*Powell v. Alabama*) in 1932, then for all felony cases (*Gideon v. Wainwright*) in 1963, and finally for misdemeanor cases that result in a jail sentence (*Argersinger v. Hamlin*) in 1972, the United States Supreme Court has required states to provide or to pay for legal representation of the indigent" (Zemans 1987, 2:636-637). Therefore, the controversy over legal fees and the availability of legal services has been settled in the criminal arena, but not in civil cases (637).

In the United States, lawyers have guided lay people through the complexities of the legal system, and with specific laws, known as the unauthorized practice of law (UPL) statutes, lawyers have enjoyed hegemony, or some would say a monopoly, in the field (Podgers 1994, 24). Recently, lawyers have utilized specially trained lay personnel, referred to as legal assistants or paralegals to perform routine tasks in the law office. As the need for legal services has increased, along with the expense of retaining an attorney, legal assistants have begun to encroach on the traditional turf of attorneys. Those who

are excluded from the legal system because they cannot afford to pay an attorney are seeking lay practitioners as alternatives to full-scale legal representation (Podgers 1994, 24).

Controversy has arisen concerning just how far lay people can go in delivering law related services. State legislatures, court systems, administrative agencies, bar associations, and legal assisting associations have all struggled to define the parameters of the practice of law. All of these groups seek to balance the conflicting values of providing broad access to justice while protecting the public from incompetent, negligent or fraudulent nonlawyer practitioners. This controversy has become especially important in the state of Arizona, UPL statute has been sunsetted, opening the door to increased participation in the legal system by nonlawyers.

Alternatives to Legal Representation

Today, citizens can turn to a growing number of alternatives to handle their legal matters. Self-help materials are now available in abundance, and tasks once handled only by lawyers are now being performed by accountants, real estate agents, bankers, and others. A new group of paraprofessionals has arisen known as independent paralegals, thereby increasing nonlawyer activity and competition in delivering legal services to the public. Those operating as independent paralegals may use a variety of titles, such as legal technicians or nonlawyer practitioners (Metz 1997). These individuals provide legal services to consumers without the supervision of an attorney (Podgers 1993, 1994; Metz

1997). It is argued that independent paralegals can provide adequate services to consumers at lower prices for a variety of basic legal needs. Among several issues of the debate, legislatures, supreme courts, bar associations, paralegal organizations, and consumer groups seem to be grappling with two key issues. One issue is where to draw the boundary line around the practice of law. The second issue is whether and how to implement a regulatory structure that would allow nonlawyers to provide some types of services to the public in a way that would minimize the possibility of consumer harm (Podgers 1994; Rhode 1996).

The dominant forces behind this trend are both the conviction that lawyers are failing to meet the legal needs of the public, particularly poor and moderate-income persons, and the growth of the paralegal profession as a possible alternative. Proponents of nonlawyer practice cite access to justice and choice as key issues, while opponents cite competence or incompetence as their primary reason for opposing nonlawyer practice (Podgers 1994; Lattoraca 1993; Munro 1990; Rhode 1996).

Humans Against Legal Tyranny (HALT) is a citizen's legal reform advocacy group that "supports the use of the least restrictive regulation possible to allow consumers the widest range of choices in the legal services marketplace without exposing them to proven harm" (HALT 1988, 3). HALT argues that the bar has not substantiated the claim that the public must be protected from harm by nonlawyers who "practice law." In "Policing the Professional Monopoly: A Constitutional and Empirical Analysis of

Unauthorized Practice Prohibitions" Deborah Rhode states that in the unauthorized practice cases that arose from direct customer complaints, only two percent included a charge of specific injury (Rhode 1981, 33). It is HALT's position that the consumer should be allowed to determine how much they want to spend and what level of expertise they need to handle their legal affairs. This is usually not possible since lawyers have succeeded in maintaining a monopoly on legal services through the use of UPL statutes (HALT 1988).

Unauthorized Practice of Law Statutes

Prior to the 1930's, the rules regulating the unauthorized practice of law were focused on preventing nonlawyers from appearing in court. However, in 1930 the American Bar Association (ABA) established its first Committee on the Unauthorized Practice of Law. By 1938 there were over 400 state and local bar associations having similar committees with the goal and purpose of establishing statutes designed to prohibit nonlawyers from engaging in many law related activities (Talamante 1992, 873-877). During the depression, bad economic times hit the legal profession, and suddenly, "there were too many lawyers chasing too few clients--at least those who could pay their bills" (Warner 1994, 1/14). Many people considered handling their own legal affairs, or began to seek help from more reasonably priced nonlawyer practitioners. However, due to the newly enacted "unauthorized practice of law" statutes and tough penalties, nonlawyer prosecutions increased.

The majority of statutes were and continue to be broad and all-inclusive. Ultimately judges are left to determine what is and is not included in the practice of law on a case-by-case basis. For example, in Texas, the definition of the "practice of law" means the

> preparation of a pleading or other document incident to an action or special proceeding or the management of the action or proceeding on behalf of a client before a judge in court as well as a service rendered out of court including the giving of advice or the rendering of any service requiring the use of legal skill or knowledge such as preparing a will, contract, or other instrument, the legal effect of which under the facts and conclusions involved must be carefully determined (Tex. Govt Code sec. 81.101 (1998)).

Any person who commits the offense of unauthorized practice of law in Texas is guilty of a Class A misdemeanor (Tex. Pen. Code sec. 381.123 (1997)) and can be punished by fine not to exceed $4,000; confinement in jail for a term not to exceed one year; or both such fine and confinement (Tex. Pen. Code sec. 12.21 (1997)).

Historical Development of the American Legal Profession

Before moving to the present, a look at the past development of the legal profession will help to understand more fully how paralegals have reached their position within the field and shed light on the controversy over who should be allowed to provide legal services. Lawyers have not always dominated the delivery of legal services. Only in the twentieth century did the field become limited to those with special training and expertise.

Erwin Griswold (1965), former dean of Harvard Law School, writes of how the obstacles that lawyers have created for themselves throughout history have affected the development of the legal profession. Griswold writes:

> The obstacles which we have set up for ourselves are almost insuperable. Yet we keep trying, and we make progress, I think. If we do, this is due to the devoted efforts of hundreds of able and dedicated lawyers, now and in the past. For, in this welter of size and confusion, we have always been blessed with a surprising number of strong and able men, who are willing to devote their time, their energy and their abilities to the public good, and the good of their profession. Being a lawyer in the United States is sometimes trying to the soul. But it has elements of inspiration. Without a long tradition, with a scattered and complicated history, and against great odds, we make our legal system work. We understand it ourselves, and seek to make it better. We can only hope that our friends will be tolerant of us in the light of the difficulties which we face (34-35).

It is essential to look at the obstacles that have arisen throughout the evolution of the legal profession which have lead to its "scattered and complicated" history; it is necessary to determine ultimately whether or not the system not only works but also continues to improve.

In the American colonies, during the early seventeenth century, the dispute resolution system that existed in most colonies was not dominated by lawyers. There was a strong religious and egalitarian spirit hostile to the notion of lawyers, especially in many settlements and communities, such as the Puritans in New England, Quakers in Pennsylvania, and the Dutch in New York. Colonists solved their own disputes within the communities, which were heavily influenced by the churches. Church elders were expected to guide disputing members to a "just" result.

For those who could not settle their own disputes, formal mediation techniques, similar to those popularized today, were used. In 1635, a Boston town meeting ordered that no congregation member could litigate before trying arbitration. In Massachusetts the laws were based on the Bible, and doubtful points were resolved by divines, not by lawyers. The colony was determined to administer the law without lawyers. As late as 1700 there were no trained lawyers in Massachusetts (Griswold 1965, 7; Chroust 1965, 1:7-12; Botien 1987, 1:160).

During the second half of the seventeenth century, England asserted its political authority over the colonies, complete with the common law tradition, including courts, trial by jury, and inevitably lawyers. In 1642, the first American lawyers began trying to suppress competition in Virginia when legislation prohibited pleading a case without license from the court. However, by 1645, lawyers who charged for services were banned from Virginia courts. They were allowed back in 1647, licensed in 1656, prohibited again from receiving compensation in 1657, and finally allowed to practice with pay, if licensed, in 1680. Other colonies had similar legislative ambivalence toward lawyers. As early as 1790, Massachusetts passed an act allowing a person to appear on behalf of another in court, whether an attorney or not, as long as a written power of attorney had been obtained from the person being represented (Griswold 1965, 15; Chroust 1965, 1:268-272).

Religion still ran strong in America in the mid-1700s, but ecclesiastical control had receded, and lawyers were much more prominent. While there were no law schools in America, those who did not study in England served an apprenticeship with an established practitioner and were then questioned by a local judge and admitted to practice (Warner 1994, 1/ 4 – 1/ 5; Griswold 1965, 7-9). However, despite the fact that there were plenty of lawyers in late eighteenth century America, there is strong evidence that most citizens did not rely on them as a primary source of legal knowledge. In 1784, *Every Man His Own Lawyer*, published in London, but widely distributed in America, was in its ninth edition. It was a comprehensive guide to both civil and criminal law (Warner 1994, 1/ 2-1/6).

As the nation took shape, lawyers tended to be poorly trained if they were trained at all, and the legal profession did not fare well as Americans moved west (Griswold 1965, 42). The administration of justice in most of the frontier states seemed discouragingly primitive. Even many of the earliest judges were uneducated men who were usually wealthy farmers, squires, merchants, or landlords. Some were almost illiterate and virtually none grounded in the law (Chroust 1965, 2:92-93).

From the early eighteenth century through the early twentieth century, apprenticeships were the principal device for legal training. Some practitioners became well known for the high quality education and instruction they provided to their apprentices. Some of those attorneys established formal programs of instruction, thus

creating the first law schools, the most famous being the Litchfield Law School in Connecticut founded in 1784. During the same period, legal education became available at the College of William and Mary, the Universities of Maryland and Pennsylvania, Yale, Columbia and Harvard. The quality of instruction varied at both private schools and colleges (Botien 1987, 1:614).

Even in the nation's most prestigious law schools, the struggle to achieve high standards was a lengthy one. When Harvard first established a separate law school in 1817, only six students entered the first year. During the next decade, the standards were low and the students were few. Then in 1829 Joseph Story, a Justice of the Supreme Court of the United States, was named the Dane Professor, a post he held until his death in 1845. Justice Story is credited with shaping the course of legal education at Harvard as the enrollment grew to 163 by the time of his death. Even though Harvard had no admission requirements, most of the students were college graduates (Griswold 1965, 42-48; Stevens 1983, 4).

At most institutions, standards for legal education remained minimal throughout the nineteenth century. By the 1860's, colleges typically had no entrance requirements for students, administered no examinations, and granted degrees based on bare attendance for a minimal period of time (Griswold 1965, 45-48; Chroust 1965, 1:197-203; Stevens 1983, 15). From the founding of the first law schools, it took almost a century to reach current standards.

For the most part, however, formal education was not part of legal training. For example, the legislature of Massachusetts provided in 1836 that if a man was of good moral character and had read law for three years in an attorney's office the courts were required to admit him to practice (Griswold 1965, 17; Chroust 1965, 1:232). Other states passed laws which eliminated the educational qualification altogether. In 1842 New Hampshire provided that every citizen over twenty-one years of age might practice law (Stevens 1983, 9). In 1843 Maine enacted a law providing that every citizen might be a lawyer. Under Wisconsin's law after 1849, every resident was qualified to serve. In 1851 Indiana put into the constitution of the state a provision which read: "Every person of good moral character, being a voter, shall be entitled to admission to practice law in all courts of justice" (Griswold 1965, 17).

During this time, the average citizen settled many of his own disputes without formal legal help, relying on several lay legal guides such as Thomas Wooler's *Every Man His Own Attorney*, published in 1845. However, in the late nineteenth and early twentieth centuries, huge numbers of non-English speakers immigrated to the United States, and the confidence that the average citizen could competently handle his own legal affairs began to erode. Calls for better professional standards began to be heard. The rapid decline of communities where people knew each other also had a negative effect on legal self-reliance. The New England town meeting style of local government did not work in the urban America of the twentieth century. Similarly the nineteenth

century spiritual and immigrant communities dedicated to solving disputes without the intervention of lawyers began to wane. In large cities, family and church ties had little power to bind people and help them settle their disputes outside of court. With the growth of technology and industrialization and the lack of open land, lawyers were able to catch up with western migration for the first time in almost 300 years. Lawyers were increasingly used to control the political and economic life of the new states (Stevens 1983, 22).

The American Bar Association (ABA), the first national organization of lawyers, was established at Saratoga Springs, New York in 1878. The Association first began as a social organization with exclusive membership. However, voluntary membership was later opened throughout the country, and the role of the association changed from socializing to policy-making (Griswold 1965, 23; Stevens 1983, 27; Honnold 1964, 405).

The Progressive reformers at the turn of the century, broke with the common law tradition of *caveat emptor* ("let the buyer beware") to argue that the government must intervene to see that the ordinary citizen has a reasonable opportunity to avoid exploitation by big business. This citizen crusade resulted in much of the progressive legislation adopted during the presidencies of Theodore Roosevelt and Woodrow Wilson, leading to many positive developments such as health and safety provisions within the workplace. The legal profession used the citizen reformation movement to sell the nation

on the rationale of "professional responsibility" and to justify organizing themselves into a publicly sanctioned monopoly.

By the turn of the century, lawyers had gained substantially in wealth, power and community standing. The influence lawyers had achieved is reflected in presidential elections. Among those elected between 1890 and 1932, Grover Cleveland, Benjamin Harrison, William McKinley, William Howard Taft, Calvin Coolidge, Warren Harding and Franklin Roosevelt all were members of the bar. In addition, Supreme Court justices Oliver Wendell Holmes and Louis Brandeis were among the most respected men in America (Warner 1994, 1/12).

As late as 1890, less than half of the states and territories had meaningful educational requirements for lawyers. In 1893, the ABA established a Section of Legal Education, which pressed for extending law school to three years. In 1900, the Association of American Law Schools (AALS) came into being and remained under the wing of the ABA until it broke away in 1914. By 1915, only thirteen states and one of the remaining territories allowed admission to the practice of law without attending law school (Griswold 1965, 55; Stevens 1983, 95-99; Honnold 1964, 406). In 1922, a report issued by the ABA Section of Legal Education recommended minimum standards for law schools which would "strengthen the character and improve the efficiency of persons to be admitted to the practice of law." These recommendations included a minimum of two years of college as a prerequisite for admission to law school, and a course of study,

which lasted for three years for those who studied full-time. The ABA also started inspecting schools and publishing a list of those schools that complied with the standards (Griswold 1965, 55; Stevens 1983, 172-173).

By 1940, all states effectively required professional study to be a lawyer. There were no requirements for continuing skills, testing or education and there was little meaningful recourse for those who were cheated or overcharged by lawyers. In 1950, the college prerequisite was increased to at least three years of college study by the ABA and adopted by the AALS (Griswold 1965, 55-56; Stevens 1983, 207). By 1960 the current standard was established, four years of college, followed by three years of full-time law school (Stevens 1983, 207).

During the Depression of the 1930s lawyers had to defend their newly minted monopoly. Bad economic times encouraged people to handle their own legal work, or to seek help from more reasonably priced nonlawyer practitioners. In response the bar adopted a campaign to rid the nation of the last vestiges of the self-help movement. There was an increase in nonlawyer prosecutions, mainly due to the passage of new UPL statutes with tougher penalties. Those involved in orchestrating the new legislation, mainly local and state bar associations, claimed their activities were designed not to feather the nest of the legal profession but to protect the public from unqualified and incompetent law practitioners (Auerbach 1976, 300; Stevens 1983, 178).

The period following the Second World War was an economic golden age for

lawyers. Relatively few lawyers were trained during the Depression, resulting in a shortage of lawyers at the same time middle-class Americans prospered and their legal needs increased. In the prosperous 1950s, it seemed as if everyone wanted their children to be lawyers, doctors, or orthodontists. The legal profession reached the zenith of its power in the early 1960s, and bar organizations clamped down on potential competitors, insisting that lawyers alone were equipped to serve the legal needs of the American public (Warner 1994, 1/15).

Americans resort to courts because other mechanisms of social controls like family, church, and neighborhood have lost some of their effectiveness. However, it is clear that the delivery of legal services is badly skewed, and this is not a recent phenomenon. In 1965, when Erwin Griswold's *Law and Lawyers in the United States* was published, he designated the proper distribution of legal services as one of the more serious problems facing the American Bar. He described the middle classes as "rapidly expanding" and "relatively affluent," with an increasing need for legal services, but claimed that they did not or could not obtain the legal services they needed, at least not from lawyers (33).

The fiction that American lawyers serve all Americans was revealed to be just that. In the late 1960s, the first coordinated delivery of legal help nationwide was proposed by President Lyndon B. Johnson's administration with the federally funded legal services for the poor known as legal aid. It then became apparent that the majority

of middle-class Americans was being underserved by the legal profession. Middle class Americans did not qualify for legal aid, but were not affluent enough to retain a lawyer under the traditional fee for services (Warner 1994, 1/16).

The public's discovery that lawyers had priced their services out of the financial reach of most Americans created dissatisfaction with the legal profession. Thus, the public began to look for ways to solve their legal problems without lawyers. In the mid 1970s, Norman Dacey's *How to Avoid Probate* and Ed Sherman's *How to do Your Own Divorce in California* were best sellers. In California, Nolo Press was established, and had published over twenty successful self-help law books (Warner 1994, 1/17-1/19).

During the twentieth century, the cost of legal services has steadily increased. Greater legal complexity, along with the burgeoning body of statutory and case law and administrative rules, has made legal services indispensable in many aspects of modern life. As the law becomes more complex, legal training increases in difficulty and expense. With a law degree costing a minimum of $100,000, legal fees rise to meet this expense. In addition, the modern law office must be equipped with costly technological equipment, increasing the capital outlay of setting up a practice. Because of the complexity of the law, many attorneys specialize in a select field, and specialists command higher fees (Crampton 1994, 531).

Development of the Legal Assisting Profession

During the 1980s, the field of legal assisting was characterized as one of the hottest career options because of its growth potential. Today the demand continues at a solid pace. In fact, out of 500 occupations, it is projected to be the eighth-fastest growing career between 1992 and 2005 (Bureau of the Census 1998, 420; Hightower 1996). As of 1996, the U. S. Bureau of Labor Statistics (1998, 420) data cites the number of paralegals in the United States as 113,000, with the number expected to rise to 189,000 by the year 2006.

By the late 1960s members of the legal profession had begun to address the need of reducing legal costs without sacrificing quality, and bar associations began encouraging the use of trained assistants. In 1967, the ABA acknowledged that much of the work in a law office can be done by well-trained assistants, freeing the lawyer's time for more demanding tasks and lowering costs. The ABA then created a standing committee on legal assistants, which continues to support the use of legal assistants. When the ABA Standing Committee advocated the use of legal assistants for the duel benefit of increased profits and access to legal services, attorneys began recognizing the profession.

While the career has developed with the encouragement of bar associations, legal assistants realized that they needed an identity and a voice of their own, a goal that could be achieved only through their own career-specific organizations. Throughout the ages,

people of like minds and common interests have banded together to define common goals, to further the group's interest or agenda, to pursue individual growth within the group, or just to socialize, commiserate and celebrate with each other. Understandably, when legal assistance began to be identified as a distinct career, organizations inevitably developed to give the new professionals its own voice. Nationally there are two major legal assistants' organizations, National Association of Legal Assistants (NALA)[8] and the National Federation of Paralegal Associations (NFPA).[9]

Currently, legal assistant education and training is addressed through on-the-job training, college and proprietary school training, seminars, and workshops. Those who have been in the field for a number of years are likely to have received their training as they worked, but those new to the profession usually have attended college. As the career has become more professional, the emphasis on formal education has increased. The number and variety of training programs have dramatically increased in the past two decades. With this explosion of educational opportunities, the need for more control over the quality and consistency of legal assistant training programs has become increasingly apparent to the legal profession, legal assistants and educational and training institutions (Malone 1989, 26; Safran 1992).

