

2001

## Why Say No to Multidisciplinary Practice?

Edieth Y. Wu

*Thurgood Marshall School of Law*

Follow this and additional works at: <http://lawcommons.luc.edu/lucj>



Part of the [Legal Profession Commons](#)

---

### Recommended Citation

Edieth Y. Wu, *Why Say No to Multidisciplinary Practice?*, 32 Loy. U. Chi. L. J. 545 (2001).

Available at: <http://lawcommons.luc.edu/lucj/vol32/iss3/3>

This Article is brought to you for free and open access by LAW eCommons. It has been accepted for inclusion in Loyola University Chicago Law Journal by an authorized administrator of LAW eCommons. For more information, please contact [law-library@luc.edu](mailto:law-library@luc.edu).

# Why Say No to Multidisciplinary Practice?

*Edieth Y. Wu, J.D., LL.M.\**

I. INTRODUCTION.....	546
II. MDP DEVELOPMENT .....	547
A. <i>The American Bar Association's Examination of MDPs</i> .....	548
B. <i>The Two Sides of the MDP Question</i> .....	552
1. Support for MDP .....	552
2. Opposition and Skepticism Regarding MDP.....	555
a. The Economic "Push" .....	556
b. The "Medical MDP" and its Effect on Doctors .....	558
c. Concerns About Gaps and Weaknesses in the Rules of Professional Conduct .....	559
III. WORK PRODUCT IS AND MUST BE LIMITED TO ATTORNEYS.....	567
IV. FOREIGN AND OTHER FACTORS AFFECTING THE MDP DEBATE ...	570
V. CONCLUSION** .....	574

---

\* Assistant Professor of Law, Thurgood Marshall School of Law at Texas Southern University. The author would like to thank the following: God, M. Salazar, S. Crockétt, M. King, M. Garner, my research assistant, Professor L. Gooden, the TSU faculty and staff, and special thanks to C. Love-Hanks, J. Alridge, and Anya Anga, TMSL Librarian.

\*\* This article was initially written prior to the American Bar Association's ("ABA") vote on MDP. Overall, the individual states should follow the ABA's lead. As Robert MacCrate, a former ABA President, said, "the House of Delegates sen[t] a clear message . . . that to preserve its core values, the American legal profession is not for sale." John Gibeaut, *It's A Done Deal*, A.B.A. J., Sept. 2000, at 92 (discussing the ABA action and the fact that lawyers "have not heard the last word" on this issue). The ABA's message should be taken to heart by any state considering MDP.

## I. INTRODUCTION

The dialogue about Multidisciplinary Practice (“MDP”) continues to escalate. Lawyers and accountants are at the forefront of this debate. In order to promote greater awareness of the issues involved, this article discusses MDP and its potential impact on the legal profession and the consumer. MDP will “enable lawyers to share fees with nonlawyers; nonlawyers to become partners in law firms; and lawyers who work in accounting and consulting firms that aren’t law firms (such as accounting firms and consulting firms) to hold themselves out as practicing law, which they can’t do today.”<sup>1</sup> First, this article tracks the development of MDP.<sup>2</sup> Second, this article looks at arguments supporting MDP,<sup>3</sup> as well as arguments opposing MDP.<sup>4</sup> Third, this article analyzes *United States v. Arthur Young & Co.*<sup>5</sup> and other case law as an instructive tool in evaluating the strengths and weaknesses of MDP. Fourth, this article addresses the foreign dialogue and other factors affecting MDP.<sup>6</sup> Finally, this article concludes that the concept of MDP is objectionable and consumer protection should be the cornerstone of the decision not to sanction MDP mergers.<sup>7</sup>

The practice of law encompasses many areas that are constantly litigated to resolve conflicts of interest.<sup>8</sup> In addition, an attorney may become entangled in situations where the client or putative client’s interests or confidential information may be compromised. The Model

---

1. Robert Pack, *Lawyers, Nonlawyers and the Future of the Practice of Law*, WASH. LAW., Sept.-Oct. 1999, at 25; see also A.B.A. Commission on Multidisciplinary Practice, Report to the House of Delegates (Aug. 1999), available at <http://www.abanet.org/cpr/mdpreport.html> [hereinafter *Multidisciplinary Practice Report*]. The report states that MDP is:

a partnership, professional corporation, or other association or entity that includes lawyers and nonlawyers and has as one, but not all, of its purposes the delivery of legal services to a client(s) other than the MDP itself or that holds itself out to the public as providing nonlegal, as well as legal, services.

*Id.*

2. *Infra* notes 10-39 and accompanying text (discussing the development of MDP).

3. *Infra* Part II.B.1 (discussing the arguments in support of MDP).

4. *Infra* Part II.B.2 (discussing the arguments opposing MDP).

5. *United States v. Arthur Young & Co.*, 465 U.S. 805 (1984); see also *infra* notes 139-63 (examining the rejection by the Supreme Court of an accountant work product doctrine as compared to its acceptance of an attorney work product doctrine).

6. *Infra* Part IV (discussing foreign and other factors affecting the MDP debate).

7. *Infra* Part V (concluding that MDP should not be sanctioned because it would adversely impact the core values of the legal profession).

8. See, e.g., *Elan Transdermal Ltd. v. Cygnus Therapeutic Sys.*, 809 F. Supp. 1383 (N.D. Cal. 1992) (holding that presumption that former members of a law firm representing the plaintiff had shared client confidences was conclusive under California law and precluded the firm from later representing the plaintiff in patent infringement action against an ex-client).

Rules of Professional Conduct are sometimes ineffective in solving these problems because of the difficulty of policing certain types of behavior. Realistically, the legal profession should realize that these types of conflicts of interest are practically insurmountable for both attorneys and accountants.<sup>9</sup> MDPs allow accountant-attorneys to create entities that present monitoring problems that inherently involve conflict-ridden opportunities. However, MDPs may represent the future of the profession if the legal community and its regulating bodies continue to encourage this type of behavior. With this in mind, the legal community and its regulating bodies might be better off refusing to sanction MDPs.

## II. MDP DEVELOPMENT

As early as the 1990s, the Big Six<sup>10</sup> accounting firms have practiced law in Europe.<sup>11</sup> Nevertheless, the question remains, should the American Bar Association ("ABA") allow the European model to invade the United States because of the pull the European market has on U.S. accounting firms?

Smaller accounting firms, investment advisers, and banks are also moving into territory that has, to date, been beyond their traditionally fixed lines of demarcation.<sup>12</sup> Further, the General Agreement on Tariffs and Trade ("GATT") purports to have jurisdiction over these professions by way of international trade aspects of the World Trade Organization ("WTO").<sup>13</sup> The WTO's new powers will extend to many areas not previously covered, specifically trade in services.<sup>14</sup> The WTO

---

9. John Gibeaut, *Squeeze Play*, A.B.A. J., Feb. 1998, at 42, 47.

10. Until fairly recently, there were six accounting firms. *Id.* at 44. These firms were: Arthur Andersen, Ernst & Young, Deloitte & Touche, KPMG Peat Marwick, Coopers & Lybrand and Price Waterhouse. However, in July 1998, Coopers & Lybrand merged with Price Waterhouse to create PricewaterhouseCoopers. Matthew Goldstein, *Accounting Firm Hits the Right Number: Price Waterhouse Coopers Merges Without Turmoil; Economy Helps*, CRAINS'S N.Y. BUS., May 31, 1999, at 16. Thus, the Big Six has become the Big Five. *Id.*

11. Gibeaut, *supra* note 9, at 42 (highlighting the future impact the Big Six and other accounting giants will have on lawyers). "Unlike nearly every U.S. jurisdiction—the District of Columbia being the lone exception—most European countries either allow accounting firms to engage in law practice themselves or to affiliate with law firms." *Id.* at 44. Furthermore, all major accounting firms have significant legal practices, often employing hundreds of lawyers throughout Europe. *Id.* "Indeed, in some markets [accounting firms] are among the largest providers of legal services for businesses." *Id.*

12. *Id.* at 43; see also Uruguay Round Agreements Act of 1994, 35 U.S.C. § 3501 *et seq.* (2000).

13. Gibeaut, *supra* note 9, at 44.

14. Patricia Isela Hansen, *The Impact of the WTO & NAFTA on U.S. Law*, 46 J. LEGAL EDUC. 569, 570 (1996) (citing WTO Charter, art. II).

will now allow more domestic laws to fall within its purview.<sup>15</sup> “These new rules are a two-edged sword: while they will likely enable the United States successfully to challenge foreign laws that harm U.S. exports, they may also be used to attack our own domestic laws and regulations.”<sup>16</sup> Since the new WTO rules include trade in services, the legal profession may be impacted. As a result of these changes, the entire MDP area may be revamped in accordance with the European or international model. Globalization of business generally draws professionals to cooperative business solutions in order to lower costs and increase efficiency.<sup>17</sup>

A. *The American Bar Association’s Examination of MDPs*

In 1995, the ABA Commission on Nonlawyer Practice released its much-anticipated report which acknowledged the growing role of nonlawyers in providing legal services in the United States.<sup>18</sup> The Commission’s report listed the following as areas in need of regulation: consumer protection laws, unfair or deceptive trade practice statutes, fraud and negligence rules, intensive regulation via registration, and certification or licensing if it were impossible to achieve acceptably low levels of harm to consumers without such regulatory approaches.<sup>19</sup>

After expressing initial reservations with MDP, the ABA, at least temporarily, shifted its position. In June 1999, a 12-member ABA Commission on MDP (“ABA MDP Commission”) unanimously recommended that lawyers be allowed to form partnerships and share fees with accountants, personal investigators, engineers, consultants and others.<sup>20</sup> In other words, the ABA MDP Commission recommended that rules should be promulgated to allow MDPs. These recommendations were placed on hold pending additional research on the matter.<sup>21</sup> On July 11, 2000, after further research had been conducted, the ABA voted against rules that would allow MDPs.<sup>22</sup> However, this vote has not ended the MDP debate.<sup>23</sup> Rather, in the

---

15. *Id.*

16. *Id.* at 578.

