PRACTICING LAW IN THE GLOBAL ECONOMY †

NANCY L. KASZAK *

Today, as lawyers, we are faced with a great challenge. We need to make choices that will determine the future of our profession. Will we be a mere footnote to the 21st century? Will we compromise the core values of the profession? Will we protect the public and our client's interests? Will we limit competition at the expense of limiting our future?

I would like to identify the choices we need to make in the context of the global economy, which have transformed the practice of law. I urge you not to ignore these choices, but to become active participants in the process of defining the future of our profession.

It is very appropriate that we talk about the importance of defining our professional future at a lecture named after Professor Francis Riley. Throughout his work at the Northern Illinois University’s College of Law, Professor Riley has always sought to help students, faculty, and alumni examine, define, and improve the quality of legal practice.

I. WHAT IS THE GLOBAL ECONOMY?

To make sure we understand the basics of the choices presented to us, let us examine the creation of the global economy and the new global enterprise. There are three factors that triggered this economic

† This piece is based on a presentation given by Ms. Kaszak as part of the Northern Illinois University Francis X. Riley Lecture Series. The presentation took place April 6, 2001, at the Northern Illinois University College of Law.

* Nancy L. Kaszak, graduate of the first class of the Northern Illinois University College of Law, has served on the Board of Visitors and helped found the Zeke Georgi Scholarship Fund. She has served two terms in the Illinois legislature, where she was a member of the House Judiciary committee. Later, she worked as a consultant to the Marco Consulting Group, the nation’s largest advisor to multi-employer pension funds. While at Marco, Nancy prepared and presented an extensive presentation to labor and management leaders on the development of the global economy and its impact on workers and small business owners. She is currently the Executive Director of the Corporation for Open Lands (CorLands), a nonprofit organization that works to preserve open space in northeastern Illinois by providing interim financing and technical assistance to local governments. Nancy also serves on the Board of the Mikva Challenge Grant Foundation, which provides high school students experiential learning on political campaigns.
transformation: technology, international capital markets, and the changed realities of international imports and exports.

A. TECHNOLOGY

In 1958 and 1959, Jack Kilby and Bob Noyce created an invention that changed the lives of each of us. Jack Kilby was working in his laboratory at Texas Instruments. Bob Noyce and his partner, Gordon Moore, were in their laboratory at Fairchild Semiconductor, a company that he and Moore had recently founded. Kilby and Noyce made what many consider to be the most important invention in the twentieth century: the silicon chip. It was inscribed electronic circuitry in a space too small to see. It liberated computers from the constraints of bulky size and cost. It amplified human intellect, rather than human muscle.

What did Jack Kilby and Bob Noyce do with their invention? Kilby continued with Texas Instruments and eventually became an independent inventor. Noyce was not only an inventor, but he was also a successful entrepreneur. In 1968, Noyce, with two co-workers from Berkeley, Gordon Moore and Andy Grove, left Fairchild to found Intel Corporation. In 1971, Intel engineers invented the microprocessor, enabling the development of the personal computer. Needless to say, Bob Noyce was quite wealthy by the time he unexpectedly passed away in 1990.

While Kilby and Noyce were inventing the silicon chip in 1958, President Eisenhower was concerned about the Soviet Union launching Sputnik, and he convinced Congress of the need to fund state-of-the-art military technology research. A consequence of this funding was the Advanced Research Projects Agency (ARPA). In 1966, ARPA contracted with three universities to participate in their research. Each university, however, wanted its own computer, with the latest upgrades. ARPA could not afford this and, as an alternative, suggested putting computers together.

2. WILLIAM GREIDER, ONE WORLD, READY OR NOT 475 (1997).
in a network. By 1969, this cost-saving idea led to the creation of the Internet.

A few years later, in 1978, the world's first widely used personal computer made its debut.\(^8\) It was a simple box with switches and small lights. That same year, two shaggy-haired computer nerds, Bill Gates and Paul Allen, developed the first commercial software program for the computer. As everyone is aware, they then established Microsoft and they too became very rich.

Once personal computers were marketed, people began to figure out a way to network those computers, just like the ARPA supercomputers. The leader in this field was the Stanford University Network, soon to become known as SUN Microsystems. Their biggest consumer was Wall Street, which needed quick access for valuing investments.