The education and training programs for legal assistants are diverse and can range from apprenticeships at law firms to formal programs offered at state colleges and universities, community colleges, business schools and legal assistant institutes. Types of

degrees or certificates awarded for successful completion of a legal assistant program can include a Certificate of Completion, an Associate Degree, a Bachelor Degree, a post-graduate certificate, and a graduate degree. Program curriculum generally consists of required and elective courses, with the amount and type of courses required depending on the type of institution and the type of degree or certification granted (Statsky 1997, 32; Albert 1988, 26).

Current discussions concerning issues such as state licensure, certification, registration, and/or regulation of legal assistants are illustrations of the unsettled status of the profession. The debate surrounding the identification and regulation of the legal assistant profession involves overlapping issues and often sparks heated debate among both attorneys and legal assistants themselves. Little consensus has been reached concerning whether legal assistants should be licensed by the state, certified by an independent or public agency, registered in some official capacity, regulated by a governmental entity, or left without supervision (Orlik 1991, 83).

Thus far, the primary result of the debate has been to stimulate numerous studies of the issues involved. In 1992 the ABA established a commission on nonlawyer practice, held hearings, and considered various recommendations. Meanwhile, state bar associations, state legislatures and other organizations and agencies have launched their own studies of nonlawyer participation in the legal profession. No end to the debate is in sight at this time (ABA, 1995).

The same argument used to justify and encourage the use of legal assistants, to help attorneys provide cost-effective legal services in the law office, has now created pressure to expand their role even further by permitting independent practice. Both attorneys and legal assistants argue that legal assistants working under the direct supervision of attorneys do not need special licensure, since the public is protected by the stringent requirements under which the attorney is licensed and allowed to practice. However, with the expansion of independent practice, the need for licensure or some form of regulation has become a more significant issue. NALA and NFPA are both well-established national groups working to support the development of the legal assisting profession, and while both maintain similar ideologies on many issues, they take different positions on what services a legal assistant should provide to the public without supervision. NALA's position is that all services should be provided to the public under the supervision of an attorney, while NFPA supports an expanded role through regulation (Samborn 1996, 24; Maine Bar Journal 1996, 378).

NALA and NFPA currently offer voluntary certification examinations for paralegals. Both NALA[10] and NFPA[11] require paralegals to meet specific education and work experience requirements to be eligible to sit for the certification exams. The requirements vary, depending on which certification exam is taken. Certification differs from licensure because licensure is mandatory and certification is voluntary.

Methodologies

Arizona provides an appropriate case study for researching and understanding the rapidly changing status of independent paralegals in the delivery of legal services. Focusing on the development and regulation of the independent paralegal profession in that state illustrates a specific approach to balancing the interests of the public and the profession. Schramm (1971) states that the essence of a case study "tries to illuminate a decision or set of decisions: why they were taken, how they were implemented, and with what result" (cited in Yin 1984, 22-23). When little is known about a recent phenomenon, careful observation of only one case allows for more in-depth analysis of a contemporary phenomenon, and can be very effective in investigating and explaining the phenomenon within its real-life context; thus revealing general explanations and outcomes (23). Employing Arizona as a model provides a specific explanation of the process of implementing the use of independent paralegals, evaluates the outcome of this addition to the legal system, and illustrates how the result of this implementation might affect future attitudes toward independent paralegals.

Multiple sources of information are used in the case study approach (Yin 1984). Most of the research for this study is based on primary materials such as textual analysis of relevant statutes and court rules. Review of case law is used to determine the current status and trends in the state of Arizona concerning both the enforcement of the UPL statutes and the regulation of independent paralegals. Data was also derived from

secondary materials such as books, reports, newspapers, and scholarly journals addressing the issue of the development of independent paralegals, the need for independent paralegals, and accessibility to the legal system.

Interviews were conducted with Frances Johansen, Unauthorized Practice of Law Counsel for the State Bar of Arizona; Bob James, Director of the Self Service Center and Member of the Consumer Protection Committee for the State Bar of Arizona; and David Bishop, an Independent Paralegal who was previously employed by the Maricopa County Superior Court to assist those who wished to represent themselves before the court. Research in professional literature, case law, newspapers, and other printed sources revealed the names and positions of these people as individuals who had been involved in the Arizona debate—either for or against the development of independent paralegal participation. Telephone interviews were conducted using open ended interview questions (Appendix A). Lasting approximately one hour each, these interviews contribute to an understanding of the political history of the development of the independent paralegal profession, as well as the future of independent paralegals. The subjects freely offered their opinions and explained their positions, as well as providing factual background for understanding the issues that must be addressed.

In addition, interviews were randomly conducted with independent paralegal business owners in Phoenix, Arizona, and the surrounding area. The interviews are used to develop a preliminary profile of operating businesses that describe themselves as

paralegal businesses. The interviews also provide valuable information as to how the independent paralegals view the current regulatory status of the profession. Individuals owning independent paralegal businesses were recruited to interview from a list generated from uswestdex.com.[12] This list consisted of a total of eighty-four business listings categorized under the heading of paralegal businesses. Every seventh business was randomly contacted by telephone and subjects were asked to voluntarily participate in the study. For those who agreed to participate, a telephone interview was conducted using open ended interview questions (Appendix B). Business proprietors were asked to respond to questions concerning how long they had been in business, whether or not they provide clients with disclaimers explaining they are not attorneys, how their independent paralegals are trained, and whether or not they favored regulation within the profession.

While the original list of contacts included eighty-four businesses, the final selection process reduced the number to approximately sixty-four listings. At least five businesses were duplicated within the list, and one Colorado business was listed. Also erroneously included in the original list were a distribution company and four law firms. At least eight were invalid listings or had disconnected phone numbers. Additionally, of those contacted, five business owners were not interested in participating in the study and another business owner was excluded from the study because she works directly with attorneys. In the selection process, if a business was excluded for any of the above reasons, the next business on the list was selected. A total of six independent paralegal

business owners were interviewed by telephone, with the interviews lasting an average of thirty-five minutes.

Research Questions

Despite the existence of UPL statutes, the use of independent paralegals in the delivery of legal services is expanding. Numerous states, such as California, Florida, Oregon, Ohio, and Washington, have created task forces to consider the most beneficial course of action to settle the controversy that has arisen concerning the delivery of legal services directly to the public by independent paralegals (Shely 1994, 16; Latorraca 1993, 493). Prior to Arizona, no state has actually decriminalized the Unauthorized Practice of Law. Therefore, this study has two goals. The first goal is to review scholarly literature, focusing on the past two decades, concerning various aspects of the controversy as to whether lawyers have a monopoly on the delivery of legal services; whether nonlawyer participation in providing legal services to the public causes public harm; and whether expanding nonlawyer activity would enhance access to the legal system.

The second goal of the thesis is to do a case study focusing on the state of Arizona, where the Unauthorized Practice of Law statute has no criminal ramifications, and the participation of nonlawyers in the delivery of legal services is potentially broader than in most states. Information about the legislative and judicial background for the change in Arizona's delivery system will provide a setting where nonlawyers provide legal services with no supervision from an attorney.

This study is an analysis of public policy making and implementation at the state level. It reviews the public sphere competition between attorneys and paralegals to see how a powerful profession influences government for its own benefit. The study further examines how the government responds to this pressure in protecting and promoting the public good. The Arizona case study will broaden our knowledge of government regulation of the legal profession and allow us to attempt to determine whether Arizona's approach is a positive model for other states. The research was guided by the following questions:

1. How did the movement towards utilization of independent paralegals evolve in Arizona?
2. What has been the response of the Arizona government, the public, interest groups, and the Arizona Bar Association, lawyers and judges, to the deregulation of the legal profession?
3. Have the newly deregulated independent paralegals enhanced the public's access to the legal system in Arizona?
4. Does the traditional definition of independent paralegal apply to those nonlawyer professionals now providing legal services directly to the public in Arizona?
5. Does Arizona's approach serve as a positive model for independent paralegals providing competent affordable legal services to the public?

Limitation of Study

This study will be limited to an in-depth study of independent paralegals, those who provide legal services directly to the public without the supervision of an attorney. Almost seventy-five percent of paralegals are employed by private law firms where they work under the supervision of an attorney; clearly the majority of individuals in the field serve in this capacity (Statsky 1997, 38-40). Expanding the role of traditional paralegals within the law office setting, as well as regulating, certifying and licensing these individuals is also a topic widely debated and is often combined with the discussion of independent paralegals. The discussion of traditional paralegals is used as a context for understanding the past, present, and future of the profession. However, this case study will focus solely on independent paralegals.

While the affordability of legal services is important to this study, no effort will be made to analyze pro bono services provided by attorneys at no charge to the client. Nor will the study address the various attempts to meet legal needs of the poor through various government programs and private charities. Efforts to expand the availability of legal services have led to a variety of alternative proposals, but this study will focus only on unauthorized practice of law restrictions.

Chapter 1
Endnotes

[1] "A statute or provision in a law that requires periodic review of the rationale for the continued existence of the particular law or the specific administrative agency or other governmental function. The legislature must take positive steps to allow the law, agency, or functions to continue in existence by a certain date or such will cease to exist" (*Black's Law Dictionary*, 6th ed., s.v. "sunset law").

[2]Ariz. Sess. Laws, ch. 202, sec. 14 (1982); Ariz. Sess. Laws, ch. 292, sec. 17 (1982); Ariz. Sess. Laws, ch. 310, sec. 33 (1982) (codified as amended at Ariz. Rev. Ann. sec. 41-2363(4) (1985)).

[3] Ariz. Sup. Ct. R. 31(a)(3) (1998).

[4]Ariz. Sup. Ct. R. 31(a)(4)(A-F) (1998).

[5] Dana Leonard, "Document Preparers Compete with Lawyers," Arizona (Phoenix) Business Gazette, 8 June 1990, Special Section 10.

[6] In all criminal prosecutions, the accused shall enjoy a right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense (U.S. Constitution, amend. 6).

[7] All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws (U.S. Constitution, amend. 14, sec. 1).

[8] NALA was organized in 1975 as an association for individual members and as an affiliation for some local paralegal associations. NALA considers itself to be "the leading professional association for legal assistants, providing continuing education, professional development and certification programs for the career field." NALA's membership exceeds 18,000 paralegals, comprised of both individual members and members of 90 state and local affiliated associations. NALA claims to be a "member-driven association", and members include legal assistants, students in legal assistant programs, attorneys and educators in legal assistant programs, legal assistant associations, and student legal associations. The organization has been active in developing certification criteria for the profession and has become known for the Certified Legal Assistant (CLA) Examination and Program initiated by NALA in 1976 (NALA Recognition Perspective Pamphlet).

[9] NFPA, by contrast, exists as a federation of local organizations. Organized in 1974, it adopted the following mission statement in 1987: "The National Federation of Paralegal Associations, Inc. (NFPA) is a non-profit, professional organization comprising state and local paralegal associations throughout the United States and Canada. NFPA affirms the paralegal profession as an independent, self-directed profession, which supports increased quality, efficiency and accessibility in the delivery of legal services.

NFPA promotes the growth, development and recognition of the profession as an integral partner in the delivery of legal services." As of 1998, NFPA membership included fifty-four associations, located throughout the United States, with more than 17,000 members (NFPA Pamphlet, November 1996).

[10] While the CLA Examination was initiated in 1982, advanced certification in specialty areas became available to all Certified Legal Assistants in areas such as Corporate and Business Law, Real Estate, Bankruptcy, Intellectual Property, and Criminal Law and Procedure. Until very recently, NALA offered the only national credentialing examination (NALA Information Recognition Perspective Pamphlet).

[11] During NFPA's 1994 Mid-Year Meeting, the membership "voted overwhelmingly to develop an exam to test the competency level of experienced paralegals. NFPA claims the Paralegal Advanced Competency Exam (PACE), a two tier exam, has two major benefits: (1) it provides a fair evaluation of the competencies of paralegals across practice areas; and (2) it creates a professional level of expertise by which all paralegals can be evaluated. Those who pass PACE and maintain the continuing education requirement may use the designation "PACE – Registered Paralegal" or "RP".

[12] West Dex provides white and yellow page listing for a 14 state region which includes Arizona, Colorado, Idaho, Iowa, Minnesota, Montana, Nebraska, New Mexico, N.Dakota, S. Dakota, Oregon, Utah, Washington, and Wyoming. The listings are free and the company uses a variety of information sources to provide complete and accurate listings. Available at http://uswestdex.com.

Chapter 2

Review of Literature

"A strong and vocal movement is growing to deregulate the legal profession by lifting restrictions on the unauthorized practice of law, enabling any lay practitioner to provide legal services" (Munro 1990, 203). Many different interest groups are debating whether or not the current structure of the legal profession should remain a system in which only lawyers have the right to provide legal services to the public. Since the promulgation of UPL statutes, lawyers have been insulated from outside competition. However, the rules are changing, and competitors, consumers and interest groups are insisting that they be allowed to enter the legal services arena (Podgers 1994, 24).

American Bar Association - Commission on Nonlawyer Practice

In response to this debate, in 1992 the ABA established the Commission on Nonlawyer Practice (the Commission), which was directed to "conduct research, hearings and deliberations to determine the implications of nonlawyer practice for society, the client and the legal profession" (ABA 1995, xiii). The Commission consists of both lawyers and nonlawyers, all having diverse geographical and professional backgrounds (xiii). An extensive report was issued in August 1995 entitled "Nonlawyer Activity in Law-Related Situations: A Report with Recommendations."[i] The Commission recognized that even with the efforts lawyers, bar associations, courts, and others have made, a significant gap remains in providing access to justice and affordable services to

all. It acknowledged that this gap is likely to remain, and that nonlawyers might help address this deficiency. Ultimately, six major recommendations were formulated (Appendix C), and three major conclusions were reached:

- Increasing access to affordable assistance in law-related situations is an urgent goal;
- Protecting the public from harm from persons providing assistance in law-related situations is also an urgent goal; and
- When adequate protections for the public are in place, nonlawyers have important roles to perform in providing affordable access to justice (3-4).

Further, the Commission determined that each state has a "unique culture, a specific legal history, a distinct record of experience with nonlawyer activity and a current economic, political and social environment which will affect its approach to varied forms of nonlawyer activity" (4). The Commission's recommendation is that each state should conduct careful examination under the leadership of its supreme court and "determine whether and how to regulate the varied forms of nonlawyer activity that exist or are emerging in its jurisdiction" (4).

This study is important because it brought together the various interest groups impacted by the regulation of legal services and gave serious consideration to the competing values of access to legal services and protection of the public from harm. Since the ABA enjoys a high level of respect from both the public and the bar, its findings inevitably would influence the debate.

Justice "Equal or Unequal"

To establish justice is the major purpose of law, making concepts of law and

justice inseparable. Ideally justice both gives rise to law and arises out of law (Garlan 1941, 22). The notion of equal justice means that the rich and the poor should be treated the same under the law (Friedman 1977, 64). The statement over the Supreme Court of the United States, "equal justice under law," is intended to embody this high principle before the highest court in the country (Garlan 1942, 92). The question that must be answered is whether or not we are fulfilling the promise of equal justice when 19 million people annually have unmet legal needs (ABA 1989; Metz 1997, 43).

The complexity of modern society with all of its intricate rules makes law a specialized field and thus excludes the general public from access to justice without the expertise of specially trained people. According to legal scholar, Lawrence Friedman[2] in his book *Law and Society* (1977), "As long as it does not distinguish between the legal and nonlegal world, a society will not need lawyers. A society must separate law from custom, ethics, and rules of courtesy and good behavior before it will feel a need for lawyers; and even then it will feel the need only if legal materials are dense enough, or tricky enough, so that people are willing to pay for skill or expert advice" (21). The history of the development of the legal profession tracts the increasing complexity of the law.

Justice has been defined in many different ways. Justice can mean a guarantee of equal treatment, but justice in this sense is impossible in any known society. As long as other goods are not distributed in equal shares, there is no way to distribute equal shares of justice. The rich can buy the best lawyers so long as there are lawyers for sale. Justice

may, however, have another meaning. A society can determine for its citizens what constitutes a minimum standard of justice (just as it can establish a minimum income); the idea then is to provide this minimum for everyone. This minimum can be defined in such terms as basic rights, fair redress of grievances and, adherence to rational standards.

Again, the question is whether justice defined even in this second sense has been achieved in the United States. The evidence indicates that it has not; even a minimum level of justice is denied to many citizens (67). Currently, the funds to support legal aid do not adequately cover the needs of those with low income, while many of those classified as middle income cannot afford an attorney and do not qualify for the under-funded legal aid. In addition, it is estimated that ninety percent of the nation's lawyers serve 10 percent of the population (Rhode 1990, 210). Thus, with a large segment of society being deprived of legal services, can it be said justice is equitably distributed?

Roscoe Pound, former dean of Harvard Law School and well-known legal scholar, describes law as the most specialized form of social control (1951, 3). "The purpose of law is said to be the preservation of peace, the settlement of conflict. Narrowly construed, peace is the cessation of conflict" (Garlan 1941, 99-100). The role of the courts is to analyze the raw materials of controversy, to clarify the issues, and determine the outcome under law.

Knowledge of the law, as one might expect, is not spread evenly in society; there are class differences, age differences, and group differences. Variations based on circumstances exist within society with regard to legal knowledge. In modern industrial

society, druggists know something about the law relating to drug stores; drivers know some traffic laws; big companies hire people who know antitrust law and the law of the stock market. However, the general public knows next to nothing about these subjects. People know about aspects of law that are relevant to their circumstances, not every fine detail, but enough to get by. The average person may have never heard of a "negotiable instrument," but he knows enough to endorse and cash a check. Experts, such as lawyers, are expected to know the technical details (Friedman 1977, 115).

The Sixth Amendment and Fourteenth Amendment of the Constitution of the United States provide criminals protection within the legal system. However, there are others, other than criminals, who are subject to laws characterized as civil law. Examples of the civil law's impact on people's lives include citizens who are wrongfully evicted from their residences, those who want to obtain a divorce, or those who need to probate the estate of a deceased relative. These citizens are subject to following the law of the state, as well as receiving the benefits and the protections provided by the laws. While these citizens have the right to represent themselves, it is not likely that they know and understand the laws, both substantively and procedurally. "Legal equality is defined variously, but in its essential parts it amounts to this, that in the same circumstances, positively and negatively defined, all individuals are to receive the same treatment and that, roughly speaking, similar consequences are to attach to similar acts" (Garlan 1941, 88). Can it be stated that where citizens do not understand the law, nor do they have the

funds to hire the services of a lawyer, nor do they qualify for legal aid, they are truly protected as guaranteed under the Fourteenth Amendment?

About forty million Americans have incomes below the poverty line and another large group lives just above it. When faced with more urgent priorities, such as food, clothing, shelter, and other essentials, legal services are a low priority for the poor. According to most studies, close to three-quarters of the legal needs of low income individuals remain unmet, as well as about sixty percent of the needs of those who are considered middle income (Rhode 1996, 711-12; Macey 1992, 1116-1117). However, according to Jonathan R. Macey's article *Mandatory Pro Bono: Comfort for the Poor or Welfare for the Rich?*,[3] poor people do not hire lawyers because they use their limited resources to buy things that they value more than legal services (Macey 1992, 1117).

The focus of Munro's article, *Deregulation of the Practice of Law: Panacea or Placebo?,* is on the Public Protection Committee, a committee created in 1987 by the California Bar. This committee ultimately recommended abolishing the prohibition of the lay practice of law (1990, 205). This committee's activities included three methods: its own investigation and research, public hearings, and surveys of California consumer protection agencies and state bars. Although the committee believed that there is some danger of harm to the public, it balanced the advantages and disadvantages and found that the need to provide broader access to legal services justified the possible harm to some individuals. The committee found the need for increased access most compelling at the lower-to-mid income levels, especially in such areas of the law as landlord-tenant,

immigration, family law, and bankruptcy. In each of these areas, lawyers could not or would not provide proper services to those with low-to-mid income (Munro1990, 220-222).