17. Ann L. MacNaughton, *Multidisciplinary Practice: Strategic Response to Transformation of Global Business Reality*, CORP. COUNS. REV. 59, 63 (2000).

18. James Podgers, *Regulating Nonlawyers*, A.B.A. J., Oct. 1995, at 103.

19. *Id.*

20. Pack, *supra* note 1, at 25.

21. *Id.* at 26.

22. John Gibeaut, *It’s A Done Deal*, A.B.A. J., Sept. 2000, at 92, 92-93 (discussing the ABA action and the fact that lawyers “have not heard the last word” on the issue).

23. *Id.*

future, each individual state will likely be faced with the decision whether to allow MDPs. Any further consideration of MDP is likely to start by reviewing the ABA MDP Commission's findings and recommendations as well as examining the overall ABA vote against MDPs.

The ABA MDP Commission realized that the current rules do not offer the protection or the policing that would be necessary to protect clients if MDP were allowed. To lay the foundation for development, the ABA Commission proposed five restrictions and precautions to protect clients.

- 1) Assurances by a multidisciplinary practice that it will not interfere with a lawyer's independent professional judgment and that it recognizes a lawyer's role as an officer of the legal system, including the ethical obligations to do *pro bono* work.<sup>24</sup>

This author believes that this is an inadequate approach to ensure that clients are protected. The question would become whether the ABA or the state bar associations are going to have jurisdiction over multimillion dollar corporations that do not hold licenses to practice law. Further, what real incentive is the head of a large corporation going to have to protect the attorney's professional obligations?<sup>25</sup>

- 2) Forbidding lawyers supervised by nonlawyers to use that as a defense to violations of conduct rules.<sup>26</sup>

This mandate forces the lawyer to either turn his face to wrongdoing or resign his potentially lucrative position in an entity where he is no longer the decision maker.

- 3) Prohibiting outside investors from owning interest in MDPs.<sup>27</sup>

If the big accounting firms continue to take the lead in acquiring or backing law firms, this prohibition may be extremely unimportant considering the wealth base that large accounting firms bring to the MDP framework.

- 4) Requiring lawyers to caution clients that attorney-client privilege may not apply to communications with nonlawyer firm members providing different kinds of services. Failure to adequately explain the difference between legal and nonlegal services could result in disciplinary action.<sup>28</sup>

---

24. John Gibeaut, *Share The Wealth*, A.B.A. J., July 1999, at 14, 16 (discussing the ABA's proposal to allow attorneys to split fees with other professions).

25. Cindy Alberts Carson, *Under New Mismanagement: The Problem of Non-lawyer Equity Partnership in Law Firms*, 7 GEO. J. LEGAL ETHICS 593, 611-13 (1994).

26. Gibeaut, *supra* note 24, at 16.

27. *Id.*

28. *Id.*

Here, the attorney's independence has been severely hampered, yet he has the duty to act as a shield in all aspects of the business venture. This places a greater onus and responsibility on the attorney; moreover, it also places the actual policing on the attorney's shoulders. Presently, attorneys who practice in law firms are allowed to disclose client information to other firm members unless specifically told not to do so by the client. "It is reasonable to presume that members of a law firm freely share their client's confidences with one another."<sup>29</sup> Further, this restriction fails to recognize that sharing information among professional colleagues, especially lawyers, is generally accepted practice. This common practice becomes more difficult when an attorney's colleague or supervisor may not be an attorney. In the past, an attorney's supervisor, usually himself an attorney, would also have to conform to the profession's standards.

5) Treatment of all the practice's clients—legal and nonlegal—as the lawyer's own for conflict-of-interest analysis.<sup>30</sup>

This restriction places the onus on the client to remember which part of the organization is on the legal, as opposed to the accounting, side of the house, especially in light of the fourth restriction's mandate that the attorney explain the difference between legal and nonlegal services to the client.

The ABA MDP Commission's recommendation represented a complete reversal in the ABA's long-standing ban on fee sharing and blended services.<sup>31</sup> The legal community should look to current independence standards and realize that the lawyers are not meeting the minimums as an independent profession today even without MDPs. Mergers with other professions may dilute the goals and aspirations of an independent legal profession even more.

For example, the 1997-98 ABA President, Jerome J. Shestack, stressed six basic elements of professionalism: "ethics and integrity, competence combined with independence, meaningful continuing learning, civility, obligations to the justice system, and *pro bono*

---

29. *Novo Therapeutisk Lab., A/S v. Baxter Travenol Labs., Inc.*, 607 F.2d 186, 196 (7th Cir. 1979) (concerning an appeal where a corporate defendant attempted to disqualify plaintiff's attorney on grounds that defendant's attorney had at one time been a partner of the same law firm whose attorneys were representing plaintiff).

30. Gibeaut, *supra* note 24, at 16 (discussing the ABA's proposal to allow attorneys and other professions to split fees); see also *Multidisciplinary Practice Report*, *supra* note 1 (summarizing the Commission's report on MDP and recommending that the ABA adopt MDP because "there is an interest by clients in the option to select and use lawyers who deliver legal services as part of a multidisciplinary practice . . .").

31. John Gibeaut, *Practice Debate Heats Up*, A.B.A. J., Aug. 1999, at 14, 16.

service.”<sup>32</sup> More importantly, the president recognized that the ABA Model Rules seemingly create minimum standards and unfortunately people decide how far they can push the envelope without actually violating the rules.<sup>33</sup> “Ethical standards should not be treated as articles of containment but embraced as welcome moral principles guiding a growing, vibrant profession. They should lead a lawyer to adhere to standards of practice that are more high-minded and exacting than the rules require.”<sup>34</sup>

Furthermore, MDP would create additional obstacles. Change is prevalent throughout the business community. Accountants do not have the threat of jeopardizing a law license. “[T]he increasing globalization of business, competition from non-traditional sources and the increasing sophistication of the consumers of legal service”<sup>35</sup> all have an impact on the law. In the 1970s, law practice was static and in its infancy. From the 1970s through the 1990s, the law business became a highly competitive 130 billion dollar industry.<sup>36</sup> This is a result of mergers, lateral hires, and expansion into the foreign market.<sup>37</sup> Likewise, the accountancy profession has also gone through many changes. Over 100 years ago, the accounting profession invented itself to serve the country’s industrial interests; it continues this trend as the business sector changes, adding new services and competencies.<sup>38</sup>

These changes are often driven by concerns that do not always encompass the client’s best interests. Projections about MDP include the absolute need to move in a direction where the client’s best interests may be compromised. “One-stop shopping to clients for multiple business services will become necessary to compete with accounting

---

32. Jerome J. Shestack, *Taking Professionalism Seriously*, A.B.A. J., Aug. 1998, at 70.

33. *Id.* at 72; see also CANONS OF PROF’L ETHICS Canon 29 (1947) (attorneys “should strive at all times to uphold the honor and to maintain the dignity of the profession and to improve not only the law but the administration of justice”).

34. Shestack, *supra* note 32, at 72; see also CANONS OF PROF’L ETHICS Preamble (1947) (articulating that the canons of ethics are adopted “as a general guide, yet the enumeration of particular duties should not be construed as a denial of the existence of others equally imperative, though not specifically mentioned”).

35. Michael M. Boone & Terry W. Conner, *Into the New Millenium: Change, Change, and More Change: The Challenge Facing Law Firms*, 63 TEX. B.J. 18, 19 (2000) (tracking changes in the legal profession from the pre-1970s to the present).

36. *Id.* at 20.

37. *Id.*

38. Anita Dennis, *No One Stands Still in Public Accounting*, J. OF ACCOUNTANCY, June 2000, at 66, 67-74 (tracking changes in the accounting profession from the 1900s to 2000).



firms and other service providers as they expand more into the legal markets.”<sup>39</sup>

### *B. The Two Sides of the MDP Question*

#### 1. Support for MDP

The so-called “one-stop shop,” where you can find your lawyer, accountant, and consultant under one roof,<sup>40</sup> is the mantra for MDP supporters. Many argue that lawyers have already practiced with others in quasi-MDP situations. For example, lawyers are currently allowed to retain professional services on a contract basis in the areas of jury consultants, investigators, and economic analysts.<sup>41</sup> MDP supporters argue that:

In the end, lawyers will not be run out of town by the accounting firms, but will have to adapt to those changes in the world that are driving multidisciplinary practice: the information revolution, client autonomy, a competitive unregulated marketplace, and ambiguity about the limits of lawyers’ professional autonomy. Those who confront these trends in creative and positive ways will thrive, while those who stick their heads in the sand will find themselves clientless and jobless.<sup>42</sup>

William C. Cobb, a Houston consultant, believes that lawyers think along very narrow lines and, as a result, MDP is going to surpass the type of service that attorneys have traditionally offered. He suggests that people are only interested in having their problems solved, and a lawyer’s ability to quote a certain regulation is not solving the problem.<sup>43</sup> Also, value is added when professionals and organizations can both solve problems and manage resources. More importantly, Cobb notes, “the problem cannot be solved in a singular product.”<sup>44</sup>

---

39. Boone & Conner, *supra* note 35, at 24; *see also Multidisciplinary Practice Report, supra* note 1, app. C (recommending that it is in the public’s best interests to permit fee sharing and partnership and other associations with nonlawyers; therefore, it is in the best interests of the public that clients be given the opportunity to purchase legal services from an MDP).