In 1990, just 11 years ago, Tim Berners-Lee was working on a fellowship for CERN. CERN is a European nuclear research organization, located in Geneva, Switzerland. Research physicists from all over the world came to CERN from their own national or academic research institutes to share and exchange knowledge. However, they had difficulty sharing this knowledge because they had incompatible information technologies. The physicists had different computers, languages, and software. Tim Berners-Lee proposed a global language for communicating between systems. He named this system the World Wide Web—the system now used for communicating over the Internet. There is fierce competition over software programs called browsers used to navigate the World Wide Web.\(^9\)

People are flocking to the Web.\(^10\) By 2002, the amount of commerce on the Internet is expected to exceed $400 billion. This is the marketplace of the third millennium.\(^11\)

How fast is this technology growing? It is growing at an exponential rate. In 1965, Gordon Moore, Bob Noyce's partner at Fairchild, began to plot the complexity of circuits that had recently been integrated onto slivers of silicon. During each of the first few years of the integrated circuit revolution, the number of transistors and resistors that fit onto a chip had nearly doubled. Moore developed a theory that computers halve in price and double in power every eighteen months. This became known as Moore's Law.\(^12\)

---

8. Id. at 20.
9. Id. at 284-6.
10. Id. at 342-53.
11. Id. at 358.
B. INTERNATIONAL CAPITAL MARKETS

We have examined the first factor leading to economic transformation. Now, let us look at the second factor—International Capital Markets. As products and services can now be easily transported globally, so can money. Capital markets operate in cyberspace, using space-age technology and complex instruments. The global flow of money has created a dynamic, driving globalization of economy. International capital market investments have wings. Funds are invested where they can provide the highest expected returns or best portfolio diversification. Funds are borrowed wherever funds are the cheapest to acquire.

Exchange rate trading drives the globalization of the economy. Since 1944, exchange rates have not been linked to the price of gold. Now, exchange rates float in world markets. Exchange rates may not accurately reflect the real value of money in particular countries. People called “arbitrageurs” bet on the value of exchange rates. They make a profit when the same security, currency, or commodity is traded in two or more markets at different prices. In 1992, George Soros, founder of the Quantum Fund, made $1 billion betting against the overvalued British pound.13

Foreign trading of currencies and securities has doubled in the last twelve years. In 1989, foreign exchange rate trading was $640 billion per day. Now, more than $1.3 trillion moves every day through the money markets of the world. Foreign exchange trading each year is about seventy-five times the annual output of the United States economy, as measured by the Gross Domestic Product (GDP). To assist global equity investing, there are 24-hour electronic trading networks linking New York, London, Tokyo, and Bonn. Wall Street brokers, such as Morgan Stanley, Merrill Lynch, and Goldman Sachs, are members of the Tokyo Stock Exchange. Gone are the days when an American President could avoid financial panic by waiting to deliver unpleasant news until after the New York Stock Exchange had closed. Now, news is instantly delivered to world markets.

13. GREIDER, supra note 2, at 240-41; see infra text accompanying notes 22, 31-32.
C. IMPORT/EXPORT TRADE: NEW REALITIES OF ECONOMIC INTERDEPENDENCE

We have examined technology and international capital markets, two of the factors leading to the latest economic transformation. Now, let us look at the third factor, the changed realities of imports and exports, which encourage economic interdependence.

Technology allows companies to produce more with less, increasing the capacity for production. Technology leads companies to invest in more output of goods beyond what consumers can absorb. Companies are looking for more consumers. As Baby Boomers age, their consumption will decrease. The consumers and markets of the future will not be in the United States, where birth rates are falling. Consequently, businesses have looked to new markets for their products.

The answer to the search for new markets is exporting products for foreign consumption. Exports, as a percent of the United States GDP, have doubled in the last twenty years. Since 1990, export-related jobs grew several times faster than total employment. Twenty-six percent of the revenue of the S&P 500 companies is revenue from foreign countries.

Most of the world’s population and almost all population growth are in nations outside traditional international business. The world is facing a demographic revolution. By 2050, more than half the world’s population is projected to reside in two major areas: Africa and the South, Central, and Southwest regions of Asia. The United States Department of Commerce has identified the ten “Big Emerging Markets” (BEMs) as Chinese Economic Areas, South Korea, Association of South East Asian Nations, India, South Africa, Poland, Turkey, Mexico, Brazil, and Argentina. These BEMs have several characteristics in common: (1) large territories and populations, (2) increased demand for consumer goods, and (3) enormous spillover into their respective regions. These nations combined contain more than half the world’s population.