Legal Services Monopoly

In the United States, lawyers have always played a large role in the political arena. In the early days of the republic, with few competing professions, lawyers inevitably performed a number of different functions, such as making contracts, facilitating real estate transactions, and settling disputes, as well as developing political theories and practices for the new nation. As the country expanded economically and geographically, lawyers' roles became increasingly important. At the present time, no other developed society gives lawyers as significant a role as the United States (Stevens 1983, 7). In the United States lawyers draft, as well as interpret and administer the laws, and control the courts. "No other group is entrusted with so much power over so broad a field of human affairs" (Countryman et al. 1973, 39).

A *monopoly* is defined as "exclusive control by one group of the means of producing or selling a commodity or service."[4] Lawyers claim that they are of *professional* status, not merely business executives, which means that, in their view at least, they are experts doing work beyond the layman's power; since the work requires skill one cannot master without long and arduous study. A *profession* is defined as an occupation requiring considerable training and specialized study, with rules and standards.[5] It has "ethics" and a mandate from society to perform some socially useful

role in a responsible way. Modern societies grant a professional monopoly over work that belongs to that corner of knowledge or skill. Only a licensed doctor may remove a gall bladder; it is a crime for some else to try. Only a lawyer can practice law. Restrictions on practice are supposed to protect the public against quacks and impostors, but from this results in a monopoly for the profession (Friedman 1977, 22-23).

HALT, the largest organization in America fighting to reform the legal system, argues that "lawyers in this country have a self-regulating monopoly over the provision of legal services. The ability to enforce the rules under which nonlawyers are prosecuted for practicing law without a license is the major way the profession preserves this monopoly" (HALT 1987,1988). The result for consumers is a lack of competition among legal-service providers that creates artificially high prices for legal services, and consequently denies legal assistance to those who cannot afford a lawyer (HALT 1987, 1).

"Lawyers love to compete, but only with each other" (Justice 1991,180). The legal profession has succeeded in limiting outside competition through their participation in bar associations, legislatures, and courts. Although the organized bar has maintained that UPL statutes prevent the unauthorized practice of law and protect the public from harm, many commentators and historians are of the opinion that the real motivation behind the legislation is to insulate lawyers from the outside competition (Auerbach 1976; HALT 1987, 1988; Munro 1990; Rhode 1996, 1981; Warner, 1994). Writing for the *Vanderbilt Law Review*, Kathleen Eleanor Justice describes the background of UPL statutes and provides an update on recent developments in their application and

enforcement. She notes the constant involvement of lawyers with these laws (1991, 179-80). Another legal scholar, Jerold S. Auerbach, wrote an extensive analysis of the development of the legal profession in which he describes the methods used by attorneys to limit their competition and assure control of the profession (1976).

Not only were lawyers often prominent on the committees that initiated UPL legislation, but the organized bar also formed mutual agreements with other professions known as "Statements of Principles". These statements were formal agreements with accountants, bankers, and realtors designed to define what constituted the practice of law and were designed to prevent future disputes from arising within these groups of professionals (ABA 1995, 22-23; Talamante 1992, 876).

However, in 1975 the United States Supreme Court held that federal antitrust laws applied to anti-competitive activity by the legal profession. Soon thereafter the United States Justice Department began to investigate monopolistic behavior by local and state bars, focusing on whether the Statements of Principles violated federal antitrust laws. As a result, many bar associations voluntarily rescinded the statements, enforcement of UPL regulations declined, and several states and the ABA disbanded their UPL committees (Talamante 1992, 873-876; Justice 1991,184-185).

Americans spend an estimated two billion dollars annually on routine legal problems that nonlawyer specialists and self-help technology can often resolve. Therefore, the more clear it becomes that nonlawyers can effectively perform legal tasks, the more difficult it becomes for lawyers to maintain this monopoly as well as justify self

regulation of the profession (Rhode 1996, 706). If the true objective in limiting the entire legal system to lawyers is consumer protection, then the current system is poorly designed to achieve it. UPL doctrines generally focus on whether lay providers are performing a legal task, not whether they are doing so effectively (Rhode 1996, 710; HALT 1987; Selinger 1996).

Consumer Choice

Choice is also a consideration in debate over the unauthorized practice of law. Those who support nonlawyer practice argue that the public should be given the opportunity to weigh the risks with the possible cost benefits in a free-market setting (Munro 1990, 205). HALT maintains that the practice of law should be substantially deregulated so that consumers have more choices about the providers from whom they may buy legal services (1987, 3).

Although the approaches taken by those who favor strict regulation and those who favor less drastic regulation differ dramatically, they share a common goal. The objective is to create a system that lowers the cost of legal services and allows greater access to the judicial system, while at the same time maintaining a high level of competency and accountability (Talamante 1992, 875).

According to HALT, "the expense and restricted supply of legal services that result from the lawyer monopoly are too high a price for the public to pay for protection from unsubstantiated harm" (1988, 2). With regard to the danger of harm caused by allowing nonlawyers to do legal work, HALT considers two comparative situations.

First, they discount the comparison of nonlawyers to non-surgeons performing brain surgery. The most complex legal disputes ("brain surgery") may require qualified advocates; however, HALT contends that under UPL statutes people are forced to pay lawyers for the equivalent of dispensing aspirin. Secondly, HALT makes an analogy relating to income tax preparation. Consumers have the right to choose from a variety of providers to calculate their income taxes, including a next-door neighbor, H & R Block, or a certified public accountant. In completing this task the provider must interpret and apply tax laws, and the individual faces penalties and serious consequences for any mistakes made. Nonetheless, we assume consumers are capable of making the best choice for their situation. Therefore, HALT asks, should it not be assumed that these same citizens have the ability to decide the level of expertise needed for their legal affairs (HALT 1987, 1988)?

In California, the Public Protection Committee ultimately recommended abolishing the prohibition on the lay practice of law. The California Legislature and courts justified UPL rules namely for protection of the individual client and of the judicial system. The critics have two main criticisms. They argue that the rules prohibiting the unauthorized practice of law create lack of access to legal services and lack of public participation in legal structuring decisions. State bars are supposed to ensure that their actions are conducted for the public's benefit; however, they are self-governed and traditionally have defined the public's legal needs without public input. A large portion of the public believes that the freedom to choose whether to use an

expensive lawyer or cheaper lay practitioner must belong to the public (Munro 1990, 205). In her study of this system, Munro ultimately supports the licensing of lay practitioners as the key to resolving this crisis. Practitioners could practice in predetermined areas and be held accountable for certain competencies and ethical standards. Under Munro's plan citizens would then be given the opportunity to choose a provider, knowing that the provider had obtained a certain level of efficiency (Munro 1990).

Rhode argues that "choice is precisely what is missing in most arguments against nonlawyer practice" (1996, 711). The central issue is "whether consumers are able to assess a provider's qualifications and to make their own cost-benefit tradeoffs" (711). Rhode states the real question is not whether people are better off with lawyer's services, as opposed to those of independent paralegals, but rather who should decide or make that choice. Why should it be the organized bar (711)?

Nor have lawyer-provided pro bono services proved sufficient to meet the legal needs of the poor or the middle class. Only the indigent qualify for free legal services through various government and charitable programs, leaving out those with low to middle incomes. While lawyers have been pressured to meet citizens' needs through these programs, resistance has been strong. For example, Macey argues that legal services are an expendable luxury for the poor and middle class. If given the choice between $2500 cash or twenty billable hours of legal services worth $10,000, most people-middle class or poor-would take the cash, he contends (1992, 1118).

In "The Retention of Limitations on the Out-of-Court Practice of Law by Independent Paralegals," Carl M. Selinger (1996), professor of law at West Virginia University, argues against complete deregulation of out-of-court law practice. He focuses primarily on the damage that deregulation would impose on "Main Street" lawyering, or the single-practitioner and small law firms. While he discusses the possibility of harm to the public, he emphasizes the impact on lawyers. He concludes by suggesting that independent paralegals should not be available for clients who can afford a lawyer's services. He contends that even the poor should have access to independent paralegals only if no other "safety-net," such as legal aid services, is available.

Other defenders of the status quo insist that consumers must be protected from their own ignorance. They may be harmed because of lack of information in ways that are impossible to correct (Crampton 1994, 545).

Regulation of the Paralegal Profession

"According to *Webster's Ninth New Collegiate Dictionary*, the earliest recorded use of the word *paralegal* in English occurred in 1971" (Statsky 1998, 19). While the paralegal profession is a relatively new one, it has been steadily increasing in the last three decades. "As the profession has emerged and developed, its definitions of job roles, rules and professional ethics have come from a myriad of sources. State bars, legislatures, courts and professional associations have all had varying degrees of influence on the current state of paralegal regulation" (Bielec 1999, 44).

Regulation is the all-encompassing concept of the exercise of outside control over

a profession or trade (Albert 1988, 23). "At its broadest, regulation can be defined as anything that restricts the way in which people are allowed to do what they want, even if it does not cause direct harm to others" (*Economist*, 1992, 22). The regulation movement within the profession is motivated by two factors: First, to protect the public from harm by ensuring paralegals have met minimum requirements, especially with regard to independent paralegals; second, to enhance the profession by receiving greater recognition, more respect, higher pay, and perhaps most important, a greater role in the delivery of legal services (Bielec 1999, 44; Albert 1988, 24).

There are three means to formally regulate a profession: certification, registration and licensure.[6] Certification is usually a voluntary process whereby a non-governmental agency or association grants recognition to an individual who has met certain qualifications or advanced skills. Examples include NALA's CLA exam and NFPA's PACE exam. Upon passing the exam, paralegals can use the designation CLA (Certified Legal Assistant) or RP (Registered Paralegal) after their names on correspondence and business cards.

Registration, a less rigid form of regulation, can be voluntary or mandatory. It simply means listing one's name and other specified information with an association or agency for the purpose of monitoring, control and recourse. There are usually no education or training requirements.

Licensing is a mandatory form of regulation and is considered to be the most stringent approach. Generally, an agency or branch of government grants permission to

perform a job to candidates meeting their set qualifications, usually through an exam testing minimum skill levels or work experience. Licensing also normally involves educational requirements and higher processing fees than other forms of regulation.

There are two additional avenues to mandatory regulation that should not be overlooked. Case law and state supreme court rules have established regulatory standards several times in the past and will continue to do so. Case law has addressed such issues as fee recovery, ethics, UPL, authorized tasks, attorney/client privilege and paralegal error. Each time a court decision is made on an issue, it becomes part of the foundation upon which laws are built. Supreme courts have just recently felt the need to create rules regulating paralegals. Only seven states have supreme court rules on the books, and the majority of these address only the definition of a paralegal (Bielec 1999, 47).

Many opponents of regulation, including lawyers, citizen groups and paralegals, hold that regulation limits individual freedom and restricts personal rights. By limiting the number of persons allowed to enter the profession, access will continue to be denied to middle and lower class people because of expense (Albert 1988, 24). With regard to traditional paralegals (those who must be supervised by an attorney held responsible for their work), they argue that licensing is unnecessary and will ultimately increase the cost of legal services which will be passed on to the consumers (Rudy 1992, 42).

Independent Paralegals

Independent paralegals, also known as legal technicians or nonlawyer practitioners, are self-employed individuals who provide advice or other substantive legal

work directly to the public, without the supervision of a lawyer and for which no lawyer is accountable (ABA 1995, xviii; Statsky 1998, 11; Albert 1988, 23). "It is argued that independent paralegals can provide an adequate level of services to consumers at lower prices than lawyers for a variety of basic legal needs in such areas as real estate, estate planning and probate, domestic relations, landlord-tenant and bankruptcy" (Podgers 1993, 51). A number of states are grappling with two key issues: first, where to draw the boundary around the practice of law; and second, whether to implement regulatory structures allowing nonlawyers to provide some types of services in a way that would protect the public from abuses (51).

While the 1990s have brought a great deal of attention to this specific group of paralegals, they have existed since well before this decade. Two Florida cases, *Sperry v. Florida* and *Florida Bar v. Furman*, demonstrate the Bar's active role in enjoining such self-employed individuals from providing legal services to the public. In 1963, Chief Justice Warren delivered the opinion of the U.S. Supreme Court in *Sperry v. Florida*[7], upholding the right of the United States Patent Office to allow nonlawyer "agents" to represent applicants before the Patent Office. Sperry was not licensed to practice law but had been approved to practice before the United States Patent Office. He had, for many years, represented patent applicants, prepared and prosecuted their applications, and advised them in connection with their applications in the State of Florida. Before being qualified as an authorized registrant, all applicants had to pass a test designed to safeguard against unskilled and unethical practitioners.

The Florida Bar sued in the Supreme Court of Florida to enjoin Sperry from the performance of such acts within the State of Florida, contending that it constituted the unauthorized practice of law. The Court did not disagree with Florida's right to regulate the practice of law within the state, absent federal legislation. The Court held that under the U.S. Constitution (art. I, sec. 8, ch. 8), the Patent Office had not exceeded the bounds of what is "necessary and proper" to the operation of the patent system. The Bar also argued that because the Commission was inconsistent with Florida state law, those unqualified individuals had the right to practice only in the physical presence of the Patent Office and in the District of Columbia, where the office was located; however, the Court struck the argument. The government, appearing *amicus curiae*, informed the Court that in November 1962, of the 7,544 persons registered to practice before the Patent Office, 1,801 were not lawyers and 1,687 others were not lawyers admitted to the bar of the State in which they were practicing (401). The Court also noted that of the 73 patent practitioners in Florida, 62 were not members of the Florida Bar (see note 44) (401). The Patent Office informed the Hoover Commission that "there is no significant difference between lawyers and nonlawyers either with respect to their ability to handle the work or with respect to their ethical conduct" (402).

A second case involves Rosemary Furman,[8] a former legal secretary who established the Northside Secretarial Service in Jacksonville, Florida. Furman compiled and sold packets of legal forms on divorce, name changes, and adoptions for $50. The price included her personal assistance in filling out and filing the forms. In 1978 and

1979, the Florida Bar Association took Rosemary Furman to court charging her with practicing law without a license, and in 1979 the Florida Supreme Court ruled against her and enjoined her from engaging in the unauthorized practice of law.

In 1982 the Florida Bar Association brought a complaint against her business alleging that she was continuing the unauthorized practice of law. In 1983 Furman's request for a jury trial was denied, and she was found in contempt of the previous court order and sentenced to thirty days in jail. The United States Supreme Court refused to hear her case and the jail sentence remained. Furman's attorneys asked the Florida Supreme Court to vacate the jail sentence if she agreed to close her business. However, the Florida Bar Association told the Florida Supreme Court that the jail term was a fitting punishment that should be served. On November 13, 1984, the Florida Supreme Court ordered Furman to serve the jail sentence for practicing law without a license. On November 27, 1984, Governor Bob Graham and his Clemency Board granted Furman clemency from the thirty-day jail term. Her case focused national attention on the broader issues of access to the judicial system (Statsky 1998, 153).

Many states have begun to consider proposals to license nonlawyers to provide selected legal services directly to the public. State legislatures and bar associations have established Task Forces to research and conduct hearings on the topic. Advocates of the proposals cite access to justice, cost, customer preference and the inevitable increase in the availability of forms and legal information through computer technology as compelling reasons to allow independent paralegals to operate. Those who oppose the

proposals emphasize the possibility of harm to the public due to unskilled and unmonitored persons. The desire to avoid competition is also a factor for many sole and small firm practitioners (Metz 1997; Munro 1990; Podgers 1993; Rhode 1996).

Lawyer Deborah L. Rhode has spent two decades researching and reporting on lay competition within the legal system, and the basic message of her work is that unauthorized practice prohibition "ill serves the public interest" (Rhode 1996, 701-702). In her essay, "Professionalism in Perspective: Alternative Approaches to Nonlawyer Practice," Rhode uses the 1995 ABA Commission report coupled with her two decades of research as evidence that lawyers must acknowledge the need for change and become constructive participants in the reform process. Rhode contends that

> Where bar organizations have participated actively in the reform process, they almost always have resisted the kind of liberalization that task forces and commissions have recommended. Over the last half century, state bars repeatedly have fought publication of self-help law materials; opposed introduction of standardized forms; prevented court clerks from providing routine legal assistance; shut down form preparation services and blocked licensing systems for nonlawyer practitioners. In polls, over 85% of lawyers support the prosecution of independent paralegals who give legal advice or prepare legal documents (705).

In addition, Rhode argues that no professional group, such as the bar, can make a disinterested assessment of the public welfare on an issue where its status and livelihood is so directly implicated. It is obvious that lay competition carries risks. According to the essay, Americans spend an estimated two billion dollars annually on routine legal problems that independent paralegals and self-help technology can often resolve. According to Rhode, lawyers have little to lose and something to gain from the

liberalization of unauthorized practice rules. When lawyers restrict nonlawyers' practice, it looks as if lawyers are "feather bedding" and the public's trust is further eroded. Reforming unauthorized practice rules could be a way to expand access to legal services without adopting measures that many attorneys find more threatening--mandatory pro bono services or procedural simplification.

Rhode further argues that if client protection is the true objective, then the current system is poorly designed to achieve it because unauthorized practice doctrine generally focuses on whether lay providers are performing a legal task, not whether they are doing so effectively (1996, 710). The two Florida examples support this observation. Both cases were based on the services performed by Sperry and Furman, not on complaints by those receiving the services. Rhode argues that regulation is the most effective response, not prohibition, and insists that consumers need a system that provides remedies where abuse or malpractice occurs without foreclosing choice (1996, 711).

Some independent paralegals can flourish and effectively compete with lawyers based on their competencies, not on price difference alone. Some individuals choose to seek the assistance of a nonlawyer because they are intimidated or put off by what they perceive as lawyers' insensitive treatment. Chronic complaints against attorneys' include failure to respond promptly to requests for information, their unwillingness to clarify or document billing arrangements, and their failure to prepare adequately for meetings or adjudicative proceedings (1996, 713). Another complaint is from those clients who

seldom have any contact with the lawyer and basically work solely with the paralegal while being billed for at the attorney's rates.

Ultimately Rhode concludes that "states should devise regulatory structures that balance the public interest in maximizing choice and minimizing harm" (1996, 714). She suggests that as the barriers erode and others are allowed to compete within the legal system, lawyers should build cooperative relationships with nonlawyers to maximize the individual's ability to obtain cost-effective services. "The fight for a sensible system of nonlawyer practice is not just the public's fight. It is the profession's as well" (1996, 716). Rhode contends that a framework for regulating legal services should be built on two central principals that would truly make public interest paramount. First, it would seek more effective ways to reduce the costs of legal services and the obstacles to self-representation. Second, it would construct regulatory structures that better accommodate consumer protection and consumer choice (1996, 713). Rhode formulates three questions to consider: Whether the risk of harm is substantially greater among lay practitioners than lawyers; whether consumers are able to gauge the risk; and whether categorical prohibitions on all nonlawyer services are the best response (1996, 708-709).

However, another argument against regulation of nonlawyers providing legal services to the public is the mere fact that regulation then leads to legitimization of the profession that some view as simply unauthorized practice of law.

Opponents of nonlawyer practice contend that attending law school and passing a bar exam is necessary to providing competent legal services. On the other hand,

proponents of opening the legal system up have discounted this argument. They point out that most law schools do not teach and bar exams do not test the law student's ability to complete routine forms. For example, bankruptcy is not a course law students are generally required to take for graduation, nor is it covered by most bar exams. Therefore, the theory that passing a bar exam gives people an instant understanding of the complexity of bankruptcy law is flawed. Those attorneys who specialize in areas such as bankruptcy actually delegate the work to paralegals who receive minimal supervision when preparing schedules, motions and responses and communicating with clients. In some cases paralegals are already performing independently within the law firm.