40. Pack, *supra* note 1, at 31.

41. Gary A. Munneke, *Can Lawyers Live With Multidisciplinary Practice?*, CORP. COUNS. REV., Feb. 2000, at 89, 91 (discussing further a lawyer’s ability to enter into an ancillary nonlegal business, which would be consistent with Model Rule 5.7).

42. *Id.* at 92.

43. *A Roundtable Discussion on Multidisciplinary Practice*, HOUS. LAW., Nov.-Dec. 1999, at 9, 10 [hereinafter *Roundtable Discussion*].

44. *Id.*

Mike Richter,<sup>45</sup> another consultant, observed that MDP has already started: "H&R Block, you might know, has a high-level division that's buying accounting firms to compete with American Express; and there is another public company out there called Century Business Systems that is also doing the same thing. So the consolidation process has started."<sup>46</sup> These comments illustrate the so-called "inevitability of MDP."

Additionally, proponents of MDP argue that opposition is unfounded because Model Rules 5.3<sup>47</sup> and 5.4<sup>48</sup> will continue to sufficiently protect client confidences and secrets from unauthorized disclosure.<sup>49</sup> A comparison has been made to the denial of boards of directors from having access to certain corporate records. Likewise, the confidentiality wall surrounding attorney-client relationships would also continue to prevent nonlawyer owners and managers from having total control of the business.<sup>50</sup>

MDP proponents also believe that "lawyer-nonlawyer ventures present no dangers that justify an absolute ban."<sup>51</sup> One concession is to mandate that practicing lawyers maintain a controlling interest in the business.<sup>52</sup> Other supporters argue that empirical data does not show

45. Mr. Richter is a shareholder of Mann Frankfort Stein & Lipp, P.C., a leading Houston-based financial services and business consulting firm. *Id.*

46. *Id.*

47. MODEL RULES OF PROF'L CONDUCT R. 5.3 (1983). Rule 5.3 states: "(a) a partner in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with professional obligations of the lawyer"; and (b) lawyers with "direct supervisory authority over [a] nonlawyer shall make reasonable efforts to ensure [compatible conduct]."

48. MODEL RULES OF PROF'L CONDUCT R. 5.4 (1983). Rule 5.4 states:

- (a) A lawyer or law firm shall not share legal fees with a nonlawyer, except that . . . .
- (b) A lawyer shall not form a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law . . . .
- . . . .
- (d) A lawyer shall not practice with or in the form of a professional corporation or association authorized to practice law for a profit, if:
  - (1) a nonlawyer owns any interest therein . . . .

*Id.*; see also *Multidisciplinary Practice Report*, *supra* note 1 (recommending that a lawyer should be permitted to share legal fees with a nonlawyer and the lawyer should be permitted to deliver legal services through MDP).

49. Susan Gilbert & Larry Lempert, *The Nonlawyer Partner: Moderate Proposals Deserve a Chance*, 2 GEO. J. LEGAL ETHICS 383, 406 (1988) (chronicling the history of the Kutak proposal and the Jordan Commission Draft which laid the foundation for the possibility of nonlawyer-lawyer partnership arrangements).

50. *Id.*

51. *Id.* at 410.

52. *Id.* at 409.

the potential harm that would be realized if the prohibition of nonlawyers' involvement was lifted.<sup>53</sup> This particular argument may have merit; nevertheless, even though "the book hasn't been written yet on whether clients in MDPs are really going to get better service or more economical service than they would get from law firms,"<sup>54</sup> proponents need to acknowledge that:

[T]he moral here is the danger of letting a large amount of money into the legal system where the people with the money do not feel bound by the same constraints that lawyers are bound by . . . . [W]e need to take that as sort of a precedent, a danger to be looked out for, as we go down this road.<sup>55</sup>

Proponents further argue that the current ethical and legal rules can protect the public, and if the rules are proved inadequate, then amendments to the rules are an appropriate solution.<sup>56</sup>

Proponents argue that the potential benefits to clients include the MDP's ability to see, and often solve, the nonlegal aspects of a client's problem. Whereas, proponents argue, the attorney practicing alone, even if he is aware of such nonlegal problems, may try to solve the nonlegal problems himself, without sufficient training or experience.<sup>57</sup> MDP proponents urge lawyers to defer to the expertise of accounting professionals in finding solutions to a client's accounting issues. Additionally, the required services would be provided more efficiently and economically because the client would not need to find and work with two or more unrelated firms.<sup>58</sup> MDP got a "shot in the arm" when the ABA MDP Commission concluded that there is a client interest in having the option to select and use lawyers who deliver legal services as

---

53. Thomas R. Andrews, *Nonlawyers in the Business of Law: Does the One Who Has the Gold Really Make the Rules?*, 40 HASTINGS L.J. 577, 621-22 (1989) (discussing the content and history of rules prohibiting nonlawyers from joining together in business partnerships); *see also infra* notes 134-38 and accompanying text (discussing FCPA).

54. *Roundtable Discussion*, *supra* note 43, at 14 (including comments made by Prof. Robert Schewerk, a professor of law at the University of Houston Law Center, who has taught and written in the area of professional responsibility and has served as an assistant reporter on the Model Rules of Professional Conduct Committee of the State Bar of Texas, which authored the current Texas Disciplinary Rules of Professional Conduct).

55. *Id.* at 15.

56. Andrews, *supra* note 53, at 622.

57. *Id.* at 622-23.

58. *Id.*; *see also* MODEL RULES OF PROF'L CONDUCT R. 5.8(c)(1)-(5) (Proposed ABA Amendment 1999) (allowing nonlawyers to control MDPs).

part of an MDP.<sup>59</sup> Thus, clients would have the opportunity for “one-stop” shopping.<sup>60</sup>

One of the stronger arguments is that the rules prohibiting mergers “owe their surprising tenacity more to the fact that they serve the profession’s economic self-interest than to any valid public purpose.”<sup>61</sup> Others suggest that the legal profession is a monopoly; therefore, the government, through the Federal Trade Commission or Congress, should displace the monopoly. Federal regulation would provide an immediate unified rule that comports with antitrust laws that apply to other business activities.<sup>62</sup> Recent suggestions about the current system’s illegitimacy, monopoly status, and the system’s protections have merit. As a result, many view the current legal system as the “ultimate monopoly,” which definitely does not need the enticements that MDP would certainly introduce.

## 2. Opposition and Skepticism Regarding MDP

The legal profession has offered the most resistance against adopting the MDP model. Opponents suggest that fee splitting would not only jeopardize attorneys’ independence but would also severely compromise the *unique* attorney-client privilege.<sup>63</sup> Attorneys cite to “core values,” such as loyalty to the client, independent judgment, conflicts of interest, and giving conflict-free advice as serious reasons to eschew MDP.<sup>64</sup> Differing standards of confidentiality between lawyers and accountants imposes an inherent conflict of interests. Under the Model Rules, when an attorney is aware of a client’s wrongdoing, the

---

59. *Multidisciplinary Practice Report*, *supra* note 1 (stressing that the Commission is not recommending that nonlawyers be able to deliver legal service; rather, lawyers should be permitted to practice in a wider variety of settings than is currently permitted by Model Rule 5.4).

60. *Id.* app. A; MODEL RULES OF PROF’L CONDUCT R. 5.8(a) (Proposed ABA Amendment 1999). This rule indicates:

[a] lawyer shall not share legal fees with a nonlawyer or form a partnership or other entity with a nonlawyer if any of the activities of the partnership or other entity consists of the practice of law except that a lawyer in an MDP controlled by lawyers may do so, subject to the present provisions limiting holding of equity investments in any entity or organization providing legal services. A lawyer in an MDP not controlled by lawyers may do so, subject to the conditions set forth in paragraphs (c)(1)-(5). . . .

*Id.*

61. Andrews, *supra* note 53, at 655.

62. *Id.* at 655-56.

63. Randy Myers, *Lawyers and CPAs: How the Landscape is Changing*, J. OF ACCT., Feb. 2000, at 73, 74. The ABA and fifty states currently prohibit lawyers from sharing fees with nonlawyers, such as accountants; thus, MDPs are currently prohibited. *Id.*

64. Pack, *supra* note 1, at 26-27.

attorney must keep it confidential,<sup>65</sup> whereas the accountant is required to disclose the same facts.<sup>66</sup> This distinction is critical to the evaluation and should not be taken lightly. The legal profession has met many challenges, but the consumer should not suffer in order to accomplish the espoused inevitable “MDP.” Consumer protection has been and must continue to be the legal profession’s paramount goal.

a. The Economic “Push”

“The legal profession exists in a bio-economic world where every other entity will affect the approach the legal industry must take in adapting to change and become more effective in solving client problems in a multi-disciplined way.”<sup>67</sup> Nevertheless, like the economic pull, this trend should not lead to the creation of large accountant-attorney monopolies. One author has hypothesized that service professions go through a seven-phase process in their efforts to compete.<sup>68</sup> The monopoly phase is the first.<sup>69</sup> The profession creates a market with only one possible supplier or where that supplier is protected by barriers prohibiting other entries.<sup>70</sup> Similarly, MDP is a merger of different disciplines into large one-stop shops, that would eventually result in a monopoly, based partly on economic prowess. One paradox of the market economy is that it drives actors to neutralize competition.<sup>71</sup>

---

65. MODEL RULES OF PROF’L CONDUCT R. 1.6 (1992).

66. Pack, *supra* note 1, at 27; *see also infra* notes 139-63 and accompanying text (discussing the lack of accountant-client privilege).

67. William C. Cobb, *Passages: A New World for the Legal Profession: Are Lawyers Sailing into the Same Storm as their Predecessor Profession?*, CORP. COUNS. REV. 77, 78 (2000).

68. *Id.* at 78-79.

69. *Id.* at 78.