In pursuit of these emerging markets, United States companies market the American dream of unlimited freedom through mass-produced products of popular culture, including movies, TV programs, music, books, and computer software. American-made products dominate entertainment around the world. Since 1991, when the collapse of the Soviet Union

15. GREIDER, supra note 2, at 27-29.
opened new markets around the world to the United States, total exports of intellectual property from the United States have almost doubled. In China, mannequins with western features sell clothes. Increasingly, which movies are made in the United States depends, in part, on how they will play overseas. The blockbuster, “Titanic,” earned twice as much abroad than in the United States. Global markets are the engine behind Hollywood’s assembly-line, short-on-dialogue, violent action, special-effect, blow-out films. McDonald’s restaurants are opening at the rate of six per day around the globe.

II. THE NEW “GLOBAL ENTERPRISE”

Now that I have examined the three factors that brought us to the global economy, let us take a few minutes and look at the new “Global Enterprise.”

The old American multi-national corporations were controlled from American headquarters. The new global enterprise has evolved into a very different institution. The new global corporation is an orchestrator of alliances, production, and transactions within cross-border relationships, not an equity owner. Groups of people in one nation combine skills with those located in other nations to provide the greatest value to customers located almost anywhere. The ability of enterprises to develop and manage these relationships is a key factor in determining the success of global competition. The key assets of high value enterprise are not tangible things and equity ownership. Rather, the key assets are the skills involved in linking solutions to particular needs.

The threads of the new global enterprise are barely visible. Information is transferred through computers, Fax machines, satellites, high-resolution monitors, and modems. Machines talking to machines is called data traffic.

MCI estimates that data traffic on global phone systems will soon overtake voice traffic. Some experts estimate that by 2005, data traffic will be ten times more prolific than voice traffic.

Global enterprises have grown to dwarf most countries. In a recent study comparing the Gross Domestic Product of countries compared with

18. Id. at 98-99.
the gross sales of companies, it was found that Volkswagon was larger than Venezuela, Zenith was larger than Denmark, Coca-Cola was larger than Hong Kong and Wal-Mart was larger than Poland.

The world's 500 largest multinational corporations dominate the world economy. For example, 500 corporations are responsible for one-third of all manufacturing exports, three-fourths of all commodity trade, and four-fifths of trade in technology and management services.

III. HOW HAS THE NEW "GLOBAL ENTERPRISE" CHANGED THE PRACTICE OF LAW?

We have learned that we are living in a global economy created by miniaturized computers and expanded communications. The new economy favors the intangible and is intensely interlinked. This economy is driven by global market values.

George Soros, the speculator who made $1 billion on the exchange market, said, "[m]arket values cannot take the place of public spirit or, to use an old-fashion word, civic virtue."22 That, however, is what is happening to us. Market values have penetrated areas previously governed by non-market considerations. Let us look at how the global economy has changed the practice of law.

A. CHANGE: MAKING AND ENFORCING LAWS

The global economy has changed the ability of governments to effectively make and enforce laws. A global corporation can shake off its ties to any one country. A corporation doing business in fifty countries need not worry as much about its obligations to any single country. A global corporation may be headquartered in the United States, but its boards and management are increasingly international.

Government is the principal agency by which society deliberates, defines, and enforces the norms that organize the market.23 No modern nation permits unregulated economy. But individual governments are in a greatly weakened position in regulating and negotiating with global enterprises. George Soros said "[w]e live in a global economy, but the

---

23. GREIDER, supra note 2, at 49-54.
political organization of our global society is woefully inadequate... [g]lobal financial markets are largely beyond the control of national or international authorities.”24 Let us look at some examples of challenges facing governments.