Bankruptcy Regulation

The 1994 Bankruptcy Reform Act, Section 110, empowered bankruptcy judges to cap the fees paralegals could charge. If so ordered, the paralegals would be required to turn over to the trustee in the bankruptcy case anything the court decides is "in excess of the value of the services rendered." The law also subjects paralegals to fines of up to $500 for each violation of the law. However, there are no fines for lawyers who overcharge and bankruptcy practice can be very lucrative. According to a 1996 Forbes article, "The Guild Fights Back", personal bankruptcies were expected to reach 1 million for the year, up from 800,000 two years prior, and up from 400,000 a decade ago (Adams 1996, 102-104). But to the dismay of bankruptcy lawyers, independent paralegals are chipping away at the fee structure, using inexpensive offices and the same legal software many law firms use, to underprice the full-price lawyers.

The Honorable Geraldine Mund, a bankruptcy judge, brings an interesting point to the debate. In some districts bankruptcy trustees are not required to be lawyers, and the positions are filled by accountants and business people. A nonlawyer trustee must make the same decisions as those who are licensed to practice law. "They must analyze whether avoidance actions exist, determine what claims objections should be pursued and decide whether to bring an action to block discharge" (Mund 1994, 339). While the nonlawyer trustee has the duty to decide whether or not the Chapter 13 plan and statement of affairs are properly prepared, if that same trustee resigns, according to the argument above, he or she now becomes unqualified because of not having attended law school or passed a bar exam.

In July 1996, Judge Robert Littlefield Jr. essentially limited the bankruptcy case fees charged by paralegals in the northern district of New York to $100. Barbara Lessunn, a single mother in a financial jam, hired Denise Gibson, an independent paralegal with five years of experience in personal bankruptcy work to prepare her Chapter 7 petition. Gibson charged Lessun $269, as opposed to the $750 fee of a lawyer. However, Judge Littlefield ruled that Gibson could charge Lessun no more than $100 (Adams 1996, 102).

Other states have also capped prices. In southern California, a judge capped the amount an independent paralegal can charge for a Chapter 7 bankruptcy at $50. Central Georgia placed the limit at $75. Lawyers in this area bill an average of $700 and $900, and many charge upwards of $1,500. The trustees claim that capping fees charged by

independent paralegals protects consumers, not lawyers' livelihoods. J. Patrick Boyl, Assistant U.S. Trustee in San Diego, is quoted by Adams as saying that their intent "is to ensure that someone who appears as a debtor in bankruptcy is adequately and thoroughly advised according to the laws" (Adams 1996, 103). When asked if consumers should be allowed to choose what kind of legal service they will get and how much they will pay for it, Boyl is further quoted as replying: "Consumers should be able to be protected. That's why we have licensing laws" (Adams 1996, 103).

In many other industrialized countries, such specialists provide legal assistance without the significant injuries that opponents to lay practice assert. In Canada, "paralegals" provide certain services to the public for a fee and do not work under the supervision of an attorney. In Japan, upon completion of an examination, judicial scriveners (*shihoo shoshi*) have special authority to assist the public in preparing legal documents such as contracts and deeds. In Russia there are nonlawyer notaries who prepare contracts and wills for the public. In Finland, lawyers are known as advocates; litigants can plead their own case or retain a representative who does not have to be an advocate. In Germany, the main providers of legal services are lawyers (*Rechtsanwalt*); however, *Rechtsberaters*, comparable to independent paralegals, can provide legal services to the public in limited areas, including small claims and no-contest domestic matters. A *Rechtsberater* must pass a licensing exam and maintain liability insurance (Statsky 1998, 30-31).

Since the delivery of legal services has long been a matter of importance to Americans, the literature devoted to the subject is extensive and often contentious. Generally, lawyers have opposed opening various aspects of law practice to lay practitioners, but as legal fees have escalated pressure has mounted for liberalizing the rules. As the literature reflects, groups such as HALT insist on the public's freedom of choice, while some paralegals seek a broader role for their profession. Arguing that they protect the public from incompetent practitioners, bar associations have defended the UPL statutes, while their opponents accuse lawyers of merely protecting their own interest. Balancing these competing interests is an important task for public policy makers.

Chapter 2
Endnotes

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[1]The report is based on statements by nearly 400 witnesses and information contained in more than 2000 documents compiled during deliberations and hearings held from 1992 through 1994 (ABA 1995, 1).

[2] Lawrence M. Friedman, JD, MLL University of Chicago, is a Marion Rice Kirkwood Professor of Law, Stanford University. He has written several books about law and society and the history of the law of the United States.

[3]Macey's article is written in response to a final report submitted in 1990 to the Chief Judge of the State of New York by the Committee to Improve the Availability of Legal Services. The Committee's study of the legal needs of the poor concluded that lawyers should be compelled to donate 20 hours every year to serving the poor. Macey argues against mandatory legal aid, concluding that the poor either do not want legal services or do not benefit from them. He contends that if given the choice of either $2500 in cash or 20 billable hours of legal services valued at $10,000, most poor or middle class people would take the $2500 cash. Macey argues that pro bono lawyering can harm the system where a lawyer pursues litigation that produces little or no benefits to fulfill their mandatory pro bono quota. Therefore, according to Macey, if the lawyers compelled to provide pro bono legal services to poor clients were permitted to negotiate with their indigent clients, both the lawyers and the clients quickly would agree that the clients should accept cash in lieu of legal services. The lawyers could put the time they saved to more productive uses, and the clients could buy some of the virtually infinite array of goods and services they actually need. Everybody would be better off (1992, 1115-1118).

[4]The American Heritage College Dictionary, 3rd Edition, s.v. "monopoly."

[5]The American Heritage College Dictionary, 3rd Edition, s.v. "profession."

[6]Numerous sources describe each of the three forms of regulating, including: Laurel Bielec, "State of Regulation," *Legal Assistant Today*, 16(4) (1999): 46-47; Barbara L. Albert, "Paralegal Regulation: Controlling the Future of the Profession," *Practicing Law Institute*, 456 PLI/Comm 21n(1988): 23-24; Theresa Meehan Rudy, "Has the Time Arrived for State-By-State Licensing?" *ABA Journal* 78 (1992): 42; Dominic Latorraca, "Regulation of Paralegals: An Upcoming Issue, *Colorado Lawyer*, 22 (1993): 493-494; "The Certified Legal Assistant Credential and Guidelines of the United States Supreme Court," *Maine Bar Journal*, 11 (1998): 376-378.

[7]*Sperry v. Florida*, 373 U.S. 379 (1963).

[8]*Florida Bar v. Furman*, 451 So.2d 808 (1984).

Chapter 3

Arizona Case Study

Introduction to the Issue

"The sunsetting of the State Bar Act in 1985 has left Arizona without an effective means of regulating the unauthorized practice of law" (Talamante 1992, 892). Sunsetting the law also opened the door in Arizona to an industry of alternative legal providers known as independent paralegals and legal document preparers. According to an article written by John Schwartz and published in the *Business Journal* (Phoenix) on 10 February 1995, "Legal document services—called by practitioners one of the fastest growing industries in the state—are being threatened by an effort of the State Bar of Arizona to stamp out what it calls the unauthorized practice of law." However, those in the industry claim they are not practicing law, but only assisting people to represent themselves by providing affordable legal document preparation services.

With the growth of this paralegal industry has come an increased scrutiny from the State Bar of Arizona. The Arizona Bar created the Unauthorized Practice of Law Task force in 1991, to investigate the growing paralegal industry. After receiving the Task Force report, the Board of Governors submitted proposed rules to the Arizona Supreme Court. The proposed rules supported licensing the independent paralegal industry and strictly limiting the areas in which it may operate (Calle 1994, 10). "At

issue is whether the paralegals who prepare documents are helping or hurting the consumer and whether the legal community is acting to protect the consumer or to protect its turf" (10).

According to an article written and published in the *Arizona Business Gazette* on 12 February 1998, by Lynda Shely, Ethics Counsel for the State Bar of Arizona, "The State Bar receives hundreds of complaints each year from people who are dissatisfied with the services (or non-services) that they received from unregulated legal providers" (4). In her 26 January 1995 article published in the *Arizona Republic*, the Bar has received nearly 1,000 heartbreaking stories during the past 10 years from those who have been harmed by or who were dissatisfied with these services or non-services. Shely explains that a real problem exists with independent paralegal businesses in that they do not have to follow standards because they do not answer to any regulatory body or agency. Further anyone can call themselves independent paralegals or document services providers and the public has no means of learning which businesses are competent (1995, 1998b).

In 1994, Robert H. Kruetzer[1] wrote an article strongly opposing the proposed rules of the Board of Governors. In Kruetzer's opinion, "The board took a wrong turn: the Task Force proposal for legitimizing unsupervised services by NLLTs should have been rejected and an expanded role for delivery of legal services by paralegals operating under the supervision of full-fledged attorneys should have been endorsed" (21). He

argues that it is an unrealistic notion that independent paralegals can operate without giving the legal advice or opinions prohibited by the rules. Therefore, the customer must come to the nonlawyer legal technician (NLLT) with both the diagnosis and solution to his or her particular problem; whereas an attorney earns a fee for counseling and protecting clients by advising them as to what should and should not be filed. Kruetzer further states that "The underlying problems, in this writer's judgment, are larger than the presence of incompetent doc preps, and beyond the competence of the organized Bar and the Supreme Court together to solve. The pressure to find a solution should not compound the harm by imposing the wrong solution" (22). Ultimately Kruetzer suggests that the Bar should support the increased use of paralegals and better law-office management to lower the costs of providing legal services, as well as increasing access to the legal system for those who cannot afford the services of a lawyer through a supplemental private social-welfare service designed like Medicaid (22-23).

According to Jim Calle's article, "Bar Seeks to Protect Public with Non-Lawyer Practice Rules," "Document preparers take issue with being the target of the proposed rules. Rather than being a renegade industry, they portray themselves as entrepreneurs serving a growing market admittedly abandoned by the legal profession" (Calle 1994, 12). With the exception of one document preparation business, all others cited within his article had the Better Business Bureau's highest service rating. Document preparers

claim that they are serving well two groups of consumers—"those seeking affordable legal service and those seeking routine legal service"(12).

A question persists as to whether problems with the paralegal business are always reported. Document preparers insist that complaints are not underreported, but three factors indicate that the reporting process may be inadequate. First, the public may not know where to call with a complaint against a document preparer. Second, people may complain to the Better Business Bureau about document preparers, but the complaints may be mislogged. Third, document preparers are completing wills, trusts, deeds and other documents, which, if flawed, may not result in harm until they are either relied upon or challenged (13). A systematic approach to measuring the extent of the problem with underreporting has not yet been developed.

In their ongoing conflict with the bar over the scope of their legal involvement, the document preparers always contend that greed and protectionism motivates their attorney opponents (14). Calle quotes Allen Merrill, owner of Mesa-based Legal Solutions and former president of the Independent Paralegal Association of Arizona, as saying, "The bar is not being truthful. They are saying that their intention is regulation and consumer protection. We say it's turf. Their intention is to put us out of business" (Calle 1994, 14). However, Sarah R. Simmons, past president of the State Bar, disagreed with Merrill's statement. She contends that lawyers are not merely trying to protect themselves, but that they are responding to a potential for public harm. She believes the

Bar will be negligent if it ignores an issue that the board of governors has determined needs attention (Calle 1994, 14).

Attempts by the Arizona legislature to re-criminalize UPL have been unsuccessful to date. To better understand the policy development, or non-development, regarding UPL and regulation of independent paralegals, the legislative history and the efforts of the Unauthorized Practice of Law Task Force of Arizona will be reviewed.

Historical Development of Unauthorized Practice of Law Rules in Arizona

In 1933, the Arizona legislature passed the State Bar Act[2], which designated the State Bar of Arizona a "public corporation." This act included the provision that declared the unauthorized practice of law a misdemeanor, and continued as the only authorization for the State Bar until 1973, when the Supreme Court of Arizona promulgated a set of "Supreme Court Rules." These Rules "created and continued.....an organization known as the State Bar of Arizona...." and such rules continued to prohibit the unauthorized practice of law. However, unlike the Bar Act, the Rules did not make the unauthorized practice of law a misdemeanor[3] (Talamante 1992,883).

A series of court decisions played a role in the development of the current UPL status in Arizona. In 1961, the Arizona Supreme Court held in *State Bar v. Arizona Title and Trust Co.* that the Court has the authority to regulate the practice of law. In 1975, the Arizona Supreme Court held that the Arizona Constitution prohibits the creation of a public corporation by special legislative acts.[4] Therefore, in *Bridegroom v. State Bar of*

Arizona, the Arizona Court of Appeals held that under the State Bar Act, the State Bar had "no viability" and its designation as a public corporation had no "legal efficiency."[5] However, the court went on to conclude that the State Bar was a legitimate organization under the Supreme Court Rules (Talamante 1992, 884).

Although the State Bar Act was not expressly repealed, in *Hunt v. Maricopa County Employees Merit System Commission*[6] the Arizona Supreme Court further weakened it as a means of regulating the unauthorized practice of law. The court held that the judiciary has the sole authority to determine who may practice law in Arizona and under what conditions. The decision implied that Section 32-261(D) violated the separation of powers provision of the Arizona Constitution.[7] The Court then adopted the substance of Section 32-261(D) as a court rule, which stated that "Under appropriate circumstances the Court may deem it in the public interest to implement a legislative enactment providing for lay representation under specified conditions." The constitutionality of the State Bar Act however was left in doubt (Talamante 1992, 884).

Arizona's legislative response began in 1982 when the legislature added the State Bar of Arizona to the list of state agencies to be terminated by July 1, 1984 under a "sunset law."[8] A sunset law requires the legislature to "take positive steps to allow the law, agency, or functions to continue in existence by a certain date or such will cease to exist."[9] Also in 1982, the legislature added the State Bar Act to the list of statutes scheduled to be repealed on July 1, 1985, under another sunset law.[10] Therefore, on July

1, 1984, the state Bar of Arizona terminated as a state agency[11] (Talamante 1992, 885), and in 1985 the State Bar Act was repealed. This statute included the provision that made UPL a misdemeanor. Although the Supreme Court Rules continue to prohibit such conduct,[12] the unauthorized practice of law is no longer a crime; further, Arizona's sole regulation of the unauthorized practice of law lies in the Supreme Court Rules. The general rule simply states that one may not practice law without a license; however, exceptions allow nonlawyers to practice under specific conditions.[13] These exceptions are Court Rules and as such do not create a separation of powers problem (Talamante 1992, 885).

Unauthorized Practice of Law Task Force

In 1991 the State Bar of Arizona created the Unauthorized Practice of Law Task Force (Task Force), which was chaired by public Board member Karen Osborne. Research was conducted on the extent of the Supreme Court of Arizona's authority to regulate the unauthorized practice of law. Based on *State Bar of Arizona v. Arizona Land Title & Trust Co.*[14] this research concluded "that the Court has the authority to regulate the practice of law, including the practice of law by non-lawyers" (Shely 1984, 15).

The Task Force requested that all of the sections of the Arizona Bar respond as to how they perceived the problem of unauthorized practice of law in their specific area, as well as make recommendations. Additionally, the Task Force received hundreds of letters from consumers, members of the bar, legal aid providers, independent paralegals,

traditional legal assistants, health care providers, judges, and state legislators (Shely 1994, 15). Public meetings and hearings were held in efforts to collect input from the community. On January 23, 1993, the Task Force met with several independent paralegals, a paralegal from the volunteer lawyer's program, and a lawyer from Community Legal Services to solicit their input on the unauthorized practice of law issue. Written comments were also received from the Administrative Director of the Courts, and the state Senate regarding Senate Bill 1414 which would have made the unauthorized practice of law a class 5 felony (Shely 1994, 16).

On March 6, 1993, the Task Force met with paralegals and domestic relations lawyers and immigration specialists. Also appearing before the task force was Dave Bishop, a paralegal employed by Maricopa County Superior Court to assist pro per litigants (persons representing themselves) in the preparation of dissolution documents. Letters from judges, practitioners, and paralegals making suggestions on how to address the issue were reviewed. Their comments came in response to articles in the *Maricopa Lawyer* and *Arizona Attorney* explaining that the Task Force was seeking public comment on imposing regulations on the unauthorized practice of law (Shely 1994, 16).

On April 3, 1993, the Task Force held another meeting inviting various members of the Sole Practitioners' Section, domestic relations lawyers, bankruptcy lawyers, and other lawyers. A public hearing was held on May 8, 1993. Notice of the hearing was posted in various publications throughout the state, and notification was directly mailed

to various interested individuals and organizations. Twenty written comments were submitted to the Task Force, and fourteen individuals testified orally. David Williams, Associate Director of the Arizona Bar Foundation, several sole practitioners, traditional paralegals, and representatives of the Independent Paralegal Association all explained their positions to the Task Force (Shely 1994, 17).

At the Bar Convention in June 1993, the Task Force heard the concerns of still more interested parties. Anna Ochoa Thorne and Chuck Kuck stepped forward to explain why the immigration section of the bar supported the immigration bill to allow non-lawyers to help individuals through immigration proceedings. Chief Justice Stanley Feldman explained his conviction that changes in the practice of law have made it difficult for lawyers to provide services at reasonable prices. He testified that community legal services and pro bono work are not filling the gap. He also clarified what he believed the Task Force's goals should be. He hoped they could provide services for those in need while eliminating unqualified providers (Shely 1994, 17).

Gordon Mullenaux, Associate Clerk with the Maricopa County Clerk of the Court, addressed the difficulties encountered by the courts because of unauthorized practice of law. He explained that pro per litigants and ill informed document preparers often expect the court to help them prepare the documents, an impossible task since the court system is not prepared to manage the overwhelming number of requests it receives. Regulation, he suggested, could assure a minimum level of training (Shely 1994, 17).

In the summer of 1993, the Task Force employed an individual to telephone legal assistants and document preparers whose numbers were listed in the phone book and in the newspaper supplement. The goal was to determine what type of advice would be offered over the phone. Contacting over 50 different businesses, the interviewer asked questions focusing on bankruptcies and divorces. He found that "most document preparers were reluctant to give out information over the telephone and most said that he would have to consult with an attorney to make the 'legal' decisions in bankruptcy or divorce" (Shely 1994, 50).

After an extensive review process the Task Force issued its report concluding that

1) neither the private bar nor legal services was meeting the legal needs of a significant portion of the public;

2) document preparers were able to serve some of those people effectively; and

3) some standards of competency needed to be required for lay people providing the services.

The Task Force considered a range of options. It explored ways to encourage pro bono work by attorneys to address the inadequacy of the availability of legal services. Also under consideration was a commission solely to investigate UPL complaints but not to regulate nonlawyers. The option that the Task Force favored was the creation of a commission under the authority of the Supreme Court both to address UPL complaints and to expand the availability of legal services. It acknowledged a need to license nonlawyers to deliver document preparation and low cost services to meet the public's

needs. Legislation to impose criminal penalties for the unauthorized practice of law was also contemplated (Shely 1994, 50).

The Task Force decided to recommend the creation of a commission under the Supreme Court that would have the authority to regulate document preparers and legal assistants. Case law establishes the authority of the Supreme Court to regulate anyone offering legal services, and the existing processes were not effectively providing legal services or handling UPL complaints. An insufficient number of lawyers were participating in pro bono programs and the document preparers were already established businesses. Once the commission was established, the Task Force determined, it would address both UPL problems and licensing to protect the public and provide them services. The Task Force also recommended that the legislature pass a criminal statute to provide additional consumer protection from untrained, unscrupulous non-lawyer practitioners (Shely 1994, 50).

The Task Force specifically recommended that the Arizona legislature enact a law that would make UPL a misdemeanor and give the attorney general authorization to enforce it. The Task Force also wanted strict licensing requirements for "Non-Lawyer Legal Technicians" (NLLTs). The practitioners should be required to meet educational standards, pass examinations, prove financial stability, accept a formal discipline process and take continuing legal education. The Task Force further wanted a requirement that NLLTs provide prospective customers with a written disclosure stating that they are not

attorneys.[15] The Task Force further recommended that NLLTs only be permitted to prepare specifically defined legal documents[16] without a lawyer's supervision (ABA 1995, 61-62). Legal technicians, however, objected to the list as being too limited (Calle 1994, 13; ABA 1995, 63). On the other hand, Sarah R. Simmons, past president of the Arizona Bar, responded that the proposal was "a fair, yet bold, approach to the twin needs of access to our justice system and public protection from incompetent providers of service"(Calle 1994, 9).