70. *Id.* at 79; Gary J. Colbert & Dennis Murray, *An Assessment of Recent Changes in the Uniform Accountancy Act*, 13 ACCT. HORIZONS 54, 65 (1999). The article highlights that:

[T]he primary beneficiary of occupational licensing might not be consumers, but members of the occupation. Members of a profession will usually be more affected by occupational regulations than would consumers. Accordingly, the professionals have a greater incentive to undertake actions that will enhance the likelihood of securing regulations favorable to the profession. In other words, those who are regulated “capture” the regulators. Members of a profession would favor regulations that restrict entry. Stricter regulations would reduce competition and existing members would enjoy monopoly returns.

Colbert & Murray, *supra*, at 65.

71. Richard L. Abel, *Revisioning Lawyers*, in *LAWYERS IN SOCIETY: AN OVERVIEW 1* (Richard L. Abel & Philip S.C. Lewis eds., 1995). The essays expound on changes in the legal profession—assessing the market control theory, competition, comparative sociology, and the independence aspects of the profession. *Id.*

The other phases are: second, the drive toward “increasing capacity to meet growing demand”; Phase III, “the use of an established distribution channel to pursue market share expansion”; Phase IV, “the shift in power from the seller to the buyer or increasing customer sophistication”; Phase V, “the reactionary response to forces not understood by the provider”; Phase VI, “the quest for the ‘holy grail’ or ‘silver bullet’ to solve the emerging problems without having to make significant shifts in the culture and the vision of the organization—the easy way out”; and, lastly, Phase VII “the recognition of the need for leadership and vision required to adapt.”<sup>72</sup> William Cobb highlights this seventh and last phase as the position the legal profession is actually in at this particular juncture in its development.<sup>73</sup> The profession will continue to solve its clients’ problems and develop mechanisms to “add value to the clients.”<sup>74</sup> In other words, firms will evolve into “true partnerships” that are truly interested in collaborations and clients’ needs, coupled with the move toward investing in its employees so that they serve the clients responsively.<sup>75</sup> The bottom line will be the recognition of professionalism and the professionals and not billable hours.<sup>76</sup> This cannot be accomplished if the bottom line is allowed to erode the profession’s duties and responsibilities to the client.

Therefore, failure to protect client confidences violates professional conduct rules and results in loss of attorney-client and work product privileges.<sup>77</sup> The problem, doubtless, will increase if nonlawyers are

---

72. Cobb, *supra* note 67, at 78-79.

73. *Id.* at 87.

74. *Id.*

75. *Id.*

76. *Id.* at 87; MODEL RULES OF PROF’L CONDUCT R. 5.8(c)(1)-(5) (Amendment Proposed by the ABA 1999).

77. Kirk R. Hall, *Not So Well-Kept Secrets*, A.B.A. J., July 1994, at 85; *see also* ANN. MODEL RULES PROF. CONDUCT R. 1.6, cmt. 5; MODEL RULES OF PROF’L CONDUCT R. 1.6 (1983). These rules state:

The principle of confidentiality is given effect in two related bodies of law, the attorney-client privilege (which includes the work product doctrine) in the law of evidence and the rule of confidentiality established in professional ethics. The attorney-client privilege applies in judicial and other proceedings in which a lawyer may be called as a witness or otherwise required to produce evidence concerning a client. The rule of client-lawyer confidentiality applies in situations other than those where evidence is sought from the lawyer through compulsion of law. The confidentiality rule applies not merely to matters communicated in confidence by the client but also to all information relating to the representation, whatever its source. A lawyer may not disclose such information . . . .

*Id.*

allowed to practice law or control lawyers' decisions; the privileges will be severely diluted. Currently, "a lawyer shall not form a partnership with a non-lawyer if any of the activities of the partnership consists of the practice of law."<sup>78</sup>

b. The "Medical MDP" and its Effect on Doctors

Jennifer James, a former professor at the University of Washington, compared similarities between doctors and lawyers and recognized that "doctors have lost more power in recent years than any profession in history." She warns that "it could even be worse for lawyers unless they 'start thinking on the edge and choose not to be part of the lodge.'"<sup>79</sup> She added that she was "troubled by the thought that lawyers could lose more power than would be good for society."<sup>80</sup> This observation is extremely astute because it highlights the concern not only for the integrity of the legal profession but also the attorney's role in protecting society as well. It also gives us a model to avoid: the doctors were faced with the opportunity to expand in money-growth opportunities but unfortunately failed to realize the long term effects such partnerships would have on their independence and reputation as professionals.

The Seventh Circuit rejected a challenge by an unincorporated association of lawyers, paralegals, and laypersons to the partnership rule, Model Rule 5.4(b), and the unauthorized practice rule, Model Rule 5.5(b).<sup>81</sup> The plaintiffs claimed that the rules are unconstitutional because they violate the Due Process and Equal Protection Clauses of the Constitution.<sup>82</sup> The court recognized that the rules promote attorneys' independence because they prevent nonlawyers from

---

78. MODEL RULES OF PROF'L CONDUCT R. 5.4(b) (1992); *see also* MODEL RULES OF PROF'L CONDUCT R. 5.4(d) (1992). Rule 5.4(d) states:

- (d) A lawyer shall not practice with or in the form of a professional corporation or association authorized to practice law for a profit, if:
  - (1) a nonlawyer owns any interest therein, except that a fiduciary representative of the estate of a lawyer may hold the stock or interest of the lawyer for a reasonable time during administration;
  - (2) a nonlawyer is a corporate director or officer thereof; or
  - (3) a non-lawyer has the right to direct or control the professional judgment of a lawyer.

*Id.*

79. Steven Keewa, *Keeping in Front of the Future*, A.B.A. J., Jan. 1998, at 81, 82.

80. *Id.*

81. *Lawline v. Am. Bar Ass'n*, 956 F.2d 1378, 1384 (7th Cir. 1992).

82. *Id.*

controlling how lawyers practice their profession.<sup>83</sup> This recognition of independence in the legal arena is analogous to the physicians' relationship with HMOs and PPOs, where the actual service provider is not ultimately responsible for bottom-line decisions. This lack of independence in the medical profession has an economic impetus; therefore, the legal profession should pay close attention to what has happened. Further, the unauthorized practice provisions protect the public by prohibiting laymen from rendering services that they are not qualified to render.<sup>84</sup> The public's interest is best served by monitoring and curtailing attempts to engage in the unauthorized practice of law.

c. Concerns About Gaps and Weaknesses in the Rules of Professional Conduct

Many lawyers are extremely interested in strengthening the rules of professional conduct in order to protect clients further. Roger Cramton, a professor at Cornell Law School, believes the exceptions to the confidentiality rules should be cleared up. Cramton said the "loophole in the confidentiality rules, [which allows the attorney to reveal client confidences if there is a controversy between attorney and client or other situations concerning the attorney's representation of the client] . . . is an embarrassment to a profession that claims to put the needs of the public above its own interests."<sup>85</sup> In other words, all communication should fall within the general rule's purview without exception.

Lawyers are concerned about problems that are likely to develop. "When money becomes the primary goal, a law firm may end up choosing to systematically and deliberately inflate clients bills and even to bill for expenses not actually incurred for those clients."<sup>86</sup> When lawyers are independently performing their jobs, problems erupt. When clients hear of criminal indictments of prominent lawyers for cheating and stealing, it eats silently and surreptitiously at the heart and soul of the profession because it corrodes the public's confidences in the

---

83. *Id.* at 1385.

84. *Duncan v. Gordon*, 476 So.2d 896, 899 (La. 1995) (upholding Louisiana's unauthorized practice statute when nonlawyer engaged in the practice of law in violation of the statute).

85. Mark Hansen, *A Roomful of Comments*, A.B.A. J., Aug. 1998, at 100 (discussing lawyers' comments to the ABA Ethics 2000 Commission that suggested ways to strengthen the public's protection); *see also* MODEL RULES OF PROF'L CONDUCT R. 1.6(a) (1983). Rule 1.6(a) states, "(a) A lawyer shall not reveal information relating to representation of a client unless the client consents after consultation, except for disclosures that are impliedly authorized in order to carry out the representation, and except as stated in paragraph (b)." MODEL RULES OF PROF'L CONDUCT R. 1.6(a) (1983).

86. Seth Rosner, *Professionalism and Money*, A.B.A. J., May 1992, at 69, 70.



lawyer-client relationship.<sup>87</sup> Lawyers agonize endlessly about how to behave. They consider their rules of professional conduct, in self-congratulatory and ceremonial speeches, while deploring their poor public “image” and proposing ways to improve it.<sup>88</sup> Lawyers’ independence is extremely important. “It is the job of a good lawyer to look through the lens of legal [and especially economic] vulnerability and to caution against anything that may lead to trouble.”<sup>89</sup> This is sound advice when contemplating the pull of the “lucrative carrot” that MDP offers.

California lawyer Jay Foonberg argues that “lawyers will lose their loyalty to their clients if they add nonlawyers as partners . . . . You will have two fiduciary duties: one to the client and one to the nonlawyer partner. Who is going to come first?”<sup>90</sup> Foonberg believes that MDPs are about making money, not client loyalty, and this creates an ethical land mine.<sup>91</sup> Agency law will be invoked when conflicts arise to determine to whom the lawyer is ultimately responsible.<sup>92</sup> Presently, this is not a problem because the client is the attorney’s primary duty.