While the United States can restrict anti-trust activities in the United States, mergers or alliances of United States corporations with companies in other countries elude governmental control.25 Application of anti-trust law is limited to restriction of competition within the United States. The United States government would have no objection if Motorola teamed up with foreign rivals or if Chrysler merged with Daimler-Benz. The United States government would have an objection if General Motors merged with Ford.26 Without control, corporations seek international alliances to hedge against risk of future rivals by forming partnerships with potential competitors. The contemporary global alliance can present tremendous opportunity for corruption and collusion to operate outside of any laws.27

Nations seeking to levy income taxes on global corporations are often baffled. What was earned on work performed within the nation? Global corporations cloak themselves in whatever national garb is most beneficial. One study of 200 United States corporations found the average multinational firm with subsidiaries in more than five regions shifts income to reduce its taxes to half of what they would otherwise be. For example, to escape taxes on United States-made chips, Intel transferred title to chips in Japan. It was Japanese income for United States tax purposes. Meanwhile, the tax treaty between the two countries treated the profits as American profits accordingly. That income became “nowhere income,” not taxable in any country.28

Nations can successfully block national borders for tangible objects weighing more than 300 pounds. It is difficult, if not impossible, to inhibit flow of knowledge and money across borders. Modern technologies make it impossible for nations to control the flow of information. Much of the knowledge, money, products, and services are now easily transformed to electronic blips that move through the atmosphere at the speed of light.

However, when nations develop multilateral agreements, effective steps can be taken. An example would be the recent effort by the European Union (E.U.) to adopt rules designed to prevent any transfer of personal consumer data out of E.U. countries unless a corporation agrees to

24. SOROS, supra note 22, at xix-xx.
25. GREIDER, supra note 2, at 181-86.
26. See id. at 186.
27. See id.
28. Id. at 95-97.
appropriate protection of personal privacy. European officials view United States privacy protections as weak. Companies that do business on the Internet or have big operations in Europe are struggling to figure out ways to comply. American consumers could be the big winners as these discussions go forward, drawing attention to the lack of good privacy protection in United States.

Global enterprises may respond more to joint national controls. As we have seen from the E.U. effort to control information, countries can group together to strengthen their bargaining position with global enterprises. Some countries, like those in the E.U., coordinate economic and fiscal policies. A global financial monitor could set uniform requirements for capital, trading, reporting, and accounting. George Soros, one of global capitalism’s most perceptive critics, believes that “[t]he lesson to be learned is that financial markets need to be supervised.” Together, countries can control global corporations through joint codes of conduct addressing the transfer of technology, health-related matters, labor standards, taxation, and the environment. Occasionally, there are even discussions regarding a global tax formula, taxing foreign exchange transactions, or short-term speculative profits.

Those participating in global transactions need the predictability of law. The vast array of countries and laws make predictability difficult. Consequently, contracts have become global lawmaking tools. Global corporations strive for uniformity of contract law. Global contract laws tend to follow the American model.

Just as individuals and businesses adapt to new technology and to the global economy, so do those engaged in what in the United States would be considered criminal activity. It is important to note that what is a crime in this country is not necessarily a crime in other countries. According to our standards, there exists major global criminal activity. These activities include the obvious: drug trafficking, weapons sales and terrorism.

These activities also include the multi-billion dollar prostitution and sex slave trade industry. This activity sacrifices a generation of women for the economic development of many third-world countries. Technology

29. See MULTINATIONAL ENTERPRISES, supra note 19, at 422-30.
30. Id.
31. GREIDER, supra note 2, at 319.
32. Id. at 96-97.
34. Id. at 39.
makes these activities cheaper, quicker, and harder to detect.\textsuperscript{35} Internet chat rooms, newsgroups, and videoconferencing are tools of this trade.

Technology has opened the door to cyber-crime. A few malicious keystrokes in one part of the world can cause huge problems for a corporation thousands of miles away.\textsuperscript{36} Trade secrets can be stolen. Finances and insurance companies can be defrauded. Migrants are smuggled. Money is laundered. Environmental laws are violated. Computer viruses are transmitted.\textsuperscript{37}

B. CHANGE: SERVING CLIENTS

We have discussed how the global economy has changed the making and enforcing of laws. Let us now examine how the global economy has changed how we serve clients. Lawyers seek to serve clients competently, without conflicts of interest. Lawyers also seek to earn a living. The values of clients have changed. Consequently, the economics of the practice of law have changed.