Upon completion of the public hearings and meetings, the Task Force proposed a rule that would address the concerns that had been expressed in their investigative process. Several sources were drawn upon for guidance in the drafting process, including the Bar's own discipline rules, the UPL rule proposed by the Board of Governors in 1985 but rejected, UPL rules from other states, and the proposals suggested in other states' UPL Task Force reports (Shely 1994, 50).

In 1993, at the end of September, every Section chairperson of the Arizona State Bar received a copy of the draft rule. Many other interested parties and organizations were also notified and asked to comment on the draft. Over 30 written comments were received and sent to the Board for their review. The Board of Governors held a special session to discuss the proposed rule on November 18, 1993, and approved the draft in concept only. In December, 1993, the Board of Governors approved certain portions of the draft rule and in January, 1994, the proposed rule was sent to the Supreme Court

under a Rule 28 Motion for Rule Change (Shely 1994, 50). However, the Supreme Court never responded to the Motion. After numerous hearings and months of study, research, and hard work, the proposed rule change was never implemented.[17]

Legislative History

In addition to the efforts of the State Bar of Arizona, there have also been unsuccessful attempts within the Arizona legislature to re-criminalize UPL and regulate independent paralegals. In 1993, Senator Marc Spitzer, a Phoenix Attorney, introduced SB1414 to the Arizona Senate Commerce Committee for adoption of a new UPL statute. The Committee refused to adopt a UPL statute in the absence of regulations licensing NLLTs. One senator stated that the UPL bill was "the lawyer protection act" and claimed that there is "an incestuous relationship between the Court and the Bar" (Hamilton 1993, 33). Senator Spitzer noted that "Lawyers are not well-liked in the Legislature. They didn't see the consumer protection aspect. They saw it as a feather-bedding" (33). At the time, the Arizona legislature had only one attorney in the Senate and six in the House of Representatives.[18]

Two years later, another attempt was made to recrimanalize UPL. Senate Bill 1055, prepared by Arizona Senate President John Greene a Republican from northeast Phoenix, passed the Senate Judiciary Committee on February 2, 1995 and went through the Senate Rules Committee on February 6. The bill would have made it illegal for anyone to practice law or deliver legal services in Arizona unless authorized under rules

adopted by the Arizona Supreme Court. It would not apply to a person who holds a valid license or permit issued by an agency, board, or department of the state. The bill lists eight exceptions for assisting others in the preparation or filing of forms: uncontested default dissolution of a marriage; establishing, enforcing or modifying a duty of support; health care power of attorney; living will; change of name; creation of an entity such as a corporation; affidavit for transfer of title to real property or for collection of personal property; and affidavit evidencing termination of joint tenancy or a life estate. The bill would have made the unauthorized practice of law a Class 6 felony, which carries a prison sentence of up to two years upon conviction.[19]

After the bill passed the Senate on a sixteen to thirteen vote, Representative Tom Smith, a Republican from Phoenix, refused to give the bill a hearing before the House Judiciary Committee. Senator Greene was annoyed by the news that Smith was killing his bill, and stated that "People are being victimized and given bad advice by unlicensed, unregulated practitioners."[20] Smith said, "The solution proposed by Greene was worse than doing nothing at all."[21] In a later interview, Greene stated that "lawyers are held in low esteem by many Americans today. I didn't appreciate how bad the situation was until I tried to get an unauthorized practice of law bill through the Legislature a few years ago."[22]

On February 11, 1997, Senate Concurrent Resolution 1005 passed by a four to three vote by the Senate Committee on Government Reform. The Resolution proposed a

State Legal Professions Board with the "exclusive" right to regulate the legal industry. Therefore, lawmakers would regulate not only lawyers but also anyone else they think is practicing law, such as paralegals and document preparers. Senator Carol Springer, a Republican from Prescott, supported the Resolution, saying, "The practice of law is the only major profession that is not subject to state regulation."[23] Tom Patterson, a Republican from east Phoenix, agreed that lawyers should not regulate themselves, when other professions must answer to the legislature. The Resolution called for a board to regulate lawyers, and for the Arizona Supreme Court to establish and enforce rules of conduct for attorneys directly appearing before any court in the state.[24]

After passing the Committee on Government Reform, the resolution failed in the Senate with a vote of nine to nineteen. All Democrats voted against the Resolution, with the exception of Elaine Richardson who did not vote, while the Republican vote was mixed. Voting in favor of the Resolution was Brenda Burns, a Republican from northwest Phoenix, who previously supported an amendment to SB 1055 that would have established a state board of legal technicians appointed by the governor to license and oversee document preparers.[25] Marc Spitzer, who at the time of the vote was the only attorney in the Senate, voted against the Resolution.[26] If the Resolution had been adopted by the legislature, it would have gone to the voters as a constitutional amendment in 1998.

Self-Service Center

The citizens of Maricopa County have access to a unique service. In February 1995, the Self-Service Center opened specifically to "help people help themselves in Court".[27] The Superior Court of Arizona developed the Center in Maricopa County under grants from the State Justice Institute and the Arizona Supreme Court.

According to Bob James'[28] article, "Self-Presented Litigants and the Unauthorized Practice of Law," in the early 90's, eighty percent of litigants in domestic relations cases before the Superior Court of Arizona in Maricopa County had no legal representation. Most litigants used generic do-it yourself kits and document preparation or independent paralegal businesses for assistance. According to James, "They mistakenly assumed that document preparation services and independent paralegals are regulated by the State Bar or some other regulatory agency" (1999, 18). Domestic relations cases had an increased disposition time because litigants were receiving materials and services from these businesses that were "either inappropriate or legally insufficient for their situations" (1999, 18).

The Center is designed to provide resources to pro per (self-representing) litigants. For example, court information, instructions and professional rosters of lawyers and mediators are made available to them. Citizens can access the Center at two physical locations,[29] by telephone,[30] or through internet access.[31] The Center provides an automated telephone system that is available twenty-four hours a day with more than 6

hours of information regarding topics from different types of cases and levels of court, detailed information about various areas of law including domestic violence, paternity, divorce, and much more. The internet site provides an abundance of information that is easy to read and understand. The site provides litigants with a variety of information about the courts, such as Tips on Self-Representation, explaining to the litigant that it is very important to dress as professionally as possible, and to be clean and neatly groomed. Another tip for the self-representing litigant is to "get legal advice from a lawyer ahead of time to make sure you are doing the right thing." It is explained that some lawyers provide "coaching" which is cheaper than hiring a lawyer for full representation. The forms needed for specific cases are assembled in packets and are accessible either through the internet site or they can be obtained at the Center's physical locations. The packets are regularly updated and designed to keep litigants from missing any documents that will be needed. The web site also explains to the litigants how to file an application to defer or waive court fees if the litigant can not afford the costs associated with filing a lawsuit.

According to Bob James,[32] Director of the Center since its opening in 1995 and member of the State Bar of Arizona Consumer Protection Committee, the Self-Service Center has helped to expedite the court system. He claims that individuals complain on a daily basis because they have spent hundreds of dollars for document preparation services and their cases have been dismissed because they failed to meet a deadline or court requirement. The Center provides packets for the litigants with the forms and

instructions written plainly, without legal jargon. The Center stresses the need for individuals to contact an attorney so that the attorney can provide them with advice and counsel about the pathway of action that will benefit them. The Center provides pro per litigants with a list of attorneys within their area who will provide "unbundled legal services," advice and counsel without full representation. A vast majority of individuals do not know that they have options such as this.[33]

James' position is that the solution to the problem is not regulation of unlicensed individuals. He argues that this would only give legitimacy to those who are not credentialed. In his opinion, advocacy and expert diagnosis must come from a licensed attorney. Independent paralegals and document preparers do not look holistically at the legal situation, and people can get hurt if they make the wrong decision based on bad advice. Comparatively, he points out, you do not just treat one symptom of an illness or one aspect of a legal problem that is likely to continue. For example, in family law cases the decisions that individuals make about a divorce will continue to affect them long after the divorce is final.[34]

James also discussed the problem of how individuals perceive the legal system, lawyers, judges and court administrators. People do not understand the value of a lawyer and lack confidence in lawyers, thus they are apprehensive about paying $150 to $200 per hour, especially if they do not have the money or feel that they can do it themselves. The judicial system tells people when they break the rules, sometimes by dismissing their

case, but it does not tell them how to achieve their goals. The court sees maneuvering the court system as the role of an attorney. When individuals representing themselves do not get the answers to their questions, their conditioned response is that "those lazy bureaucrats do not want to help."[35]

James explained that the role of the Consumer Protection Committee is to educate the public about the importance of contacting an attorney and the possible problems of hiring nonlawyers. The Committee receives input from citizens through the members, as well as feedback from the people who contact the Arizona State Bar or complete complaint cards to identify the harm that they have suffered by using a nonlawyer. He explained that the Center's purpose is not to put nonlawyers out of business, but it does stress to individuals the importance and benefits of contacting a lawyer instead of a nonlawyer. He believes that the Center has definitely made a difference in people's lives, as well as in the judicial system, but he admits that the Center does not have the marketing budget of the independent paralegal businesses, putting it at a disadvantage.[36]

Prior to the opening of the Self-Service Center, David Bishop, an independent paralegal, provided services to pro per litigants in the Domestic Relations Court of Maricopa County.[37] Bishop has a Bachelor's degree in Criminal Justice and was a police officer for fourteen years. After working for Community Legal Service (legal aid) for several years, he was hired in November 1989 by Judge Gurst, Domestic Relations Judge for Maricopa County. Bishop was hired by the court to assist in the preparation of

documents for individuals to file so that they could represent themselves in domestic relations cases. He provided services to thousands of people and because he worked directly with the court, there was never a fear of unauthorized practice of law occurring. People did not have to meet any income levels. They just had to be able to get an appointment, and because of the heavy demand for his services a lottery type system was eventually developed.[38]

Bishop served on four committees that worked to establish the Self-Service Committee. Prior to the Center opening, he became critical of several aspects of the Center, especially of the documents being used. When the Self-Service Center opened in February 1995, his position was basically phased out, and he left the Court in November 1995. After leaving the Court, Bishop was contacted by the Maricopa County Bar Association, Young Lawyers Division, and the Domestic Violence Committee. They offered to contract directly with him to provide legal services to clients in need. Bishop provides a maximum of twenty hours per week to victims of domestic violence at no charge to them and then it is billed back to the bar association at a small hourly rate. This program was developed under the auspices of a volunteer lawyer program and is administered through Community Legal Services. While the program is administered through the legal aid program, he prepares the documents needed by the victim at his office and then the victim files the documents with the court.[39]

In addition to contracting with the Maricopa County Bar, Young Lawyers Division, Bishop also provides services to the public and claims that his clientele consists of all income levels, but he also provides services to many people who cannot "rub two nickels together." Bishop would like to see regulation of the profession, believing that it would not hurt those who are doing a good job.[40]

Bishop does not feel that the Self-Service Center developed into the program it was designed to be, primarily because the document packets are convoluted and confusing. Many people do not know how to use the computers at the Self-Service Center, and people cannot get any advice or help from the Center's staff. He witnessed one individual at the Center who was so disgusted that he raised the forms above his head and threw them in the trash. People are dealing with a lot of emotional crises when they come to the Center, but they can receive very little information or help with their problems.[41] He reports that people often contact him after receiving documents from the Center that they find too confusing to complete on their own.

Independent Paralegal Business Profile

For the purposes of this study, several independent paralegal businesses were randomly interviewed and data was collected to develop a preliminary profile.[42] Appendix B contains the questions used to guide the interviews. Although the interviewees frequently added information from the perspective of their particular business interest, the same questions were posed to each one to maintain uniformity.

From a total of 64 paralegal businesses, six were randomly selected for extended interviews. The final sample represents almost ten percent of the businesses currently operating in Phoenix, Arizona and the surrounding areas as legal technicians. Though the actual number represented is small, it is an adequate sampling for the purposes of this study. Figure 1 provides a summary of the information gathered from the business owners who agreed to voluntarily participate in the study.

Table 1

Independent Paralegal Business Profile

Business	Years in Operation	Degree/Training	Provides Disclaimer
Business 1	5 years	Began a Paralegal program but did not complete	Yes
Business 2	12 years	Paralegal Certificate from American Paralegal Institute	Yes
Business 3	10 years	Associate Degree and six years law office experience	Yes
Business 4	10 ½ years	Paralegal Certificate from North American College and currently seeking a Bachelor's Degree in Business Administration	Yes
Business 5	5 years	Associate degree and law office experience	Yes
Business 6	12 years	Accountant	Yes

Business owners unanimously agreed that they would like to see some form of limited regulation but did not want to be overseen by the State Bar Association. The business owners verified that there are disbarred attorneys operating paralegal businesses as well as incompetent paralegals; however, they feel that there are numerous complaints against a few people as opposed to complaints against many people. While Arizona Better Business Bureau records were not sought for all sixty-four listed businesses, all

who were included in the survey have a satisfactory rating or had no reports filed against them. The research of Jim Calle, an Arizona attorney who investigated Better Business Bureau complaints against paralegals, supports the interviewees conclusions that few complaints have been filed (1994, 12).

When asked about the income level of the clientele, all but one of the independent paralegals claimed that they provide services to people from all income levels. The majority of their clientele consists of low to middle income individuals. Several of the businesses provide low fees and payment plans to their customers. The businesses interviewed claimed that they do not advertise. Because they offer a good service at low prices, customers return and make referrals for them. They mainly build their businesses through these referrals.

Deanna Peters,[43] owner of Deanna Peters Paralegal, Inc. (Business 4) presented a unique business situation among the businesses interviewed. Peters' business is located in Scottsdale, Arizona and her clientele consists of 400 corporate clients, business owners, and very affluent people. She provides corporate services (incorporations and corporate minutes once a year for the corporations), uncontested divorces, wills and trusts, as well as other miscellaneous services. Deanna Peters' business brochure contains her biographical information, business philosophy, and a list of services and fees (See Appendix D). According to Peters, her clients come to her as a matter of choice. Some of her clients can afford to hire a team of attorneys, but she feels that she has built a

business where clients receive more service for their money. She does not advertise—her business is built on referrals.

During the interview, Peters stated that, "I am probably the highest priced paralegal in Arizona, if not I would be shocked.[44] In her brochure and website[45] Peters clearly explains that she is not an attorney, her office is not staffed by attorneys, she does not give legal advice, and if the expertise of an attorney is needed, she will recommend an attorney who will provide quality services to clients for a reasonable fee.

Peters is a registered lobbyist and has been active in legislative issues regarding the independent paralegal profession. She would like to see some kind of regulation put into place, but she is hesitant about licensing procedures, especially if the State Bar is involved in the process. In her opinion, licensing a profession does not guarantee competence. Peters also volunteers for the Maricopa County Bar Association's Committee on Domestic Violence.[46]

Allen Merrill,[47] owner of Legal Solutions (Business 6) has been involved in lobbying against UPL legislation that would put independent paralegal businesses out of operation or extremely limit them. Merrill served as president of the Independent Paralegal Association, which was formed in response to efforts to eliminate paralegal businesses. Merrill, like the other business owners interviewed, would like to see some form of regulation; however he does not trust the motives of the Bar. During the interview, Merrill explained that the original sunsetting of the State Bar Act in 1985

resulted from a dispute between lawmakers and the Bar. The conflict erupted over whether or not the Bar would have to open its records to review by the state Auditor General. According to Merrill, the legislature allowed the Act to be sunsetted because of the Bar's refusal to allow the review of its records.[48]

Public Protection

"Some consumers of legal services need to be protected against their own ignorance. They may be harmed as a result of information deficiencies that are costly or impossible to correct" (Crampton 1994, 545). Frances Johansen,[49] Unauthorized Practice of Law Counsel for the State Bar of Arizona, works directly with the Consumer Protection Committee to help reach its goals and objectives in protecting the public. The committee that she works with is made up of attorneys, a paralegal working with a law firm, and Bob James, director of the Self-Service Center. She explained that part of her job is that of educating and informing the public of what UPL is, what its effects are, and who does it. To reach this goal the Bar has distributed a brochure entitled "I Need Legal Advice—What Should I Do?" (Appendix E); the brochure is available in paper form and on the State Bar of Arizona's website.[50]

According to Johansen, most of the people harmed by the unauthorized practice of law are probably not sophisticated enough to know there is a state bar to take their complaints. If the Bar receives a complaint, she will independently do research to determine its validity. If circumstances warrant it, she will advise individuals that they

can bring a civil suit. Additionally, the Attorney General can prosecute for consumer fraud if a nonlawyer misrepresents himself or herself as an attorney or claims to be capable of performing functions that only an attorney can perform, such as attending court with the client. She also corresponds with the Better Business Bureau.[51]

When asked what the Bar would like to see happen with independent paralegal businesses, Johansen responded that the bar wants to make an intelligent decision. The bar has to gather information and take an educated position; her job involves facilitating their decision-making process. According to Johansen, the state is making some strong strides, and the Self-Service Center is a model of this. The legal community has to determine what it can do to serve those individuals who are now seeking the services of a nonlawyer. Johansen verified that there had been no recent legislation presented and she did not foresee anything happening in the near future. She said she would be very surprised if the bar takes any position on the matter within a year, at the earliest.[52]

Bankruptcy Regulation

One area that has been successfully regulated through federal statutory and case law is that of bankruptcy. As late as 1996, forty percent of Chapter 13 cases were prepared by document preparers, thus putting a strain on the court system. However, the number has since declined to only about five to ten percent. Section 110 of the Bankruptcy Code has played a role in this reduction. It requires a "bankruptcy petition preparer," which means a person, other than an attorney or an employee of an attorney,

who prepares for compensation a document for filing,[53] to put his or her name, address and Social Security number on each document prepared and to give the debtor a copy of the document. Furthermore, the preparer cannot use the word "legal" in any advertisement. Further the law allows the bankruptcy court to require a preparer to turn over any fee the court finds to be in excess of the value of the documents prepared. In Arizona, a fee of $200 has been determined to be acceptable in most circumstances.

According to Russell A. Brown's article "Bankruptcy and the Unauthorized Practice of Law," with the exception of domestic relations, the field of bankruptcy has seen the largest influx of document preparers. "About 40 to 50 percent of Chapter 7 bankruptcy cases are filed pro se, with the majority of them prepared by document preparers" (1999, 30). According to this article, "Many bankruptcy document preparers are disbarred lawyers from Arizona or another state, have law degrees but cannot get licensed in Arizona, or are lawyers who move to Arizona but do not bother getting licensed" (1999, 30).

The bankruptcy court can fine bankruptcy preparers up to $500 for each violation and require that the preparer turn over any fees collected above those set by the court. Since the passage of Section 110, the Arizona Bankruptcy Court has fined and enjoined preparers. *In re Repp*, 218 B.R. 518 (Ariz. 1998), the court fined one preparer $1 million for violating the Court's permanent injunction. In another case, the Bankruptcy Court also ordered the same preparer to disgorge about $200,000 in excessive fees in nearly 200

cases for violating the Court's order not to charge more than $200 per case. The United States Attorney prosecuted the preparer in the District Court for criminal contempt of the Bankruptcy Court's order, but the District Court has rendered no decision yet.

The bankruptcy judges are not tolerant of document preparers giving legal advice. Judge Sarah Sharer Curley published a decision, *In re Gabrielson*, 217 B.R. 819 (Ariz. 1998), defining which activities constitute the practice of law in bankruptcy. The practice of law includes advising debtors about which chapter to file, determining how creditors should be listed in the schedules or plan, or advocating a position on behalf of the debtor to third parties. The Court used the Arizona Supreme Court's definition of the practice of law from the case *State Bar v. Arizona Land Title & Trust Company*. Therefore, Arizona has defined what document preparers may and may not do, and they have also limited the amount that can be charged. Of the businesses interviewed for this study, Allen Merrill, owner of Legal Solutions, is the only one that still provides bankruptcy services after the enactment of Section 110 of the Bankruptcy Code.