Further, the rank and file attorneys have not, in large numbers, weighed in on the issue.<sup>93</sup> Nevertheless, the large firms’ efforts should not carry the day. Of course, business trends and global factors are important today, but neither should have the impact of lowering the standards and reducing safeguards that protect the public in an effort to accommodate big business, whose primary concern is an economic one. The New York State Bar Association House of Delegates passed a resolution against MDP “in the absence of a sufficient demonstration that such changes are in the best interests of clients and do not undermine the integrity of the delivery of legal services by the legal profession.”<sup>94</sup>

State bar leaders have also expressed concerns that the ABA’s broad definitions of what constitutes the unauthorized practice of law do not

---

87. *Id.* at 70; *see also* Hickman v. Taylor, 329 U.S. 495 (1947) (articulating that, historically, a lawyer is an officer of the court and is bound to work for the advancement of justice while faithfully protecting the rightful interests of his client).

88. Abel, *supra* note 71, at 297.

89. Jeffrey L. Seglin, *Ethics Requires Revealing the Truth*, HOUS. CHRON., May 28, 2000, at 5D.

90. Jill Schachner Chanen, *MDP: The View From Main Street*, A.B.A. J., Dec. 1999, at 76.

91. *Id.*

92. *Id.*

93. *See Multidisciplinary Practice Report*, *supra* note 1, app. B, at 1-3 (a review of the list showed that attorney witnesses testifying at the Hearings represented larger firms—a few were solo practitioners).

94. Gibeaut, *supra* note 31, at 14.

go far enough to prevent encroachment by nonlawyers and a deterioration of attorneys' independence.<sup>95</sup> The problem of inadequate enforcement devices for nonlawyers is also a strong indication against allowing MDP.<sup>96</sup> The nonlawyer is in a position to reap the benefits of a well-policed profession. The increased investigations, discipline, and insurance costs will be paid by the attorney, yet the nonlawyer will not have to fear that the police powers of the legal regulators will ever touch him because he is, in fact, beyond its authority.<sup>97</sup> The American Institute of Certified Public Accountants ("AICPA") basically supports this position. It criticized an ABA plan that would have required MDPs controlled by nonlawyers or accountants to submit to annual certification and audit requirements by the courts.<sup>98</sup> Perhaps the only workable solution to the MDP debate is to allow "[t]hose lawyers who wish to enjoy the benefits of being part of the world of business . . . to change careers [rather] than change the profession."<sup>99</sup> As stated by Professor Schuwerk, "[t]his whole debate is going to force us to really examine why we wanted to be lawyers in the first place, what professional values are really our core values, and what are primarily financial values . . . ."<sup>100</sup>

George Soros, a well-known businessman-philanthropist, has not weighed in specifically on the MDP debate, but he has used his funds to obtain further accountability in the legal profession.<sup>101</sup> He believes the legal profession, like medicine, has veered from its core values and taken on those of the marketplace, which by definition are amoral with their bottom-line standards.<sup>102</sup> MDP entices lawyers to reach for economic gain; that is, the marketplace culture has been allowed to

---

95. *Id.* at 16.

96. Carson, *supra* note 25, at 612-13. The harm caused by the non-lawyer's behavior is compounded by the fact that he may cause it with impunity since he is not subject to discipline. Even if the harm precipitated by non-lawyers were no greater in magnitude than that caused by lawyers, it may be greater in frequency given that non-lawyers have no training in legal ethics and face no disciplinary consequences for their actions. *Id.*

97. *See id.* at 613 (discussing the new set of standards).

98. Myers, *supra* note 63, at 75 (discussing the move toward MDP and the benefits of one-stop shopping).

99. Carson, *supra* note 25, at 633-34.

100. *Roundtable Discussion*, *supra* note 43, at 17 (statement of Prof. Schuwerk, a professor of ethics at the University of Houston Law Center, who has served as an assistant reporter on the Model Rules of Professional Conduct Committee of the Texas State Bar).

101. *See* Terry Carter, *Mr. Democracy: Giving More Billions to Further Justice than Anyone—Ever*, A.B.A. J., Jan. 2000, at 57, 59 (discussing Soros's Open Society Institute, Program on Law and Society, among others, which are charged with bringing about changes in the U.S. justice system and other related areas).

102. *Id.*

compromise independent judgment.<sup>103</sup> MDP would not only erode this critical independence, but it would create avoidable situations that would produce conflicts and greater opportunities to circumvent the system, which is presently ill-equipped to deal with lawyers that are bending the ethical rules. Continuing to reject MDP will send the clear message that by "emphasizing the values of independence we fortify ourselves to exercise them."<sup>104</sup>

Currently, ABA rules place heavy emphasis on supervising nonlawyer employees.<sup>105</sup> Furthermore, many jurisdictions expose lawyers to disciplinary sanctions as well as civil liability for failure to provide employees with reasonable supervision and failure to ensure that their conduct is compatible with the profession's obligations.<sup>106</sup> The rules mandate that the attorney shall be responsible for the recalcitrant employee's conduct.<sup>107</sup> Attorneys continue to have great difficulty complying with the responsibility of supervising nonlawyers, even without the extra burden of factoring MDP into the equation. One attorney was given a six-month suspension for relinquishing significant aspects of his probate practice to a nonlawyer.<sup>108</sup> Another attorney allowed a nonlawyer to sign checks for disbursements from the office and clients' trust accounts, an action that eventually led to unauthorized drawing of checks and misrepresentations to clients.<sup>109</sup> The attorney was suspended because the court reasoned that the public had to be protected.<sup>110</sup>

---

103. Cf. Shestack, *supra* note 32, at 73.

104. Cf. *id.*

105. See MODEL RULES OF PROF'L CONDUCT R. 5.3(a) (1983). Rule 5.3(a) states:

With respect to a nonlawyer employed or retained by or associated with a lawyer:

(a) a partner in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer.

*Id.*

106. Walter W. Steele, Jr., *Supervision of Non-Lawyer Employees: The Hidden Ethical Obligation*, 58 TEX. B.J. 798, 799 (1995) (chronicling the results, in several states, where lawyers failed to properly supervise nonlawyers and as a result were disciplined for violating the rules).

107. *Id.*; see also MODEL RULES OF PROF'L CONDUCT R. 5.3(c) (1983) (stating that a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if: (1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or (2) the lawyer is a partner in the law firm in which the person is employed, or has direct supervising authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action).

108. Steele, *supra* note 106, at 799 (discussing *Office of Disciplinary Couns. v. Ball*, 618 N.E.2d 159 (Ohio 1993)).

109. *Id.* at 800.

110. *Id.* at 800 (discussing *Attorney Grievance Comm'n of Maryland v. Goldberg*, 441 A.2d

Many of the observations made by James Sales<sup>111</sup> succinctly articulate why MDP is not a good idea. Sales highlights the AICPA's position, which applauds the ABA MDP Commission's "far-looking futuristic position"<sup>112</sup> to embrace MDP. Nevertheless, Sales could not agree with the MDP proposal because: 1) AICPA objects to the definition of the "practice of law"; 2) it opposes the imposition on the MDP of any ethical rules regarding conflicts of interest or solicitation; 3) it took issue with the imposition of the Code of Professional Conduct on an MDP; and, 4) it rejected annual certification or audit by jurisdictions containing MDP delivery of legal services. AICPA takes the position "that there [i]s no need for onerous regulatory oversight of an MDP."<sup>113</sup> This objection to oversight highlights the accounting profession's desire to reap benefits, but also its refusal to accept the legal profession's accountability standards. Such resistance casts an ominous shadow on the accounting profession's commitment to protect the public and maintain professional standards.<sup>114</sup>

Furthermore, Sales accurately observes that the practice of law is not governed by consumers. Lawyers are professionals because they are guided by judicial licensing and oversight imposed by the United States Supreme Court and individual state bar associations.<sup>115</sup> Only those entities or their designated representatives enforce the rules governing the practice of law, and legal guidance and oversight is accomplished through our disciplinary process.<sup>116</sup> "The rules of professional conduct present a serious problem for adoption of the MDP concept."<sup>117</sup>

In 1996, the ABA Section on Legal Education and Admission to the Bar identified several reasons for the decline in professionalism within the profession,<sup>118</sup> two of those reasons explain why the ABA should

---

338 (Md. 1882)).

111. *Roundtable Discussion*, *supra* note 43, at 13. James B. Sales participated in the Roundtable, and he has headed the Litigation Department of Fulbright & Jaworski L.L.P. for the past twenty years. He is a past President of the Houston Bar Association and was the first chair of the Houston Bar Foundation. He also serves as the HBA's delegate to the ABA House of Delegates.

112. *Id.* at 13.

113. *Id.* at 13-14.

114. See AICPA CODE OF PROF'L CONDUCT, pmbl. (expressing the profession's recognition of its responsibilities to the public).

115. *Roundtable Discussion*, *supra* note 43, at 14 (statement by Professor Sales regarding the judiciary's role in maintaining professional standards).

116. *Id.*

117. *Id.*

118. ABA Sec. of Legal Teaching and Learning Professionalism, A.B.A. Sec. of Legal Educ. and Admissions to the Bar, *Report of the Professionalism Committee*, Aug. 1996, at 3 [hereinafter *Teaching and Learning Professionalism*] (developing ways to better inculcate a higher sense of

reject MDP. Presently, the legal profession is failing to meet goals of professionalism and is ultimately harming the consumer. The Committee said that:

[C]hanges in the economics of the practice of law . . . have converted law practice from a profession to a business—making it more difficult for lawyers to devote significant amounts of time to public service activities and generating a growing sense of dissatisfaction with law practice . . . .<sup>119</sup>

This “business” posture that has been adopted by many is indicative of the fervor that is driving adoption of the MDP model. The MDP venture is, to date, “an undermining of the traditional independent counseling role of lawyers.”<sup>120</sup> Thus, courts have held that the unauthorized practice of law is grounded in the public’s need for integrity from the legal profession, and “the unauthorized practice rule is rationally related to a legitimate state interest,”<sup>121</sup> which is partly driven by the attorney’s independence and recognition as a consummate professional.