Clients increasingly value their lawyers' knowledge of the clients' industries. They expect their lawyers to be price-competitive with other lawyers and other consultants. Clients want lawyers who are problem-solvers, not explainers of legal limitations. Lawyers must now think creatively and have a global, multi-discipline perspective.\textsuperscript{38}

Now, clients merge with other corporations, creating conflicts in representation. For example, a client may merge with an opposing party on another matter being handled by the firm. In addition, these corporate mergers dislodge the personal relationships between corporate officers and their legal advisors.\textsuperscript{39}

\begin{itemize}
  \item \textsuperscript{35} K. Arnold, MPS 538 Presentation (1999) (unpublished manuscript, on file with author).
  \item \textsuperscript{36} Douglas F. Gray, \textit{Net Enables Global Crime Spree}s, at http://www.infoworld.com/articles/hn/xml/00/06/22/000622hnglobal.xml (last visited Dec. 6, 2001).
  \item \textsuperscript{38} JAGDISH SHETH & ANDREW SOBEL, \textit{Clients for Life: How Great Professionals Develop Breakthrough Relationships} 21-42 (2000).
  \item \textsuperscript{39} Id.
\end{itemize}
C. CHANGE: STRUCTURING THE PRACTICE

We have discussed how the global economy has changed the making and enforcing of laws and how it has changed our service to clients. Let us now examine how the global economy has changed the structure of the practice of law.

The legal profession has been changed by a massive increase in the number of lawyers. Globalization distances business relationships, increasing the need for lawyers for the protection of rights. The number of lawyers has grown exponentially.\(^\text{40}\)

Law firms have also grown in size. In order to be price-competitive and to have a global view, law firms have been engaged in mega-mergers. For example, in Chicago, Rudnick and Wolfe merged with Piper and Marbury, creating a 750-lawyer firm with nine offices. Wilson and McIlvane merged with Quarles and Brady, creating a 330-lawyer firm with four offices. Hopkins and Sutter merged with Foley and Lardner, creating a 210-lawyer firm with seven offices. In a world where clients are becoming national and global, inevitably the firms that serve them will become national and even multi-national. In January 2000, the merger of three firms created the world's largest law firm: Clifford Chance in London, Rogers and Wells in New York, and Punder, Volhard, Weber and Axster in Germany. The new Clifford Chance will have 3,100 lawyers.\(^\text{41}\)

As America leads the global economy, global legal principles become Americanized. Consequently, the role of American law firms has increased. Legal services are the fourth largest export in business, professional, and technical services from the United States. Global legal practice is the fastest growing and most lucrative practice area for large law firms.\(^\text{42}\) From 1986 to 1996, export of legal services grew by almost twenty times, to a level almost four times that of the imports of legal services.\(^\text{43}\) Jurisdictional boundaries disappear in an Internet-driven transaction where anyone in the world is less than one second away from anyone else.\(^\text{44}\) Consequently, law firms are expanding their network of global offices.

\(^{40}\) See Shapiro, supra note 33, at 55.

\(^{41}\) The Battle of the Atlantic, ECONOMIST, Feb. 26, 2000, at 79, 80.

\(^{42}\) Id. at 80.


As the global economy has changed law firms, accounting firms have also changed. As borders between countries have become less significant, so have borders between legal and accounting professions. Accounting firms have grown beyond accounting and auditing functions to become “professional service” firms. They provide consulting on management, investment banking, computer systems, personnel, business strategy, and the law. As they developed these services, accounting firms developed global networks of offices.\(^{45}\)

These “professional service” firms compete with law firms. The primary competition comes from the Big Five “professional service” firms.\(^{46}\) The “professional service” firms now provide legal consulting that had been previously provided by law firms. These consulting services include estate planning, dispute resolution, litigation support, valuation and business planning, environmental and labor law compliance, employee benefits and financial planning. Lawyers working in these firms claim they are not practicing law and are outside the profession’s general regulatory net.

The Big Five are targeting lawyers to work for them. They look to recruit mid-ranking lawyers in firms or small companies who are frustrated by limited earnings. It is estimated that “professional service” firms can pay twenty to twenty-five percent higher than law firms. They also target recent law school graduates. New York University Law School estimates that twenty percent of its recent graduates have been hired by the Big Five.\(^{47}\)

“Professional service” firms are huge. They are planning on growing more and increasing their legal consulting services. Accenture employs as many lawyers as the world’s largest law firm, Clifford Chance. Accenture aims to be a global player in legal services over the next five to ten years. PricewaterhouseCoopers has twenty-three times the number of employees as Clifford Chance. PricewaterhouseCoopers operates in almost eight times the number of countries as Clifford Chance. Ernst and Young just recently financed the creation of a fifty-lawyer firm: McKee, Nelson, Ernst and Young. There is no fee sharing with the firm, but they do have


\(^{47}\) *Id.* at 881, n.46.
contiguous office space, presumably to financially benefit from their relationship.  