Complaints Against Non-Lawyers

Jona Goldschmidt (1998) published a study entitled "Crossing Legal Practice Boundaries: Paralegals, Unauthorized Practice of Law, and Abbott's System of Professions." She studied 550 UPL complaints received by the State Bar of Arizona from 1988 through 1994. The results of the study, as reflected in Table 2, show that 381 (70%) of the complaints were made by attorneys, 68 (13%) were made by individuals, 24 (4%)

were made by judges, and supervised paralegals accounted for 15 (3%) of the complaints made (169-170).

Table 2.

Who Files UPL Complaints	Number (%)
Attorney/law firm	381 (70)
Individual	68 (13)
Judge	24 (4)
County Attorney	16 (3)
Paralegal (supervised)	15 (3)
Government employee	11 (2)
Private Corporation	7 (1)
Anonymous or unknown	6 (1)
County bar association	5 (1)
Insurance companies	3 (1)
Miscellaneous	10 (2)
Total	546 (100)

Notes: Percentages have been rounded.
Source: Data from Jona Goldschmidt, Crossing Legal Practice Boundaries: Paralegals, Unauthorized Practice of Law and Abbott's System of Professions, (Greenwich, Conn.: JAI Press, 1998), 170.

Second, Goldschmidt analyzed the groups against whom UPL complaints were made. Table 3 indicates that independent paralegals accounted for the largest group against whom complaints were made, with 207 (38%) of the UPL complaints. Goldschmidt makes a specific reference within the study to one independent paralegal she calls "Mr. Jones," who is the respondent in approximately 27% of the complaints. If these are subtracted from the total, only 59 (11%) of complaints were against independent paralegals. Additionally, complaints made against document preparation companies totaled 103 (19%). The third largest category was individuals who had committed "lawyer-like acts" to assist themselves or others with a legal problem. This group accounted for 64 (12%) of the complaints filed (171-172).

Table 3.

Against Whom Are UPL Complaints Filed?	Number (%)
Independent paralegal	207 (38)
Document preparation company (general)	103 (19)
Individual	64 (12)
Unlicensed attorney	31 (6)
Accident consultant	30 (6)
CPA/accountant	18 (3)
Homestead assistance company	12 (2)
Collection agency	9 (2)
Tax service	8 (2)
Miscellaneous	68 (12)
Total	550 (100)

Notes: Percentages have been rounded.
Source: Data from Jona Goldschmidt, Crossing Legal Practice Boundaries: Paralegals, Unauthorized Practice of Law and Abbott's System of Professions, (Greenwich, Conn.: JAI Press, 1998), 171.

Third, Goldschmidt analyzed the areas of law in which UPL activities occurred (Table 4). The ranges of legal subjects were broad, but excluding the miscellaneous category, five categories contained more than 50 complaints in each. The area of contracts accounted for 95 (18%) of the complaints; however if "Mr. Jones'" complaints were deleted, this category would be reduced to 4.5% of the complaints. Divorce accounts for 88 (17%); wills and trusts account for 58 (11%); Personal injury accounts for 56 (11%); and bankruptcy accounts for 51 (10%) of the complaints made (172-173).

Table 4.

Area of Law in which Alleged UPL Occurred	Number (%)
Contract	95 (18)
Divorce	88 (17)
Wills and Trusts	58 (11)
Personal injury	56 (11)
Bankruptcy	51 (10)
General consumer law	40 (8)
Debt collection	20 (4)
Real estate	16 (3)
Landlord-tenant	13 (3)
Homestead exemption	11 (2)
Income tax	8 (2)
Power of attorney	8 (2)
Insurance	7 (1)
Miscellaneous	56 (11)
Total	527 (100)

Notes: Percentages have been rounded.
Source: Data from Jona Goldschmidt, Crossing Legal Practice Boundaries: Paralegals, Unauthorized Practice of Law and Abbott's System of Professions, (Greenwich, Conn.: JAI Press, 1998), 173.

Fourth, Goldschmidt categorized the types of activities alleged to constitute UPL (Table 5). The offer to negotiate a settlement was the most frequently filed complaint, accounting for 117 (21%) of the 550 complaints. Giving legal advice accounted for 66 (12%) of the UPL complaints, and impersonating an attorney totaled 18 (3%) of the complaints (173-174).

Table 5.

Nature of Alleged UPL Activity	Number (%)
Offer to negotiate settlements	117 (21)
Using attorney's powers, while not licensed	92 (17)
General document preparation	87 (16)
Giving legal advice (no misrepresentation)	66 (12)
Preparing pleadings	55 (10)
Preparing living trusts	33 (6)
Impersonating attorney	18 (3)
Failure to return funds or documents (not UPL)	17 (3)
Failure to render services due (not UPL)	15 (3)
Giving legal advice (with misrepresentation)	10 (2)
Document preparation (homestead exemption)	9 (2)
Court appearances offered or made for another	6 (1)
Miscellaneous	25 (4)
Total	550 (100)

Notes: Percentages have been rounded.
Source: Data from Jona Goldschmidt, Crossing Legal Practice Boundaries: Paralegals, Unauthorized Practice of Law and Abbott's System of Professions, (Greenwich, Conn.: JAI Press, 1998), 174.

The final question Goldschmidt analyzed was whether or not the complaints alleged that a specific harm had resulted from the UPL activity (Table 6). She noted that in 389 (71%) of the complaints, no harm was alleged. An allegation of monetary loss in the amount of $100-$500 accounted for 17 (3%); $501-$1000 accounted for 9 (2%); and $1001-$5000 accounted for 7 (1%) of the UPL complaints made (175-176). Even when harm was alleged, the actual monetary loss tended to be small.

Table 6.

Harm Alleged in UPL Complaints	Number (%)
No harm alleged	389 (71)
Facing unnecessary litigation (unspecified money damages)	42 (8)
Unspecified money damages (with no future damages)	30 (6)
$101-$500	17 (3)
Erroneous legal advice (no harm alleged)	14 (3)
$501-$1,000	9 (2)
Delay of litigation	9 (2)
Denial of access to court	9 (2)
$1,001-$5,000	7 (1)
Unspecified money damages (with future damages expected	7 (1)
Intimidation	7 (1)
Miscellaneous	10 (2)
Total	550 (100)

Notes: Percentages have been rounded.
Source: Data from Jona Goldschmidt, Crossing Legal Practice Boundaries: Paralegals, Unauthorized Practice of Law and Abbott's System of Professions, (Greenwich, Conn.: JAI Press, 1998), 176.

Specific examples of serious complaints against nonlawyers include two individuals Kathryn Durand and Marilyn Summers, as well as disbarred attorneys Richard Barry, R. Wayne Miller, and Gary Karpin, just to name a few. Kathryn Durand, owner of Payless Legal Documents Service, since 1994 had at least nineteen complaints filed with the Better Business Bureau. According to a bureau report, "Our file shows a pattern of failure to deliver promised. . .services. . . . Namely, a lack of timely delivery in (document) preparation." On November 23, 1993, in response to her complaint, Zitta Lauricella received notification from the state Attorney General's Office that they were closing its investigation of Durand. The letter stated, "We will not be filing a consumer fraud lawsuit against Tucson Document Preparation Service. . . . A lawsuit for injunctive relief would also be inappropriate since. . .(the) service ceased doing business as of July

1992." Yet the office promised to reopen its investigation "should we receive information that Kathrynn Durand is operating another document preparation service company."[54]

Marilyn Summers, is currently serving a twenty-year prison sentence after pleading guilty to two counts of theft of more than $25,000, two counts of perjury and a fraud charge. The Arizona Attorney General's Office dropped seventy-eight other felony charges against her as part of a plea bargain. Summers, a Tucson paralegal and owner of Marilyn Summers & Associates, worked independently, contracted for lawyers, and was appointed by courts to serve as a conservator for disabled clients and minors. Summers transferred money without permission from the clients' trust and estate accounts to her business and was convicted of stealing more than $1 million from estates and conservatorships handled through her business. The funds of twenty-seven people were involved.[55]

The Durand and Summers cases illustrate that independent paralegal businesses have indeed sometimes inflicted serious harm on an unsuspecting public. Such egregious cases cast suspicion on legitimate businesses that are dedicated to providing good service to the public. Regulatory schemes that address the most serious threat of damage would serve the interest of both the public and the legitimate businesses.

All paralegal business owners interviewed for this study either had no reports filed with the Arizona Better Business Bureau or had a satisfactory rating. However, a serious

problem apparently arises when disbarred attorneys operate paralegal businesses. For example, Richard Barry, President of People's Paralegal Service, was not only disbarred but was also convicted of charges relating to fraudulent mortgages and spent 49 months behind bars. The Better Business Bureau rates his business as unsatisfactory and suggests that extreme caution be exercised when considering investment opportunities. One complaint remains unanswered and another remains unresolved.[56] Richard Barry also operates Why Pay a Lawyer, which also has an unsatisfactory rating with the Better Business Bureau. The reason given for the poor rating is his having a pattern of failing to respond to complaints.[57] According to Johansen, other disbarred attorneys practicing in Arizona as independent paralegals include R. Wayne Miller and Gary Karpin, both of whom have a bad reputation with the Arizona Bar.[58]

Of course, complaints have also been filed against licensed attorneys in Arizona. According to an Arizona *Business Gazette* article, the Bar's legal staff has filed 83 formal complaints during the first seven months of 1999, four times the amount filed in 1997. Eighteen attorneys have been suspended or disbarred so far in 1999, compared with 17 suspension and disbarments in 1998. According to Gael Cohen, director of lawyer regulation for the state Bar, "poor office management is at the root of most minor complaints. The problem can take many forms—not responding to requests for information from other attorneys, missing court hearings or not completing work in a timely manner."[59]

The unusual circumstances in Arizona have provided an opportunity for independent business people to enter the legal services field. Although most independent paralegal services seem to have maintained their integrity, the system is not without its problems. Lawyers express concern that the public will be harmed and have tried to reestablish a system of regulation. While the independent paralegals perceive some advantages to regulation, they oppose oversight by the State Bar because they distrust the motives of the Bar.

The sunsetting of the State Bar Act in Arizona opened new opportunities for paralegal businesses and presented the State Bar with significant challenges. When the lapse of this Act left the state with no enforcement mechanisms to prevent the unauthorized practice of law, it opened the door for independent paralegal practices. In Arizona document preparers have entered fields generally reserved to licensed attorneys in other states, making legal services available to relatively poor and middle class clients whose needs had not been met by attorneys. Expressing concerns about protecting the public from incompetent and/or unscrupulous providers, the Arizona State Bar has conducted hearings and issued an extensive report calling for reforms, but no action has been taken thus far.

Meanwhile, the independent business owners believe that they are providing a valuable service and meeting the needs of their clients. They recognize a potential for harm and thus have an interest in ensuring that their fellow practitioners are ethical.

Consequently, all of the business owners surveyed for this study supported some form of regulation. They oppose State Bar regulation because they believe that attorneys would use regulation to protect their own interests, rather than those of the public. Instead they favor independent regulation and hope to open a dialogue about what form precisely that regulation should take.

Chapter 3
Endnotes

[1]Kruetzer was the Chair of the Sole Practitioners Section of the State Bar at the time of publication.

[2]Ariz. Sess. Laws, ch. 66 (1933), repealed by Ariz. Rev. Stat. Ann. Sect. 41-2371(4) (1985).

[3]Ariz. Sup. Ct. R. 31(a)(1) (1998) (formerly Ariz. Supt. Ct. R. 27).

[4]*Firemen's Fund Ins. Co. v. Arizona Ins. Guar. Ass'n*, 112 Ariz. 7, 7-8, 536 P. 2d 695, 695-6 (1975).

[5]27 Ariz. App. 47, 49, 550 P.2d 1089, 1091(1976).

[6]127 Ariz. App. 259, 261-62, 619 P.2d 1036,1038-39 (1980).

[7]"No one of such departments [the legislative, executive, or judiciary] shall exercise the powers properly belonging to either of the others" (Ariz. Const. art. III).

[8]Ariz. Sess. Laws, ch. 202, sec. 14 (1982); Ariz. Sess. laws, ch. 292, sec. 17 (1982); Ariz. Sess. Laws, ch. 310, sec. 33 (1982) (codified as amended at Ariz. Rev. Stat. Ann. Sect. 41-2363(4) (1985)).

[9]*Black's Law Dictionary*, 6th Edition, s.v. "sunset law."

[10]Ariz. Sess. Laws, ch. 310, sec. 36 (1982) (codified as amended at Ariz. Rev. Stat. Ann. Sect. 41-2371(4) (1985)).

[11]Ariz. Rev. Stat. Ann. 41-2363(4) (1998).

[12]Ariz. Sup. Ct. R. 31(a)(3) (1998).

[13]Ariz. Sup. Ct. R. 31(a)(4)(A-F) (1998).

[14]90 Ariz 76, 366 P.2d 1 (1961).

[15]The disclosure would be required upon first contact, and would include: 1) a statement that the NLLT is not a lawyer, not licensed to practice law, and not allowed to give legal advice; 2) a list of the services to be performed with estimated time for performance and the method by which the fees for such services will be calculated; 3) a statement that the customer has the right to rescind the contract and seek legal advice; and 4) a statement of the NLLT's qualifications. NLLT's would also be required to display a sign stating their license number, that they are not a lawyer, and information as to where complaints against the NLLT's service can be made (ABA 1995, 62).

[16]Documents included health care powers of attorney; living wills; applications for name changes; affidavits for the transfer of title to real property and for collection of personal property, and residential real estate transfers; landlord/tenant proceedings; Chapter 7 bankruptcies involving only unsecured creditors and no real property assets, uncontested default dissolution of marriage; guardianship or minor proceedings; and incorporation (ABA 1995, 63).

[17]Frances Johansen, Unauthorized Practice of Law Attorney for the State Bar of Arizona, interviewed by the author, 6 January 2000.

[18]Rick Piper, Arizona State Legislature Judicial Committee Analyst, interviewed by the author, 25 February 2000.

[19]John Schwartz, "Legal Document Preparers Face Challenge," *Business Journal(*Phoenix and Valley of the Sun), 10 February 1995.

[20]Howard Fisher, "Bill Outlawing Unlicensed Practice of law to Die, Lawmaker Promises," *Arizona Daily Star*, 22 March 1995, 2(B).

[21]Ibid.

[22]"Obtain Advice from the Right People," *Arizona Business Gazette*, 26 November 1998, 24.

[23]As quoted by Howard Fischer, "Senate Panel Oks Board to Govern Lawyers," *Arizona. Business Gazette*, 13 February 1997, 24.

[24]Ibid.

[25]John Schwartz, "Legal Document Preparers Face Challenge," *The Business Journal* (Phoenix and Valley of the Sun), 10 February 1995.

[26]Piper, telephone interview.

[27]The Self-Service Center is available at: http://www.superiorcourt.maricopa.gov/ssc/sschome.html.

[28]Director of the Self-Service Center for the Superior Court of Arizona and a member of the Consumer Protection Committee for the State Bar of Arizona.

[29]101 West Jefferson, 4th Floor, Phoenix or 222 East Javelina, 1st Floor, Mesa; both locations are open from 8:00 am - 5:00 pm, Monday through Friday, except for Court holidays.

[30](602) 506-SELF (7353).

[31]See note 27 above.

[32]Bob James, telephone interview, 3 March 2000.

[33]James, telephone interview.

[34]James, telephone interview.

[35]James, telephone interview.

[36]James, telephone interview.

[37]David Bishop, telephone interview, 29 February 2000.

[38]Bishop, telephone interview.

[39]Bishop, telephone interview.

[40]Bishop, telephone interview.

[41] Bishop, telephone interview.

[42]Regina Washburn, telephone interview, 3 January 2000; Steve Wynar, telephone interview, 3 January 2000; Debbie Parks, telephone interview, 5 January 2000; Carol Hooven, telephone interview, 5 January 2000. Deanna Peters, telephone interview, 6 January 2000; Allen Merrill, telephone interview, 28 February 2000.

[43]Deanna Peters, telephone interview, 6 January 2000.

[44]Peters, telephone interview.

[45]Available at: http://www.deannaparalegal.com.

[46]Peters, telephone interview.

[47]Allen Merrill, telephone interview, 28 February 2000.

[48]Merrill, telephone interview.

[49]Frances Johansen, telephone interview, 6 January 2000.

[50]Available at: http://www.azbar.org.

[51]Johansen, telephone interview.

[52]Ibid.

[53]11 USCA sec. 110 (a)(1).

[54]As quoted by Laura Brooks, "Longtime Paralegal's Failure to Finish Jobs Angers Clients," *Arizona Daily Star*, 26 January 1997, 1(B).

[55]Alexa Haussler, "Paralegal Faces over 80 Counts, "*Arizona Daily Star*, 5 July 1997, 1(B); Jon Burstein, "Convicted Paralegals's Items Will Be Auctioned Tomorrow," *Arizona Daily Star*, 13 June 1998, 3(B); Stephanie Innes, "Hope Slim for Bilked Client of Paralegals," *Tucson (Arizona) Citizen*, 17 August 1998, 1(C); "Victims of Tucson Paralegal Win Fight to Get Restitution for Fraud," *Arizona Republic*, 18 August 1998, B(1).

[56]Arizona Better Business Bureau, 4428 N. 12 St., Phoenix, Arizona 85014, telephone number (602) 258-0121.

[57]Arizona Better Business Bureau.

[58]Johansen interview.

[59] Mike Fimea, "State Bar Picks up Pace of Justice, Revised Handling of Complaints," *Arizona Business Gazette*, 26 August 1999, p. 1"

Chapter 4

Conclusions and Recommendations

Conclusion

The Almanac of American Politics describes Arizona paradoxically as "Americas oldest continuous community" and as "one of America's fastest growing and most rapidly changing states" (Barone 2000, 108). After World War II, "business men, lawyers, developers, and water companies" built this state based somewhat on the opposite of New Deal Principles, i.e. minimal government and little business regulation (108). This study is a contemporary example of such policies.

The first research question posed in this study concerns the evolution of the utilization of independent paralegals in Arizona. Research reveals that this business opportunity developed, not because of any plan or design, but because the legislature allowed the State Bar Act to be sunsetted. In 1985, with the sunsetting of the State Bar Act, the unauthorized practice of law (UPL) was no longer a crime. As a market for their services emerged, independent paralegals began entering the legal services industry in Arizona. While the debate has continued for more than a decade, the State Bar of Arizona and the Arizona state legislature have not been successful in excluding or regulating independent paralegals. According to Goldschmidt's (1998) study, "The populist, anti-lawyer Arizona Legislature was greatly influenced by the lobbying of

independent paralegals, who succeeded in opposing reinstatement of a criminal sanction against UPL on grounds that they can provide equivalent legal services at a much lower cost" (184).

The second research question seeks to determine the response of the Arizona government, the public, interest groups, and the Arizona Bar association to the development of these businesses. Few lawyers serve in the Arizona legislature, and the legislature reflects Arizona's commitment to laissez faire principles. Consequently the government has thus far been unwilling to impose restrictions on the practice of law that would impede the independent paralegal businesses.

The response of the Arizona attorneys has been mixed. The State Bar conducted extensive hearings on the issue and recommended changes, but their recommendations have not been implemented. Bar leaders, such as Frances Johansen, Unauthorized Practice of Law Counsel for the State Bar of Arizona, acknowledge that an effort to enforce UPL rules is unlikely to rid the field of nonlawyer practitioners and will likely only further injure the legal profession's popularity.