Additionally, the public’s image of the legal business has been severely tarnished. “Lawyers are seen as ‘takers’ from society, not ‘contributors.’”<sup>122</sup> MDP would further contribute to this tarnished image, especially if multinational MDPs are formed as a result of the inevitable mergers. Currently, and perhaps rightly so, the perception that “tax havens protect some interests internationally, so do ‘law havens’ protect others who seek international legal anonymity, asset protection, secrecy and an ‘alegal’ environment with nearly zero demands of accountability.”<sup>123</sup> This type of real or perceived clandestine activity is occurring without widespread MDP. What will happen if a state sanctions such MDP arrangements? The District of Columbia Bar Association has allowed MDPs since 1991; still, one major limitation exists—attorneys must retain control of such firms.<sup>124</sup> At this juncture, the biggest employers of attorneys are the Big Five accounting firms.<sup>125</sup> One of the main concerns is that these firms

---

professionalism throughout the American legal profession).

119. *Id.* at 3 (citing Am. Bar Ass’n, The Report of “At a Breaking Point,” A National Conference on the Emerging Crises in The Quality of Lawyers’ Health and Lives—Its Impact on Law Firms and Client Services (1991)).

120. *Id.*

121. *Lawline v. Am. Bar Ass’n*, 956 F.2d 1378, 1385 (7th Cir. 1992).

122. Boone & Conner, *supra* note 35, at 24.

123. DAVID J. SAARI, GLOBAL CORPORATIONS AND SOVEREIGN NATIONS 163-64 (1999).

124. Myers, *supra* note 63, at 75.

125. *Id.*

currently “skirt the ABA’s prohibition relating to MDPs by contending that their lawyers don’t practice law and don’t hold themselves out to the public as lawyers. In the real world, that boils down to saying they don’t draft legal documents, offer legal advice or represent clients in court.”<sup>126</sup> The perception is that large firms are getting away with “de facto” MDPs while small firms doing the same would be afraid of being “drawn and quartered.”<sup>127</sup> The Big Five are international conglomerates that are eager to test the “MDP water” in the United States.<sup>128</sup>

This pushing of the MDP envelope is analogous to American companies that adopt foreign models of business practices, even though in reality they do not square with U.S. standards.<sup>129</sup> The Big Five are international conglomerates that are already operating internationally as MDPs. Transnational corporations (“TNC”) already benefit from the notion that the primary focus of international law should be relations between sovereigns,<sup>130</sup> not protecting private business practices and concerns. This narrow view already “allows TNCs to evade accountability for their actions at the domestic level by shifting production between different sites. The absence of clear international standards means that they can also avoid regulation at the international level.”<sup>131</sup> Seventy percent of global trade is controlled by 500 corporations, and one percent of the TNCs own one-half of the total stock of foreign direct investment.<sup>132</sup> MDPs are sure to have major capital in order to control the newly established mammoth-sized attorney-accountant ventures.

---

126. *Id.*; see also *Multidisciplinary Practice Report*, *supra* note 1, at 1 (acknowledging that “an increasing number of U.S. lawyers with significant practice experience are leaving law firms to join organizations such as the Big [Five] accounting firms that provide a variety of professional services”).

127. Myers, *supra* note 63, at 75.

128. See *Multidisciplinary Practice Report*, *supra* note 1, app. C, at 4 (“U.S. and foreign representatives of four out of five of the Big Five testified before the Commission that the most efficient way to provide a seamless web of services to clients was through an integrated services entity.”).

129. See *id.* at 4 (articulating that “the Big Five accounting firms and other entities have been able to create legal services units within their own business organizations or affiliate with foreign law firms in ways that are inconsistent with rules of lawyer conduct or UPL statutes in this country” (citing WARD BOWER, *MULTIDISCIPLINARY PARTNERSHIPS—THE FUTURE IN GLOBAL LAW PRACTICE* 158-60 (1997))).

130. SAARI, *supra* note 123, at 164.

131. *Id.* (quoting Grossman & Brodlow, *Are We Being Propelled Towards a People Centered Transnational Legal Order?*, 9 AM. U. J. INT’L L. & POL’Y 1, 9 (1993)).

132. Tony Clark, *Mechanisms of Corporate Rule*, in *THE CASE AGAINST THE GLOBAL ECONOMY AND FOR A TURN TOWARD THE LOCAL* 298 (1996).

The WTO has made it possible for TNCs and banks to move capital and services freely throughout the world, unfettered by regulations of nation-states or elected governments.<sup>133</sup> If MDP is given the “green light,” the United States may have to develop a Foreign Corrupt Legal Practices Act, similar to the current Foreign Corrupt Practices Act (“FCPA”)<sup>134</sup> that causes offenders to incur large monetary fines for its contravention. The desire to allow American firms to expand via MDP is actually quite clever. Prior to the passage of the FCPA, U.S. companies were engaging in activity that may not have been illegal in the particular country where the activity took place but was illegal in the United States. Similarly, Rule 11 of the Federal Rules of Civil Procedure,<sup>135</sup> and the equivalent rule in state courts, allows U.S. courts to sanction lawyers for violating certain rules; the rules protect parties from harassment, misrepresentation, and the like. Doubtless, Rule 11 and its state equivalents will be ineffective as a tool to govern U.S. attorneys’ behavior in international courts because Rule 11 does not apply to behavior outside of U.S. courtrooms.

MDP runs parallel to the activities to which American businessmen want the United States to turn a blind eye—pre-FCPA and post-FCPA business negotiations. Edward M. Graham, an economist, said:

U.S. business executives are particularly galled by the fact that illicit payments to foreign governments and their agents are essentially forbidden under the United States Foreign Corrupt Practices Act, whereas certain other advanced countries not only fail to forbid such payments but in some cases even allow home-country tax benefits to offset or partially offset such payments.<sup>136</sup>

---

133. *Id.* at 301.

134. Foreign Corrupt Practices Act, 15 U.S.C.A. § 78dd-1 (West 1997 & Supp. 2000) (as amended Nov. 10, 1998, Pub. L. 105-366, § 2(a)-(c) 112 Stat. 3302). The FCPA states:

[It] shall be unlawful for any [issuer] . . . corruptly, in furtherance of an offer, payment, promise to pay, or authorization of the payment of any money . . . giving of anything of value to any foreign official for purposes of influencing any act or decision of such foreign official in his official capacity . . . in order to assist such issuer in obtaining or retaining business. . . .

*Id.*

135. FED. R. CIV. P. 11(c)(2) (outlining that sanctions may be imposed for violation of the rule . . . which may consist of directives of a non-monetary nature, an order to pay a penalty into court . . . and order directing payment to the movant for some or all reasonable attorneys’ fees and other expenses incurred as a direct result of the violations).

136. SAARI, *supra* note 123, at 221 (discussing corrupt practices in business: “in the United States, pay-off; in Japan, wairo; in Germany, trinkgelt; in Italy, bustarella; and, in Mexico, mordida”).

As some have noted, “the FCPA breathes morality.”<sup>137</sup> There is a public interest in business misconduct that is extremely intense and continues to linger in the United States.<sup>138</sup> MDP decisions must be evaluated with the highest level of scrutiny; thus, looking at analogous situations in other disciplines is a key factor, tempered with the public’s protection.

### III. WORK PRODUCT IS AND MUST BE LIMITED TO ATTORNEYS

The legal profession is uniquely situated in relation to other professions. *United States v. Arthur Young & Co.*<sup>139</sup> is instructive to those who are seeking to determine MDPs’ impact on the legal profession and the clients that it will ultimately serve. In *Arthur Young*, the distinct aspects of lawyers’ roles and accountants’ roles are succinctly stated and analyzed. Specifically, respondent Young was the independent certified public accountant (“CPA”) responsible for auditing Amerada Hess Corporation, as required by the Securities and Exchange Commission (“SEC”).<sup>140</sup> In the regular course of his specific tasks, Young verified Hess’ statement of its contingent tax liability and prepared the accrual workpapers.<sup>141</sup> Later, the Internal Revenue Service (“IRS”) performed a routine audit of Hess’ financial situation and issued an administrative summons to receive, *inter alia*, the tax accrual workpapers.<sup>142</sup> The district court rejected Young’s accountant-client privilege argument.<sup>143</sup>

Unlike accountancy, however, attorneys’ work products are not discoverable; the work product rule, as articulated in *Hickman v. Taylor*,<sup>144</sup> is well settled. The work product exception amplifies a *major distinction* between the legal profession and the accounting profession. As the Supreme Court has noted:

Corporate financial statements are one of the primary sources of information available to guide the decisions of the investing public. In

---

137. *Id.* at 222 (quoting RALPH H. FOLSOM & MICHAEL W. GORDAN, INTERNATIONAL BUSINESS TRANSACTIONS 336-37 (1995)).

138. *Id.* at 225 (quoting DAVID VOGEL, KINDRED STRANGERS: THE UNEASY RELATIONSHIP BETWEEN POLITICS AND BUSINESS IN AMERICA 103 (1996)).

139. *United States v. Arthur Young & Co.*, 465 U.S. 805 (1984).

140. *Id.* at 808.

141. *Id.*

142. *Id.* at 809.

143. *Id.* at 809-10. The Court of Appeals drew on *Hickman v. Taylor*, 329 U.S. 495 (1947), to fashion a work product immunity doctrine, determining that the IRS failed to demonstrate sufficient need. *See id.* at 810.

144. *Hickman v. Taylor*, 329 U.S. 495 (1947) (articulating the attorney work product exception).



an effort to control the accuracy of the financial data available to investors in the securities markets, various provisions of the federal securities laws require publicly held corporations to file their financial statements with the Securities and Exchange Commission.<sup>145</sup>

Thus, on the one hand, the well-enforced and highly accepted attorney work product privilege guards and protects the client's confidentiality.<sup>146</sup> On the other hand, courts and the SEC have taken steps to protect the consumer and the general public by requiring accountants to disclose their work products. The combination of these two concepts is inherently problematic when the work product doctrine is considered. The public's protection is best afforded by not extending the work product privilege to accountants and their clients.