IV. WHAT CHOICES DOES IT PRESENT TO LAWYERS?

I have examined the global economy and its impact on the practice of law. Now, let us look at the choices it presents to the legal profession. The issue we need to face is how do lawyers participate in this economy without compromising the core values of our profession?

I believe the core values of the profession are independence, competence and loyalty. Our goal should be to promote the public interest, to protect clients, and to preserve the core values of the profession. Our sole purpose should not be to limit competition.

As a profession, we have choices. Should the rules governing the practice of law be changed? If so, how? Should Multi-Disciplinary Practices (MDPs) be allowed?

We make these choices in a difficult environment. As law practice becomes global, the practice of law remains regulated by local jurisdictional boundaries with varying standards. Many question whether the state requirements are relevant to the current global context. Some argue for the federal regulation of the practice of law. The first step in this direction comes from the federal government under the GATS Treaty (General Agreement on Trade in Services). The treaty gives the federal government limited power to regulate the legal profession. GATS prohibits states from unduly restricting activities of foreign legal consultants and encourages states to allow foreign legal consultants to practice in their jurisdictions.

Some lawyers argue for allowing Multi-Disciplinary Practices. Steven Bennett, Executive Vice President and Chief Legal Officer of Cardinal Health, Inc., testified before the American Bar Association that clients' problems are not just “legal problems,” but require a multi-disciplinary approach. He warned that if lawyers do not adopt MDP they risk becoming “a mere footnote in the twenty-first century.” Proponents of MDPs argue that MDPs would provide better, more cost-effective

48. Id. at 880, n.41.
49. Bernard Greer, Professional services in the global economy: Implications of “one-stop shopping,” at http://www.hg.org/1stop.html (last visited Dec. 6, 2001); see also Terry, supra note 46.
51. Terry, supra note 46, at 891.
service to clients with one-stop shopping. George Overton, an attorney with Wildman Harrold, is active in ethics and professionalism matters. Overton critically views the economic arguments underlying the resistance to MDPs. He said that “[y]ou would never know from the debate that the legal profession has a monopoly. They take it for granted . . . [w]e define the package given to the client. We don’t present an alternative package.”

Other attorneys argue against MDPs. Larry Fox, attorney with Drinker Biddle and Reath, L.L.P. and former Chair of the ABA Standing Committee on Ethics and Professional Responsibility, testified before the ABA against MDPs, claiming that “he who pays the piper calls the tune.”

Opponents of MDPs argue that it would undermine core values of the profession: independence and loyalty. Cheryl Niro, past-president of the Illinois State Bar Association, is concerned about how MDPs would function. She said she does not “know how this all holds together without serious danger to consumers.” Others are much more alarmed at the prospect of MDPs. Jerold Solovy, Chairman of Jenner and Block, said that MDPs would be the “death knell of the legal profession.” He claims that with MDP’s, the distinctiveness of practicing law will be lost.

The ABA Model Rules of Professional Conduct prohibit lawyers from fee-sharing and entering into partnerships with non-lawyers. The Rules require an attorney to protect client confidentiality, prohibit conflicts of interest and impute disqualification to all partners in the firm. In 1999, the ABA Commission on Multi-Disciplinary Practice unanimously recommended allowing MDPs. The following year, the ABA House of Delegates overwhelmingly rejected that recommendation.

MDPs are currently allowed in the District of Columbia, Germany, the Netherlands, Upper Canada and New South Wales. MDPs are under consideration in many countries: Australia, England, Wales, Canada, and

54. Terry, supra note 46, at 891.
55. Id. at 891-92.
57. Id.
58. Id.
63. Terry, supra note 46, at 878-79.
Several states are currently reviewing their laws: Arizona, Colorado, Michigan, Minnesota, South Carolina, and Utah. In addition, over forty states and local bar associations are considering MDP.65

What choices do we have if MDPs are permitted? The legal profession has attempted to erect walls around its practice, defining who is and who is not entitled to practice law. Many of those walls are penetrable. While everyone agrees that it takes a law license to walk in the door of a courtroom, does it take a law license to engage in ancillary services such as estate planning, dispute resolution, litigation support, valuation and business planning, environmental and labor law compliance, and providing employee benefits and financial planning? The profession has also drawn walls around the practice to preserve core values and to encourage growth of practice. Today, we are faced with the choice of destroying those walls, or building new ones.