The first problem in applying UPL statutes is defining the practice of law, and the second major weakness in the structure is that it invites challenges to the legal profession's motivation (Podgers 1993, 53-55). To support the rationale that UPL laws must be enforced to preserve the quality of the administration of justice and to protect the public good, it must be shown that lay practitioners are less competent and less ethical

than fully trained lawyers. According to Johansen, consumer protection is the focus of the Bar, not financial motivation. Defenders of the independent paralegal movement respond that if consumer protection is the goal, the State Bar should continue to focus on educating the public as to the precautions that should be taken when choosing a lawyer or nonlawyer.

The public has responded favorably to the independent paralegal movement. Few complaints have been filed against these businesses. Even the complaints filed reflect little or no monetary loss. Interest groups speaking for consumers, such as HALT, insist that the monopoly lawyers hold on the practice of law should be broken. The independent paralegal movement poses one way to limit lawyers control of the system.

The third research question posed by this study concerns whether deregulation of the practice of law has enhanced the public's access to the legal system in Arizona. The research shows that a large segment of the United States society does not have access to legal services, specifically those who lack resources but do not qualify for legal aid (ABA 1989, 1995, app. e; Rhode 1996, 1990). The Arizona research further supports that there are competent nonlawyers providing services to the public. After operating for many years, with few exceptions, these businesses have maintained good standing with the Better Business Bureau; they have had few problems with the Attorney General's Office,

and civil suits have not been filed against them. Each business interviewed for this study met these criteria.

With the exception of two businesses, all interviewees stated that the majority of their clients are low to middle income individuals who would not have had the ability to afford the legal services of an attorney. Since none required income qualification for their services, they did not keep specific statistics on their client's income levels, but they made their estimates from general observations and statements that the clients made to them. However, each of the businesses reported dealing with some clients from all income levels, and one reported that the majority of her clients are wealthy. Therefore, even some who could afford the services of an attorney made the choice to seek the assistance of a nonlawyer. One Arizona study revealed that twenty-two percent of the litigants who chose not to use an attorney reported that they could afford the fees, while thirty-one percent said that they could not afford to pay an attorney (Selinger 1996, 884).

Unfortunately, the research also shows that there are individuals providing legal services to the public who do so fraudulently, causing harm to those receiving the services. Among these individuals causing harm, disbarred attorneys seem to be prevalent and are not only disliked by the State Bar of Arizona but also by those in the independent paralegal profession. Under the current system, some present themselves as licensed attorneys. In one study of 550 complaints filed, 18 impersonated an attorney (Goldschmidt 1998, 174). All independent paralegals interviewed for this study provide

a written disclaimer to all clients explaining that they are not attorneys and cannot provide legal advice to the client. The interviewees believe that they have an ethical and moral obligation to reveal their qualifications before the client retains their services.

The fourth research question asks whether the traditional definition of independent paralegal applies to nonlawyer professionals now providing legal services directly to the public in Arizona. Since the businesses currently operate without any regulatory scheme, there are no limits on who can present themselves to the public as legal document preparers. With the exception of one business owner, an accountant, all of those interviewed had some training as paralegals, either through formal training or work experience. Since paralegals practice under the guidance of an attorney, these businesses mark a break with the traditional definition. Research reveals that the absence of regulations or controls means a lack of standardization among providers of these services.

The final research question asks whether the Arizona approach serves as a positive model for independent paralegals providing legal services to the public. While the Arizona experience has provided some positive results, it also has drawbacks. Independent paralegals began providing services to the public more than a decade ago, and it is apparent that they have found a market in Arizona; but the question remains as to whether or not this profession should be regulated on some level. "Establishing a regulatory scheme is an expensive and often politically explosive undertaking. This is

true whether the regulation seeks to ban an activity or to grant someone a limited license to perform it. A state must decide whether the resulting uproar is justified by the amount of risk the public might suffer without the regulatory scheme" (Statsky 1997, 210). Such a decision is particularly difficult in a laissez-faire state such as Arizona.

Scholars who have studied the issue of regulating the unauthorized practice of law have reached different conclusions. Respected critics of the status quo, such as Deborah Rhode (1996), argue that opening some aspects of law practice to document preparers and independent paralegals benefits the public. States could reduce the costs of legal representation while preventing public harm if adequate regulatory machinery were provided. Munro (1990), on the other hand, opts for moderation, calling for allowing independent paralegals to perform only a limited number of tasks. Selinger (1996) opposes allowing those who can afford legal fees to use a nonlawyer.

Opponents of regulating nonlawyers range from those who would impose no restrictions on the market to those who seek to further limit it. HALT (1987, 1988) contends that the legal services market should be free from regulation and open to competition from lay providers, especially for routine, uncontested matters. This organization believes citizens should have unlimited choice regarding how their legal matters are handled. On the other hand, some critics strongly oppose regulating nonlawyers because they believe that regulation would legitimize the independent paralegal profession. Kruetzer, Shely, and James see attorneys as the only qualified

individuals who can provide adequate legal services to the public; attorneys can provide advice and counsel as to how and why an individual should seek specific types of redress in the legal system and any other individual providing this type of service falls under the definition of UPL (Kruetzer 1994; Shely 1995; James 2000).

Even though some people may be harmed by unscrupulous nonlawyers performing legal tasks, research for this study indicates that more benefits than detriments will accrue from paralegals participating in the legal field. The most important benefit is increasing accessibility of legal services for those who do not qualify for legal aid but cannot afford an attorney; thus expanding access to justice. In addition, new career opportunities would be opened for nonlawyers, and consumers would experience greater freedom. The detriments include the possibility of harm to the public who receive unqualified assistance from nonlawyers, as well as financial harm to practicing attorneys, especially sole practitioners and small law firms. It appears as though HALT has a valid argument; just as a person has the right to allow a neighbor to prepare his or her taxes, individuals should be allowed to choose whether or not they want to obtain the services of an attorney or an independent paralegal (1987, 1988). Ultimately, if the independent paralegal is not impersonating an attorney and provides the client with clear disclosure that they are not an attorney, then the client must ultimately make the decision as to what services he or she needs and wants, and whether to employ the services of a lawyer, an independent paralegal, or self-representation. The provider of services should be held

accountable for providing the services promised and the client must be accountable for his or her choice.

Interviews with Arizona attorneys and paralegals revealed no serious problems with the performance of independent paralegal businesses. All of the business owners interviewed demonstrated competence in their field, expressed a commitment to high ethical standards, and readily admitted their limitations.

According to Goldschmidt's study, in seventy-one percent of the complaints received by the State Bar of Arizona, no harm was alleged. Still, the strongest argument against those operating paralegal businesses that provide services directly to the public, is the possibility of harm to the client. While attempts to regulate independent paralegals have been made, and while the independent paralegals interviewed for this study unanimously favored some type of regulation, the efforts have been unsuccessful. Thus Arizona's experience offers a positive model in that it reveals the possibilities for expanding access to justice and legal services, but, at the same time, it illustrates the shortcomings of an unregulated system.

Recommendations

Does Arizona's approach serves as an effective model for independent paralegals providing competent, affordable legal services to the public. On the surface, the answer to this question is yes. The system seems to be working effectively for the most part. Independent paralegals have been able to maintain a useful position within the legal

services market for more than a decade, since the 1985 sunsetting of the criminal UPL statute. While complaints have been made against nonlawyers, allegations of actual harm were made in only one third of the complaints. And even where damage was alleged, the dollar amount was usually quite small.

Many individuals cannot afford the services of an attorney but do not qualify for financial aid. Self-representation is nearly impossible when procedural laws are often difficult to understand, especially for those who have no experience with the law. It would seem as though independent paralegal businesses would be hurt financially in Arizona with the creation of the Self-Service Center, which was designed to provide assistance to those who represent themselves (either by choice or because they cannot afford to hire an attorney). However, according to independent paralegals interviewed for this study, their businesses have not been hurt by this service. They claim that the forms confuse their clients and that they do not receive adequate information at the Center; therefore they seek the services of the independent paralegals. Even among those who can afford an attorney, the freedom to choose from among a variety of providers is also attractive.

However, the system in Arizona developed chaotically because of the way the UPL statute was sunsetted. No alternative planning was done prior to the lapse of the system. Thus there are no provisions for regulation of the paralegal profession, and formal complaints against providers must be made either through the Better Business

Bureau or the Attorney General's office. While regulatory mechanisms can be expensive for the state because of the need for staff, to improve the system the State of Arizona should implement a registration system for those operating within the independent paralegal profession. Registration would provide a minimal regulatory scheme that is much less expensive than licensing or certification.

The questions formulated by Deborah Rhode might well be considered in that endeavor: whether the risk of harm is substantially greater among lay practitioners than lawyers; whether consumers are able to gauge the risk; and whether categorical prohibitions on all nonlawyer services are the best response.

- **Question:** Is the risk of harm substantially greater among lay practitioners than lawyers?

The answer based on this research appears to be no, although there are few studies that examine this specifically and none provide a comparison. Goldschmidt's study is based on 550 complaints that were filed against nonlawyers with the State Bar of Arizona between 1988 through 1994; on average that would constitute approximately 91 complaints per year. Comparatively, 83 formal complaints against attorneys were filed with the Arizona State Bar during the first seven months of 1999. Comparisons are impossible because the number of lawyers is greater and the types of cases that lawyers and nonlawyers handle are different. Interviews with nonlawyer practitioners revealed no serious accusations of harm by the business investigated.

Recommendation: An additional study would help determine the question of

relative harm. The study should examine persons who have received services from nonlawyers, without limiting the participants to those who have filed a complaint. It would also be helpful to have a comparative study of complaints filed against lawyers and nonlawyers during the same time period to gauge the exact differences between the two. A comparative study could focus on the nature of complaints and the relative monetary losses suffered by complainants. As there are obvious differences of opinion between lawyers and nonlawyers, a study conducted by someone not associated with either group would provide a useful, unbiased tool for evaluating the issues involved.

- **Question:** Are consumers able to gauge the risk?

While some people need to be protected, we must assume that most individuals have common sense with the ability to be rational. The consumer can be rational when he or she has the needed information to make an informed decision. Currently in Arizona, consumers only have the option of contacting the Better Business Bureau to determine if the independent paralegal business is in bad standing with the agency. Additionally, it should be clear to the consumer that the independent paralegal is not an attorney. Of the businesses interviewed, all provide a written disclaimer to the consumer stating he or she is not an attorney.

Recommendation: An ideal system would require independent paralegals to register with the state, giving biographical information, educational experience, training and work experience, and criminal or disbarment history. Such a system would allow

consumers access to this biographical information; thus providing consumers the opportunity to make their own, better informed choices. The Arizona Task Force and other sources have used the term nonlawyer legal technician (NLLT) to identify nonlawyers providing services to the public (ABA 1995; Metz 1997; Shely 1994). The use of this term, as opposed to independent paralegal, would help decrease confusion as to whether or not the provider is a licensed attorney.

- **Question:** Are prohibitions on all nonlawyer services the best response?

During the 1995 legislative session in Arizona, the legislature attempted to re-criminalize the unauthorized practice of law; however, the attempt was unsuccessful. Additionally, according to the Supreme Court Rules nonlawyers cannot appear in court. If the government can show that specific legal knowledge and training is necessary to perform a specific function, then independent paralegals should be excluded from providing those services to the public. Excluding independent paralegals from providing specific types of service based on the client's ability to afford, or not afford, the services of an attorney is cynical and is not in the consumer's best interest. This sort of restriction is not based on protection from harm and clearly inhibits individual choice.

Recommendation: Ultimately the focus should be on increasing access to justice for all. Lawyers, nonlawyers, and those interested in the topic should consider the findings of the ABA as well as the research provided by this and other studies that focus on Arizona as an example. An unbiased study as to whether or not those who have

actually obtained the services of independent paralegals would have had adequate access to legal services if they had not had the option of hiring an independent paralegal would be very beneficial. Past studies seem to focus on whether or not nonlawyers are providing services, not the effects of those services and whether or not access to justice was enhanced.

Summary

This study analyzes public policymaking and implementation at the state level. Arizona provides an interesting study of competition in the public sphere between attorneys and independent paralegals. Both of these powerful professions have worked to influence government regarding their position within the legal services industry, as to what is the best approach to promote the public good with regard to the availability of legal services. The ABA Commission on Nonlawyer Practice encouraged each state to "determine whether and how to regulate the varied forms of nonlawyer activity that exist or are emerging in its jurisdiction"(4); currently Arizona has chosen to allow nonlawyer activity with no regulation.

As a final recommendation, if states are truly concerned with increasing access to justice and the availability of legal services to the public, they should consider Arizona's experience, the advice of Deborah Rhode, and the findings and recommendations of this study. With careful consideration of all competing interests, states can implement regulatory systems that will allow independent paralegals to provide services directly to

the public, while creating a structure that accommodates both consumer protection and consumer choice. An ideal system would allow citizens to make informed decisions, make the provider of services accountable to the public, and decrease any confusion as to whether or not the provider is a licensed attorney. A registration system, the use of the term nonlawyer legal technician as opposed to independent paralegal, and the requirement of a disclaimer could improve the current system in Arizona. The Arizona experience reveals the possibilities for expanding access to justice to those who cannot afford a lawyer. It also provides a cautionary example of the potential shortcomings of unregulated legal services. With the addition of a minimum amount of regulation, the Arizona experience could become a national model for regulating the expansion of access to justice in a shielded and affordable manner.

References

Adams, Susan. "The Guild Fights Back." *Forbes* (November 1996): 102-104.

Albert, Barbara L. "Paralegal Regulation: Controlling the Future of the Profession." *Practicing Law Institute* 45 (1998): 21-27.

"America's Parasite Economy." *Economist* 325 (1992): 21-24.

American Bar Association (ABA). *Nonlawyer Activity in Law-Related Situations: A Report with Recommendations*. Chicago: American Bar Association, 1995.

American Bar Association (ABA) Consortium on Legal Services and the Public. *Pilot Assessments of the Unmet Legal Needs of the Poor and of the Public*. Chicago: American Bar Association, 1989.

Arizona Business Journal, 10 Febraury 1995.

Arizona Daily Star, 22 march 1995 – 13 June 1998.

Arizona Business Gazette, 8 June 1990 – 26 August 1999.

Arizona Republic, 3 June 1992 – 18 August 1998.

Auerbach, Jerold S. *Unequal Justice: Lawyers and Social Change in Modern America*. New York: University Press, 1976.

Barone, Michael and Grant Ujifusa. *The Almanac of American Politics 2000* Washington, D.C.: National Journal, 1999.

Bielec, Laurel. "States of Regulation." *Legal Assistant Today* (March/April 1999): 44-51.

Botein, Stephen. *Colonial Law and Justice*. Vol. 1, Encyclopedia of the American Judicial System, edited by Robert J. Janosik. New York: Scribner, 1987.

Brown, Russell A. "Bankruptcy and the Unauthorized Practice of Law." *Arizona Attorney* 35 (February 1999): 30-31.

Calle, Jim. 1994. "Bar Seeks to Protect Public with Non Lawyer Practice Rules." *Arizona Attorney* 30 (March 1994): 10-15.

"Certified Legal Assistant Credential and Guidelines of the United States Supreme Court." *Maine Bar Journal* 11 (November 1996): 376-378.

Chroust, Anton-Hermann. *The Rise of the Legal Profession in America*. Norman: University of Oklahoma Press, 1965.

Countryman, Vern, et al. *Law in Contemporary Society: The Original Lectures*. Austin: Texas Law Review, 1973.

Crampton, Roger C. "Delivery of Legal Services to Ordinary Americans." *Case Western Reserve Law Review* 44 (Winter 1994): 531-551.

Friedman, Lawrence M. *Law and Society: An Introduction*. New Jersey: Prentice-Hall, 1977.

Garlan, Edwin N. *Legal Realism and Justice*. New York: Columbia University Press, 1941.

Goldschmidt, Jona. "Crossing Legal Boundaries: Paralegals, UPL, & Abbotts System of Professions." Vol. 10, *Current Research on Occupations and Professions. Greenwhich: JAI Press*, 1998.

Greenberg, Bud. 1992. Paralegal Eagles Square Off: Consumers Should Look into Service Before Buying. *The Phoenix Gazette*, 3 June.

Griswold, Edwin N. *Law and Lawyers in the United States: the Common Law Under Stress*. Cambridge: Harvard University Press, 1965.

HALT. 1987. *Challenging the Lawyers' Monopoly*. [Issue Brief, October].

HALT. 1988. *Alternatives to the Lawyer Monopoly*. [Position Paper, June].

Hightower, Susan. "For Paralegals, Job Prospects are Still Good." *Texas Lawyer* 11, no. 43 (1996): 4-5.

Honnold, John, ed. *The Life of the Law: Readings on the Growth of Legal Institutions*. London: Glencoe, 1964.

James, Bob. "Self-Presented Litigants and the Unauthorized Practice of Law." *Arizona Attorney* 35 (May 1999): 18.

Justice, Kathleen Eleanor. "There Goes the Monopoly: The California Proposal to Allow Nonlawyers to Practice Law." *Vanderbilt Law Review* 44 (January 1991): 179-193.

Kruetzer, Robert H. "Non-Lawyer Practice Rules: New Rules Take Wrong Turn." *Arizona Attorney* 30 (March 1994): 20-23, 50-51.

Latorraca, Dominic. "Regulation of Paralegals: An Upcoming Issue." *Colorado Lawyer* 22 (March 1993): 493-494.

Leonard, Dana. 1990. Document Preparers Compete with Lawyers. *Arizona Business Gazette*, 8 June.

Macey, Jonathan R. "Mandatory Pro Bono: Comfort for the Poor or Welfare for the Rich?" *Cornell Law Review* 77 (1992): 1115-1123.

Malone, Gerry. "Education Update1989: A Legal Assistant and Law Office Dynamics." *Legal Assistant Today* (Jan/Feb 1989): 26-28,54.

Metz, Holly. "Invasion of the Nonlawyers." *Student Lawyer* (March 1997): 38-44.

Mund, Geraldine. "Bankruptcy Petition Preparation Services: Paralegals: The Good, the Bad, and the Ugly." *American Bankruptcy Institute Law Review* (Winter 1994): 337-344.

Munro, Meredith, Ann. "Deregulation of the Practice of Law: Panacea or Placebo?" *The Hastings Law Journal* 42 (November 1990): 203-248.

Nagel, Stuart S. *The Scales of Justice: The Tipped Scales of American Justice.* New Brunswick: E.P.Dutton & Co., Inc., 1972.

National Association of Legal Assistants. 1989. *Recognition Perspective Pamphlet.*

National Federation of Paralegal Associations. 1996. *Membership Pamphlet.*

Orlik, Deborah K. "The Legal Technician Controversy: What's the Real Issue?" *Legal Assistant Today* (July/August 1991): 83-84.

Pocock, Walter. 1993. Paralegals vs. Lawyers: A Hot Issue. *The Arizona Republic,* 10 May.

Podgers James. "Legal Profession Faces Rising Tide of Non-Lawyer Practice." *Arizona Attorney* 30 (March 1994): 24-29.

Podgers, James. "Delivery of Legal Services: Crumbling Fortress." *American Bar Association Journal* 79 (December 1993): 50-56 .

Pound, Roscoe. *Justice According to Law.* New Haven: Yale University Press, 1951.

Rhode, Deborah L. "Professionalism in Perspective: Alternative Approaches to Nonlawyer Practice." *New York University Review of Law and Social Change* 22 no.3 (1996): 701-716.

------. "The Delivery of Legal Services by Non-Lawyers." *Georgetown Journal of Legal Ethics* 4 (1990): 209-233.

------. "Policing the Professional Monopoly: A Constitutional and Emperical Analysis of Unauthorized Prohibitions." *Stanford Law Review* 34 (1981): 100-112.

Rudy, Theresa Meehan. "Has The Time Arrived For Sate-By-State Licensing? No: Another Roadblock." *American Bar Association Journal* 78 (December 1992): 42-43.

Safron, Verna. "New Trends in Paralegal Education." *Legal Assistant Today* (Jan/Feb 1992): 29-38.

Samborn, Hope Viner. "Conflicts and Confidences, an Impact on Lawyers." *American Bar Association Journal* 82 (June 1996): 24-25.