Each profession has regulatory schemes that are designed, not only to protect the integrity of the profession, but also to protect the public at large. The attorney work product doctrine articulated in *Hickman*, established in 1947, is now well accepted. Unlike the *Hickman* Court, the *Arthur Young* Court rejected the premise that accrual workpapers were a fitting analogue to the attorney work product doctrine.<sup>147</sup> Specifically, the Court rejected the District Court and the Court of Appeals' determinations that even though the tax accrual workpapers satisfied the relevance requirement of the statute, they deserved protection from discovery.<sup>148</sup> In other words, the Supreme Court has already rejected the argument that an accountant work product doctrine should exist.<sup>149</sup>

Thus, the Court distinguished the attorney's role as confidential advisor-advocate and loyal representative, with a duty to present his client's case in the most favorable light, from that of the accountant who certifies the public reports that collectively depict a corporation's financial status. The accountant assumes a public responsibility, which transcends any relationship with the client. This is epitomized by consumer regulations, mandating that "financial reports must be audited by an independent certified public accountant in accordance with generally accepted auditing standards,"<sup>150</sup> a standard intended to protect

---

145. *Arthur Young*, 465 U.S. at 810-11.

146. See MODEL RULES OF PROF'L CONDUCT R. 1.6 (1983) (stating that, except in extremely limited situations, an attorney shall not reveal information related to representing a client).

147. *Arthur Young*, 465 U.S. at 817; see also *Multidisciplinary Practice Report*, *supra* note 1, cmt. 5 (discussing the attorney work product and confidentiality doctrines).

148. *Arthur Young*, 465 U.S. at 818.

149. *Id.*

150. *Id.* at 811 (citing 17 C.F.R. § 210 (1983) (prescribing the qualifications of accountants' reports that must be submitted with corporate financial statements)).

the public *en masse*. The accountant owes special allegiance to the corporation's creditors and stockholders, as well as the investing public. This public "watchdog" function demands total independence.<sup>151</sup>

If the courts were to allow insulation, such as accountant work product protection, it would force accountants to ignore the significance of their role as disinterested analysts charged with protecting the public.<sup>152</sup> Unlike attorneys, whose ultimate loyalty is to their private clients, the accountant owes a "special allegiance" to the investing public. This "special allegiance" continues to drive courts' evaluations of accountant-client privilege.

In *Marcus Bros. Textiles, Inc. v. Price Waterhouse, L.L.P.*,<sup>153</sup> an auditor argued that he was not liable to a third party because the third party was not in privity.<sup>154</sup> The party was able to use as evidence an internal memo, *inter alia*, that developed certain client-specific information.<sup>155</sup> Nevertheless, in an attorney-client situation, the information would be viewed as privileged, and thus protected by the attorney-client privilege or work product doctrine. Generally, the attorney's work product is not subject to a privity argument from a third party because the attorney only has privity with the individual client, not with the public or any third party.

In *Arthur Young*, the auditor had to review many sources to complete his task. For example, an auditor will typically examine the corporation's books, records, and tax returns, along with his interviews with corporate personnel and judgments on the evaluated information.<sup>156</sup> Nevertheless, the district court and the court of appeals determined that the tax accrual workpapers satisfied relevance.<sup>157</sup> The Supreme Court said, correctly, that the courts were misguided in their efforts to establish a self-styled work product privilege for accountants. The Court stated that "no confidential accountant-client privilege exists under federal law, and no state-created privilege has been recognized."<sup>158</sup> Unlike attorneys, accountants can be forced to disclose

---

151. *Id.* at 818.

152. *Id.*

153. *Marcus Bros. Textiles, Inc. v. Price Waterhouse, L.L.P.*, 498 S.E.2d 196 (N.C. Ct. App. 1998).

154. *Id.* at 199 (recognizing that liability of an auditor extends not only to those in privity or near privity but also to those whom he knows and intends to rely on his opinion or those he knows his client intends will so rely).

155. *Id.* at 198.

156. *Arthur Young*, 465 U.S. at 812.

157. *Id.* at 813.

158. *Id.* at 817 (quoting *Couch v. United States*, 409 U.S. 322, 335 (1973)).

information in court. Thus, lack of privilege is a significant difference between the legal profession and the accounting profession. This major distinction must be considered with the highest deference during this ongoing debate on MDP. Nonetheless, in light of this protection and to preserve the integrity of the profession, law firms should form committees that help to monitor the firms' compliance with the ethical rules<sup>159</sup> because this self-policing will highlight the profession's commitment to maintaining its "core values."

The attorney-client privilege<sup>160</sup> is likewise heavily relied on to protect client matters. An example of the depth of this protection was profoundly exemplified when the United States Supreme Court held that communications between a lawyer and a client remain privileged even after the client's death.<sup>161</sup> The Court cited "weighty reasons"<sup>162</sup> in upholding the posthumous privilege, specifically, the need to encourage full and frank communications between the attorney and his client. This holding further supports the rules that prohibit lawyers from revealing clients' confidences and secrets.<sup>163</sup>

#### IV. FOREIGN AND OTHER FACTORS AFFECTING THE MDP DEBATE

The new vocabulary for the one-stop shop includes "global" and "strategic fit," conjuring up a sense of escape from the traditions and regulations that have so affected lawyers to date.<sup>164</sup> Antonio Garrigues Walker was a partner at J. & A. Garrigues, one of Spain's biggest law firms, which merged with a global consulting giant a few years ago.<sup>165</sup>

---

159. *Teaching and Learning Professionalism*, *supra* note 118, at 33.

160. See MODEL RULES OF PROF'L CONDUCT R. 1.6 (1983) (stating that, except in extremely limited situations, a lawyer *shall not* knowingly reveal a confidence or secret of his client); CANONS OF PROF'L ETHICS Canon 37 (1947). Canon 37 states:

It is the duty of a lawyer to preserve his client's confidences. This duty outlasts the lawyer's employment, and extends as well to his employees; and neither of them should accept employment which involves or may involve the disclosure or use of these confidences, either for the private advantage of the lawyer or his employees or to the disadvantage of the client, without his knowledge and consent, and even though there are other available sources of such information. A lawyer should not continue employment when he discovers that this obligation prevents the performance of his full duty to his former or to his new client.

CANONS OF PROF'L ETHICS Canon 37 (1947).

161. Steve France, *'Weighty Reasons' For Secrecy*, 84 A.B.A. J., Aug. 1998, at 44.

162. *Id.* (citing *Swindler & Berlin v. United States*, 524 U.S. 399 (1998)).

163. MODEL RULES OF PROF'L CONDUCT R. 1.6 (1983) (asserting that "a lawyer shall not reveal information relating to representation of a client").

164. See Keeva, *supra* note 79, at 81 (chronicling reasons why American attorneys should embrace change to become part of the so-called "inevitable MDP").

165. *Id.* at 82.

Walker warns that even his firm could not fight against the auditing firms and, as a result, had to merge.<sup>166</sup> Walker asserts that he is satisfied with the merger and chides Americans that “even big American law firms aren’t global.”<sup>167</sup> International law, accountancy firm mergers, as well as global capitalism are also major factors that drive the MDP engine. The changing nature of capitalism is seen through “cross-cultural management, which is being pressed into service by joint ventures, foreign subsidiaries and alliances among corporations.”<sup>168</sup>

Unfortunately at this time, “international law is not powerful enough to govern traditional multinational corporations outside their home state.”<sup>169</sup> This failure in the multinational arena should act as a red flag for the ABA and others to proceed with caution in the MDP area. These very concerns and issues await MDP if it is allowed to flourish in the manner that multinationals have flourished.

Domestic firms are not only weighing in on the MDP debate, but are also taking advantage of the allowance in the District of Columbia Ethical Rules that allow a “nonlawyer to be a partner in a law firm . . . [as long as] any services the nonlawyer renders be in direct support of the provision of legal services.”<sup>170</sup> Specifically, Ernst & Young has financed a D.C. law firm, McKee, Nelson, Ernst & Young, which is basically the merger of an accounting firm and a law firm. The firm has been described as “the closest thing to a multidisciplinary practice in this country to date.”<sup>171</sup> This venture is not the only one; it follows recent announcements of the formation by other Big Five firms of strategic alliances with influential U.S. law firms,<sup>172</sup> including the 1999 KPMG-Morrison & Forester (of San Francisco) merger, and PricewaterhouseCoopers’ alliance with the Washington, D.C. law firm of Miller Chevalier.<sup>173</sup>

---

166. *Id.*

167. *Id.*

168. SAARI, *supra* note 123, at 82 (developing the changing balance of power between corporations and public authority in this global economy—“should 185 sovereigns allow 750 giant corporations to invest corporate profits as they alone see fit”) (quoting CHARLES HAMPDEN-TURNER & ALFONS TROMPENAARS, *THE SEVEN CULTURES OF CAPITALISM* (1993)).

169. *Id.* at 163.

170. Mark Hansen, *All Aboard For MDP Train*, A.B.A. J., Jan. 2000, at 28.

171. *Id.*

172. Jack Baker, Randall K. Hanson, & James K. Smith, *Large Firms Press Ahead*, J. OF ACCT. 76 (Feb. 2000) (discussing the reality of MDP in the United States).