If MDPs are permitted, we must decide what form or structure of practice will be allowed.66 Can lawyers share fees with non-lawyers in MDPs? Must lawyers own or control the MDP? What professions may join with lawyers? What name could an MDP use? What disclosure requirements should be imposed on MDPs? Would those requirements differ for clients and for regulators? Would passive investors in MDPs be allowed?

If MDPs are permitted, we must decide on the scope of practice.67 Can a MDP simultaneously offer audit and legal services? Can MDP lawyers litigate? Must the primary purpose of the MDP be to not litigate?

If MDPs are permitted, we must decide how ethical standards are to be implemented.68 Who will regulate MDPs? What ethical rules will apply to MDPs? Will lawyers be regulated or will the activities of MDPs be regulated? What ethical standards should apply to non-lawyers? What happens when there are conflicting professional standards within an MDP?

If MDPs are permitted, we must determine measures to be taken to protect core ethical values.69 How do you preserve independent judgment? How do you maintain client confidentiality? How do you avoid conflicts of interest?

64. *Id.* at 909.
65. *Id.* at 904.
66. See *id.* at 894.
67. See *id.* at 896.
68. See *id.*
69. See *id.* at 898-903.
The ABA Commission on MDPs has recommended its approval of the concept. The Commission said that it is "possible to satisfy the interests of clients and lawyers by providing the option of an MDP without compromising the core values of the legal profession that are essential for the protection of clients and the proper maintenance of the client-lawyer relationship." The Commission determined that appropriate safeguards could be developed "to adequately address the concerns and maintain the core values while providing broader access to legal services for the public."

The Commission believed that lawyer control of MDPs is not necessary. The Commission recommended that different enforcement mechanisms be used if non-lawyers controlled an MDP. Specifically, it recommended that MDPs should be subject to court audit procedures and be certified by a state supreme court or its designee.

The Commission did not limit the professions that could join with lawyers, but did prohibit passive investors in the firm. The Commission did not limit the names to be used by MDPs, nor the scope of its practice. The Commission did recommend that all lawyers in an MDP be required to make disclosures to clients that lawyers are practicing in an MDP. The Commission believed that if there was a conflict between the ethics rules of professions, the legal professional rules should prevail. The Commission also recommended that the confidentiality rules within an MDP be similar to those within a traditional law firm.

CONCLUSION

We have seen what has brought us to a global economy, how the global economy has changed the practice of law, and the challenges that globalization presents to lawyers. We struggle with one of the most important questions facing society today. Commerce and finance have leapt beyond the existing order, transforming the consciousness of people and society.

People may wish to turn away from these changes, but there is essentially no place to hide. George Soros believes that the development of a global society has lagged behind the growth of a global economy. Unless

70. See Background Paper, supra note 52.
71. Terry, supra note 46, at 912.
72. Id.
73. Id. at 912-13.
74. Id. at 913.
75. Id.
that gap is closed, the global capital system will not survive.\textsuperscript{76} Soros concludes that economic values, on their own, cannot be sufficient to sustain society.\textsuperscript{77}

We must accept responsibility for closing the social gap. While the options that the profession faces may seem difficult, we have basically two open to us. First, we can try to stop MDPs and choose to fight the impact of global economic realities. There are many good reasons to stop their growth. As a profession, however, we have difficulty defining the practice of law and proving unlicensed practice. Second, we may choose to adapt the current regulations of our profession to those economic realities.

We cannot, however, ignore MDPs. MDP lawyers claim they are not practicing law. If we ignore MDPs, the result could be two worlds of lawyers: one regulated and one unregulated. We cannot ignore those economic realities. By ignoring them, we would abdicate not only the core values of our profession, but also our fundamental responsibility as citizens and lawyers to protect democracy.\textsuperscript{76}

\textsuperscript{76} See Soros, supra note 22, at 102.
\textsuperscript{77} Id. at xxi.