------. "Has the Time Arrived for State-by State Licensing? Yes: Enhance Professionalism." *American Bar Association Journal* 78 (December 1992).

Selinger, Carl M. "The Retention of Limitations on the Out-of-Court Practice of Law by Independent Paralegals." *Georgetown Journal of Legal Ethics* 9 (1996): 879-913.

Shely, Lynda. "Lawyers and UPL: What Should You Do?" *Arizona Attorney* 34 (February 1998a): 31-33.

------. 1998b. Unlicensed Practice: Clients Beware. *Arizona Business Gazette,* 12 February.

------. 1995. Some Hired Legal Guns Can Do Harm, Legislature Should Pass Bill Regulating Non-Lawyers. *The Arizona Republic*, 26 January.

------. "Chronology of the Non-Lawyer Practice Rule." *Arizona Attorney* 30 (March 1994): 15-17,50.

Simmons, Sara R. "New Rules: Solution or Heresay?" *Arizona Attorney* 9 (March 1994).

Statsky, William. *Essentials of Paralegalism* (3rd Edition). St. Paul: West Publishing Company, 1998.

------. *Introduction to Paralegalism: Perspectives, Problems, and Skills* (5th Edition). St. Paul: West Publishing Co., 1997.

Stevens, Robert. *Law School: Legal Education in America from the 1950s to the 1980s*. Chapel Hill: The University of North Carolina Press, 1983.

Talamante, Ryan J. "We Can't All be Lawyers...Or Can We? Regulating the Unauthorized Practice of Law in Arizona." *Arizona Law Review* 34 (Winter 1992): 873-892.

Tucson (Arizona) Citizen, 17 August 1998.

U.S. Bureau of the Census. *Abstract of the United States: The National Data Book* (118th Edition). Washington, D.C.:GPO, 1998.

Warner, Ralph. *The Independent Paralegal's Handbook: How to Provide Legal Services Without Becoming a Lawyer* (3rd Edition). Berkeley: Nolo Press, 1994.

Yin, Robert K. *Case Study Research: Design and Methods*. Beverly Hills: Sage Publications, 1984.

Zemans, Frances Kahn. *The Legal Profession and Legal Ethics*. Vol. 2, Encyclopedia of the American Judicial System, edited by Robert J. Janosik. New York: Scribner, 1987.

Statutes and Case Law

Argersinger v. Hamlin, 407 U.S. 25 (1972).

Ariz. Const. art. III.

Ariz. Rev. Stat. Ann., Supreme Court Rule 31 (1998).

Ariz. Rev. Stat. Ann. sec. 41-2363(4) (1985).

Ariz. Rev. Stat. Ann. sec. 41-2371(4) (1985).

Bankruptcy Reform Act, 11 U.S.C.A. sec. 110 (2000).

Bridegroom v. State Bar of Arizona, 12 Ariz. App. 47, 550 P.2d 1089 (1980).

Firemen's Fund Ins. Co. v. Arizona Ins. Guar. Ass'n, 112 Ariz. 7, 536 P.2d 695 (1975).

Florida Bar v. Furman, 451 So.2d 808 (1984).

Gideon v. Wainwright, 372 U.S. 335 (1963).

Hunt v. Maricopa County Employees Merit System Commission, 127 Ariz. 259, 619 P2d 1036 (1980).

In re Gabrielson, 217 B.R. 819 (Ariz. 1998).

In re Repp, 218 B.R. 518 (Ariz. 1998).

Powell v. Alabama, 287 U.S. 45 (1932).

Sperry v. Florida, 373 U.S. 379 (1963).

State Bar of Arizona v. Arizona Land Title and Trust Co., 90 Ariz. 76, 366 P.2d 1 (1961).

Tex. Gov't Code Ann. sec. 81.101 (1998).

Tex. Penal Code Ann. sec. 12.21 (1997).

Tex. Penal Code Ann. sec. 381.123 (1997).

Personal Communications

Bishop, David. Telephone interview by author, 3 March 2000. Independent Paralegal/ owner of Bishop and Associates, Phoenix, Arizona.

Hooven, Carol. Telephone interview by author, 3 January 2000. Independent Paralegal/owner of That Paralegal Place, Phoenix, Arizona.

James, Bob. Telephone interview by author, 3 March 2000. Director of Self Service Center, Phoenix Arizona.

Merrill, Allen. Telephone interview by author, 3 January 2000. Independent Paralegal/owner of Legal Solutions, Inc., Phoenix, Arizona.

Parks, Debbie. Telephone interview by author, 5 January 2000. Independent Paralegal/owner of Legal Type Documents, Phoenix Arizona.

Peters, Deanna. Telephone interview by author, 6 January 2000. Independent Paralegal/owner of Deanna Peters Paralegal, Inc., Scottsdale, Arizona.

Piper, Rick. Telephone conversation with author, 25 February 2000. Arizona State Legislature Judicial Committee Analyst, Phoenix Arizona.

Washburn, Regina. Telephone interview by author, 3 January 2000. Independent Paralegal/owner of A Woman for Women, Phoenix Arizona.

Wynar, Steve. Telephone interview by author, 3 January 2000. Independent Paralegal/owner of Arizona Paralegal Service, Phoenix, Arizona.

APPENDIX A

Open-ended Interview Questions
(General)

Open-ended Interview Questions
(General)

1. According to my research, the Arizona legislature has made several attempts to criminalize the unauthorized practice of law. In your opinion, why has it not been successful?

2. Are you aware of any current legislation that has been introduced regarding unauthorized practice of law or the regulation of independent paralegals?

3. Do you know if the governor has a position regarding this profession?

4. Have political parties adopted platform positions regarding UPL or regulation?

5. Have interest groups played a role in lobbying for specific positions?

6. In what ways have members of the public voiced their position?

7. Are people getting help with legal services that they would not have gotten otherwise?

8. In your opinion, are the services provided by independent paralegals competent? Why or why not?

9. Why has the Arizona Supreme Court not taken a stronger position regarding criminalization of UPL?

10. Are attorneys losing money because of independent paralegal business?

APPENDIX B

Open-ended Interview Questions
(Independent Paralegal Business Owners)

Open-ended Interview Questions
(Independent Paralegal Business Owners)

1. Business Name and Address

2. For what length of time have you been in business?

3. Describe any paralegal training you have received and your business experience prior to opening this business.

4. Do you provide a disclaimer to your customers stating that you are not a licensed attorney?

5. Do you favor some type of regulation for independent paralegal businesses?

6. Do you believe your business has increased the public's access to justice? Why or why not?

7. Do you believe there are areas of law or services that should not be open to independent paralegal businesses?

APPENDIX C

American Bar Association
Summary of Recommendations

American Bar Association
Commission on Nonlawyer Practice
August 1995

SUMMARY OF RECOMMENDATIONS

Whereas, Increasing the Public's Access to the Justice System and to Affordable Assistance With Its Legal and Law-Related Needs Is an Urgent Goal of the Legal Profession and the States; and

Whereas, The Protection of the Public from Harm Arising From Incompetent and Unethical Conduct By Persons Providing Legal or Law-Related Services Is an Urgent of Both the Legal Profession and the States; and

Whereas, When Adequate Protections for the Public Are in Place, Nonlawyers Have Important Roles to Perform in Providing the Public With Access to Justice;

THEREFORE, The American Bar Association Commission on Nonlawyer Practice Recommends:

1. The American Bar Association, State, Local and Specialty Bar Associations, the Practicing Bar, Courts, Law Schools, and the Federal and State Governments Should Continue to Develop and Finance New and Improved Ways to Provide Access to Justice to Help the Public Meet is Legal and Law-Related Needs.

2. The Range of Activities of Traditional Paralegals Should Be Expanded, with Lawyers Remaining Accountable for their Activities.

3. States Should Consider Allowing Nonlawyer Representation of Individuals in State Administrative Agency Proceedings. Non-Lawyer Reprensenters Should Be Subject To the Agencies' Standards of Practice and Discipline.

4. The American Bar Association Should Examine Its Ethical Rules, Policies and Standards to Ensure that they Promote the Delivery of Affordable Competent Services and Access to Justice.

5. The Activities of Nonlawyers Who Provide Assistance, Advice and Representation Authorized to Statute, Court Rule or Agency Regulation Should Be Continued, Subject to Review By the Entity Under Whose Authority the Services Are Performed.

6. With Regard to the Activities of All Other Nonlawyers, States Should Adopt an Analytical Approach in Assessing Whether and How to Regulate Varied Forms of Nonlawyer Activity that Exist or Are Emerging in Their Respective Jurisdictions, Criteria for this Analysis Should Include the Risk of Harm These Activities Present, Whether Consumers Can Evaluate Providers' Qualifications, and Whether the Net Effect of Regulating the Activities Will Be a Benefit to the: Public, State Supreme Courts Should Take the Lead in Examining Specific Nonlawyer Activities Within Their Jurisdictions With the Active Support and Participation of the Bar and Public.

APPENDIX D

Brochure:
Deanna Peters Paralegal, Inc.

Deanna Peters
Paralegal, Inc.

Office Hours

Regular office hours are Monday through Friday by appointment.

New Clients

Deanna Peters' office welcomes new clients referred by existing clients and other professionals. Referrals account for a majority of the business generated by the office.

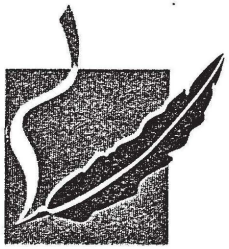
Mediation Services

Deanna Peters can assist couples who have decided that their marriage relationship is ending, and that they will disregard all questions of marital fault. Mediation is a way to resolve disputes without a courtroom battle concerning issues such as custody, support, and division of assets and liabilities. Mediation is a voluntary process which uses the assistance of a trained counselor who serves as an impartial, neutral third party to help the couple reach an agreement in a civilized, adult manner.

For More Information

Please call the office today or visit our website for additional information.

Tel. 602-953-1967
www.deannaparalegal.com



Deanna Peters
Paralegal, Inc.

7975 N. Hayden Road, Suite D-241
Scottsdale, Arizona 85258

www.deannaparalegal.com

Deanna Peters
Paralegal, Inc.

Comprehensive,
cost-effective preparation
of legal documents
with a commitment
to excellence in service

7975 North Hayden Road, Suite D-241
Scottsdale, Arizona 85258
Tel. 602-953-1967 / Fax 480-922-0890
e-mail: deanna@deannaparalegal.com

www.deannaparalegal.com

Commitment and Philosophy

Often the preparation and filing of routine legal documents can be handled efficiently and cost-effectively by a paralegal. Deanna Peters is a paralegal who can assist you in the preparation and filing of many routine legal documents. She is committed to providing quality services to clients who need access to the legal system but whose needs are not fulfilled by simply purchasing a form.

All documents are prepared to fit each individual client's particular needs, no matter how simple or intricate. Services are performed by Deanna, and all cases are carefully monitored to ensure that deadlines are always met. Clients are kept apprised of the status of their cases and all the necessary steps and court procedures so they know what to expect.

If a client's case warrants the expertise of an attorney, Deanna will recommend that one be retained who is experienced in the area of law necessary to handle that specific situation. Recommendations will be made only to attorneys who are committed to providing quality services to clients for a reasonable fee. There are no attorneys on staff at Deanna Peters' office.

Fees & Costs

Corporate Minutes	$130 / yr.
Deeds	$45 to $125
Recording Fee	$10 and up
Divorce (court costs additional)	$450 and up
Incorporation	$475
"S" Election	
Corporate Book	
Statutory Agent	
Filing Fee	$95
Publication Fee	$120
Limited Liability Company	$450
Filing Fee	$85
Publication Fee	$41
Living Trust	$595
Deed	$45 to $125
Recording Fee	$13 and up
Living Will	$25
Mediation	$125 / hr.
Power of Attorney	$45
Will	$95 and up

Fees may vary according to individual circumstances.

Other legal documents prepared
Notary Public

Major Credit Cards Accepted

About Deanna Peters

Deanna Peters has owned and operated a paralegal business in Arizona since 1989, and has been involved in the legal field since 1984.

She co-authored Divorce and Child Custody (Makai Publishing, 1992, revised Career Press, 1994). A former speaker for S.C.O.R.E. (a division of the Small Business Administration) on forms of Business Ownership, she also has been a guest speaker for numerous companies, community service groups, and retirement communities.

Deanna is a member of the National Association of Women Business Owners (NAWBO), the Scottsdale Chamber of Commerce, and Las Rancheras Republican Women. She also has served on the Board of Directors of the Entrepreneurial Mothers Association. Deanna is active in the community, and she volunteers for the Maricopa County Bar Association's Committee on Domestic Violence. She co-chaired the MCBA's 8th Annual Necessities Drive and she is a Girl Scout leader. Deanna is a member at Florence Crittenton Services of Arizona helping teenage girls.

Deanna publishes a quarterly newsletter, *The Legal Link*, to help her clients stay informed on current issues.

When she was appointed by the State Bar of Arizona, Deanna served on a special committee formed to study the unauthorized practice of law in the state. She is a registered lobbyist and has an active interest in legislative issues regarding paralegal businesses. Deanna has volunteered many hours to the Arizona State Bar Fee Arbitration Committee.

A graduate of North American College, she currently is earning a Bachelor's Degree in Business Administration from the University of Phoenix.

APPENDIX E

Brochure:
I Need Legal Advice—What Should I Do?

I Need Legal Advice— What Should I Do?

When Do I Need a Lawyer?

When you have a legal question, you may wish to consult with a lawyer about your legal rights and responsibilities. Often, early consultation with a lawyer will save you time, trouble, and money. Here are some examples of situations in which you may want to consult a lawyer:

- Before signing written contracts with major financial provisions or consequences.
- When you have tax problems or questions.
- When you are making a will or planning an estate.
- Before organizing or buying a business.
- When you are involved in an accident in which there is personal injury or property damage.
- When you are arrested or charged with a crime.
- When there are changes in your family status – marriage, adoption, divorce, or guardianship.

Why Should I Seek the Advi ce of a Lawyer?

- Only lawyers, licensed by the Arizona Supreme Court, are authorized to complete legal forms and give legal advice in Arizona.
- Only lawyers are permitted to represent you in court.
- Only lawyers are bound to keep all that you tell them in strict confidence.

How Can I Find a Lawyer?

- Talk to friends and family members who have had a positive experience with an attorney.
- Call the State Bar at (602) 340-7300 for free lists of certified specialists in the areas of Bankruptcy, Criminal, Estate & Trust, Family Law, Injury & Wrongful Death, Real Estate, Tax, or Workers' Compensation.
- Visit our Web site at www.azbar.org
- Lawyer Referral Services connect you with a lawyer for a half-hour consultation for a small fee. In Maricopa County contact (602) 257-4434 and Pima County contact (520) 623-4625. Please check your telephone directories for the listing for the local county bar association in other counties.

Why Shouldn't I Hire a Document Preparer?

- Document preparers are not authorized to complete legal forms or give legal advice.
- Document preparers are not permitted to represent you in court.
- Document preparers are not subject to ethical rules or to Supreme Court discipline.
- Document preparers are not licensed by anyone.

CAUTION: There are persons who are not lawyers (document preparers, independent paralegals, or disbarred lawyers) who may try to practice law. Only active members of the State Bar of Arizona may practice law in Arizona. If you hire a non-lawyer to provide legal services to you, be advised that the non-lawyer is not permitted to give you legal advice. Nor is that person regulated or licensed by any agency. The State Bar of Arizona cannot help you recover your money if you have a problem with a non-lawyer providing legal

services to you.

What Should I Do if I Have a Problem With a Non -lawyer?

If you have chosen to hire a non-lawyer to help you with your case, and you have a problem, please contact:

State Bar of Arizona
Consumer Protection Committee
111 W. Monroe, Suite 1800
Phoenix, AZ 85003-1742
(602) 340-7292
consumerhelp@azbar.org

If you have a problem with a **lawyer,** please contact the State Bar of Arizona at (602) 340-7280.

Once you have the name of an attorney, contact the State Bar of Arizona to find out:
• Status of lawyer's license—(602) 340-7239
• Lawyer's disciplinary history—(602) 340-7277

Can I Represent Myself?

In all cases you have the right to represent yourself. In court proceedings, you will be expected to know the applicable law and court procedures.

There are self-help resources in your community that will explain court rules and procedures. For self-help legal information:

- In Maricopa County, visit the Self-Service Center at 101 W. Jefferson, Phoenix, and 222 E. Javelina, Mesa, or online at **www.superiorcourt.maricopa.gov/ssc/sschome.html** for forms and information in family law and probate.
- Visit the Arizona Courts' Web site at **www.supreme.state.az.us**
- Visit the State Bar's Web site at **www.azbar.org**
- Go to the County Law Library in your Superior Court building.

What Can I Do to Reduce My Legal Expenses?

- You can consult briefly with a lawyer to review legal documents that you completed. Lawyers have a variety of payment options, including a one-visit fee, fees paid over time, or no fees up front in certain types of cases.
- Gather information before meeting with your lawyer. Write down names, addresses, and telephone numbers of all the persons involved in the matter.
- Be organized. Bring letters, documents, and other important papers to the first meeting with your lawyer. Write down questions that you want your lawyer to answer.
- Keep your lawyer informed, but don't make unnecessary calls about minor details.
- Ask how you can help reduce costs by obtaining documents, contacting witnesses, or providing other assistance.
- Ask for a written fee agreement that explains how and when you will be charged.

- Be on time for appointments.

How Can I Get Free or Inexpensive Legal Help?

There are organizations in Arizona that provide legal assistance for free or at a reduced cost. Each organization has different eligibility requirements.

- Arizona Center for Disability Law ..... (520) 327-9547
- Arizona Senior Citizens Law Project ..... (602) 252-6710
- College of Law Legal Clinics:
  - Arizona State University ..... (480) 965-6968
  - University of Arizona ..... (520) 621-1975
- Community Legal Services:
  - Maricopa County ..... (602) 258-3434
  - East Maricopa County..... (480) 833-1442
  - Mohave County ..... (800) 255-9031
  - Yavapai County ..... (520) 445-9240
  - Yuma/La Paz Counties ..... (520) 782-7511
- DNA People's Legal Services:
  - Chinle ..... (520) 674-5242
  - Coconino County ..... (520) 774-0653
  - Hopi Legal Services ..... (520) 738-2251
  - Keams Canyon..... (520) 738-5231
  - Tuba City ..... (520) 283-5265
  - Window Rock ..... (520) 871-4151
- Elder Law Hotline ..... (800) 231-5441
- Florence Immigrant & Refugee Rights ..... (520) 868-0191
- Four Rivers Indian Legal Services (520) 562-3369
- Friendly House Immigration Services ..... (602) 257-1870
- Papago Legal Services ..... (520) 383-2420
- Southern Arizona Legal Aid (SALA)
  - Cochise County ..... (800) 231-7106
  - Gila County..... (800) 523-9461
  - GrahamCounty..... (800) 231-7106
  - Greenlee County ..... (800) 231-7106
  - Pima County ..... (800) 248-6789
  - Pinal County..... (800) 523-9461
  - San Carlos Office..... (800) 523-9461
  - Santa Cruz County..... (520) 287-9441
  - White Mountain-Apache ..... (520) 338-4845
  - White Mountain Legal Aid ..... (520) 537-8383
- Southern Arizona People's Law Center ..... (520) 623-7306
- 24-Hour Info. Line ..... (602) 506-SELF [7353]

Look for our other consumer brochures:

- A Guide to Understanding Wills
- The Truth about Living Trusts
- Alternatives to Trial

- Clients' Rights and Responsibilities
- How to Find and Hire a Lawyer
- A Guide to Guardianship and Conservatorship
- Information about Disputes with Lawyers
- State Bar Speakers Bureau

Find them at **www.azbar.org** or call (602) 340-7293

What You Can Find on the State Bar's Web Site: www.azbar. org

- Locate a lawyer
- Links to law-related Web sites
- Information about disciplined lawyers
- Consumer information on legal topics
- State Bar information