173. *Id.*

Competition is a major force that drives MDP. Accountants and other nontraditional businesses are expanding into the legal field.<sup>174</sup> Consolidation of law firms will make them bigger and stronger and additional foreign firms will continue to expand into the American market.<sup>175</sup> Changes in the Uniform Accountancy Act, which relate to experience requirements and non-CPA ownership, may also impact the accounting profession's drive to move toward MDP.<sup>176</sup>

In Europe, Latin America, and the United States, those with legal training are increasingly being challenged. Technocrats who are trained in economics and business (especially accountants), are "numerate," "computer literate,"<sup>177</sup> and highly educated. Specifically, corporate middle managers in Europe and Latin America are legally trained because of the undergraduate degree status of the legal profession, although few complete the additional requisites to actually enter private practice or enter the magistracy.<sup>178</sup> This academic exposure to the legal profession provides the business community with highly educated professionals ready to explore all types of ventures and more likely to accept MDP because not only do many of their home countries sanction it, but also because they see the "golden parachute" of opportunities. This is also true for U.S. CPAs, who continue to show a great deal of interest in various business ventures, and continue to expand into other professions. After the CPAs launched a successful lobbying campaign, forty-one states relaxed their rules and now allow CPAs to accept commissions and referral fees.<sup>179</sup> Thus, accountants are spreading their reach deeper into non-traditional professions. Many states, in addition to allowing fee splitting, also allow accountants to obtain licenses to sell life insurance.<sup>180</sup> As a result, one-stop shopping is a reality for the accounting firms.

It is projected that by 2010, some U.S. firms will have over 1,000 attorneys and will offer broad specialized services—local and regional, as well as national and global.<sup>181</sup> "In the [near] future, successful law

---

174. Boone & Conner, *supra* note 35, at 25.

175. *Id.* at 25.

176. Gary J. Colbert & Dennis Murray, *An Assessment of Recent Changes in the Uniform Accountancy Act*, 13 AM. ACCT. ASSOC., at 55-68 (1999) (discussing relaxation of certain standards—prior UAA requirement of one year public accounting experience under the direction of a CPA, revised UAA allows the one year experience to be in a broad array of settings and experience only has to be verified by a CPA).

177. Abel, *supra* note 71, at 300.

178. *Id.*

179. Janet Novack, *Certified Public Accomplice*, FORBES, Nov. 1999, at 282.

180. *Id.*

181. Boone & Conner, *supra* note 35, at 25.

firms will be those which have real change leaders on their management team . . . people who have the skills for identifying and implementing change in a manner that breaks down . . . barriers to change.”<sup>182</sup> The changing economy generally has led some to speculate that companies will “try to make money by suing everybody in sight.”<sup>183</sup> In other words, the law will be used to create greater legal controls and to weaken consumer welfare.<sup>184</sup> MDP will likely take on the multinational corporation model and, as a result, will carefully structure and develop entities in ways that will effectively avoid being regulated or effectively make it impossible to adequately regulate them. “Multinational corporations increasingly demand the ‘freedom’ they need to optimize their operations across borders.”<sup>185</sup> Presently, the stateless position that most multinational corporations are experiencing has caused uneasiness.<sup>186</sup> As multinationals continue to “reinvent[] themselves,”<sup>187</sup> MDPs are a very attractive ingredient to add to the portfolio of service providers, especially in light of “global capitalism,”<sup>188</sup> most of which positively influences an increase in MDP.

In addition to the role that capitalism plays, Japanese, North American, and European corporations have increasingly become stateless—using their multinational personalities to obtain their global competitive ends.<sup>189</sup> They use their chameleon-like abilities to become insiders when they operate outside of their main place of operation. As one CEO put it, “when we go to Brussels, we’re member states of the EEC and when we go to Washington we’re an American company too.”<sup>190</sup> Whenever companies need to, they wrap themselves up in the nation of choice to get support for tax breaks, research subsidies, or governmental representation in negotiations affecting their marketing plans. Through this process, stateless corporations are effectively

---

182. *Id.*

183. J. Bradford De Long, *The Promise and Perils of the New Economy*, XXII-4 THE WILSON QUARTERLY 14, 26 (1998).

184. *Id.* at 26.

185. John Stopford, *Think Again—Multinational Corporations*, FOREIGN POL’Y, Winter 1998-99, at 12, 22.

186. *Id.* at 13 (discussing trends in multinationals growth and the perception that they are large, footloose, and exploitative).

187. *Id.* at 12.

188. See SAARI, *supra* note 123, at 79 (articulating that in the 21st century capitalism will be dominated by a spectrum of Capitalisms, and that several specifically drive the move toward MDP, including: Investor Capitalism; Corporate Capitalism; Global Capitalism; Twenty-first-century Capitalism; and Free Market Capitalism).

189. Clark, *supra* note 132, at 299.

190. *Id.*

transforming nation-states to suit their interests.<sup>191</sup> MDP entities are sure to adopt this pattern because the market is also driving them, and it has a track record for successfully working to the stockholders' and owners' advantages.

More specifically, internationalization of the legal practice is also a factor in the drive toward MDP. American firms are competing in London with British firms, because American firms, at this juncture, wield major "wallet power."<sup>192</sup> As a result of this "wallet power," international flexibility in the MDP is driving U.S. firms toward the international MDP model and international firms are gravitating to U.S. firms based on the readily available capital to support international MDPs. Another source of general competition for the legal profession and the more aggressive approach toward MDP "is the global accounting giants, who see law as a logical and profitable area for expansion."<sup>193</sup> Major domestic and international law firm mergers are also on the rise; for example, London's Clifford Chance, New York's Rogers and Wells, and the German firm of Pünder Volhard Weber and Axster merged on January 1, 2000, to form the world's largest single law firm.<sup>194</sup> These large mergers are, no doubt, the forerunners to MDP firms, which will evolve into mega-merged MDP firms. General mergers and MDPs are part of what industry professionals see as necessitated by marketplace and client dictates,<sup>195</sup> which work to accelerate the drive toward MDP. As international forces such as mergers, transactional, and transnational cooperation continue to develop, doubtless, the notion that MDP is the answer will become more prevalent. Corporate expansion is an unavoidable force, but does not have to dictate the legal profession's next step in its development.

## V. CONCLUSION

In debating and evaluating whether to sanction MDP, the ABA should realize that an alternative currently exists that allows law firms, perhaps not under the MDP form, to accomplish the same goals that

---

191. *Id.*

192. Linda Tsang, *Friendly Rivals*, A.B.A. J., May 2000, at 52, 54.

193. *Id.*

194. *Id.*

195. *Id.*; *Multidisciplinary Practice Report*, *supra* note 1 (stating that the United States and foreign representatives of four of the Big Five testified before the Commission that the most efficient way to provide a seamless web of services to clients was through an integrated services entity); Commission Report, Witnesses at ABA Commission on MDP Hearings, app. B (many foreign professional, both lawyers and accountants testified: French, English, Welsh, Spaniards, et al.).

most espouse as the driving force for the adoption of the MDP model. For example, one approach might be "client teaming," where interdisciplinary "client teams" will become an organizational form of choice for many large law firms as a way to more effectively meet the diversified needs of particular clients. Traditionally, firms organize themselves by practice groups, which are formed around industries such as health-care, technology, and entertainment.

Next is the client-centered approach, where the law firms build a strategic client team around an individual client. The team is formed early in the relationship and comprises specialty lawyers (who are also accountants) key to the client's long-term needs. This "connectivity" with clients will become an increasingly popular approach to servicing emerging growth companies that need the integration of multiple specialties (e.g., an accountant who could serve a dual function) and, as they move quickly, lawyers that are already highly educated about business. "The result is improved, individualized legal service [regulated by traditional legal standards] for the client and a more satisfying way to practice law for lawyers, who view themselves as business partners with the client."<sup>196</sup> Thus, attorneys will continue to have the independence and accountability needed to protect the public and effectively execute their professional goals. This example of how interdisciplinary "client teams" work within the current legal structure is a viable alternative to MDP and is also indicative of how the current system has the tools to competently discharge the practice of law without joining the "lodge."

In short, as this paper has highlighted, "[w]hile accountants may be cheaper and faster, they cannot offer broad-ranging confidentiality or loyalty to their clients and the protections those duties try to guarantee."<sup>197</sup> If nonlawyers are allowed to practice law, no regulatory system is in place to ensure independence and confidentiality, but, most importantly, nothing would ensure that competent delivery of legal services is at the forefront of what the profession is undertaking. Further, some states even prohibit lawyers from performing certain multistate transactions in their efforts to ensure that their citizenry is sufficiently protected. Ultimately, even if we determine that safeguards could be developed and implemented in an attempt to protect the public, it is unlikely these safeguards would be sufficient to truly protect the consumer's right to sufficient legal services. In other words, accepting MDP, even if sanctioned by many, would undermine the integrity of the

---

196. Boone & Conner, *supra* note 35, at 24.

197. Gibeaut, *supra* note 9, at 47.



legal profession. On balance, even though MDP has its support, as the ABA has noted “[w]e must consider the potential impact of MDP on some of our treasured core values.”<sup>198</sup> “Lawyer independence, avoidance of conflicts of interest, zealous representation, maintenance of client confidences and the attorney-client privilege may be irreparably affected by the MDP structure.”<sup>199</sup> With this caveat, attorneys should not accept MDP if we are committed to our “core values.”

---

198. William G. Paul, *To MDP or Not to MDP*, A.B.A. J., Dec. 1999, at 6 (President's Message) (commenting on the MDP debate and the deliberative process that lawyers use in making controversial decisions); see *Multidisciplinary Practice Report*, *supra* note 1 (discussing the ethical and regulatory barriers to MDPs, the Report stated that “the paucity of enforcement actions may be partially attributed to the inability of the courts and regulatory authorities to formulate [and enforce the unauthorized practice of law] a workable definition of the practice of law. . .”).

199. Paul, *supra* note 198, at 6.