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Greg Casey
University of Missouri-Columbia

Carol A. Needham
Saint Louis University School of Law

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Consensus Across Multiple Divides: An Empirical Study of Outlooks Underlying Lawyers' Attitudes on Multidisciplinary Practice

Greg Casey & Carol A. Needham*

I. INTRODUCTION

Lawyers hold a variety of views regarding the advisability of permitting attorneys to join multidisciplinary practices.¹ The professional regulations currently in effect preventing lawyers from practicing law within the same entity with members of other professions,² the development of these restrictions,³ the evolution of the

* Greg Casey, Associate Professor of Political Science, University of Missouri–Columbia. Carol A. Needham, Associate Professor, Saint Louis University School of Law. E-mail may be sent to the authors at caseyg@missouri.edu and needhamc@slu.edu.

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1. The term “multidisciplinary practice,” when used in this Article, refers to an entity which the ABA Commission on Multidisciplinary Practice described as:

[A] partnership, professional corporation, or other association or entity that includes lawyers and non-lawyers 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. It includes an arrangement by which a law firm joins with one or more other professional firms to provide services, and there is a direct or indirect sharing of profits as part of the arrangement.

ABA Commission on Multidisciplinary Practice, Recommendations, Report, and Reporter's Notes on the ABA Commission on Multidisciplinary Practice, Appendix A (1999), available at <http://www.abanet.org/cpr/multicom.html> [hereinafter ABA Commission, 1999 Final Report].

2. See, e.g., Mary C. Daly, *Choosing Wise Men Wisely: The Risks and Rewards of Purchasing Legal Services from Lawyers in a Multidisciplinary Partnership*, 13 GEO. J. LEGAL ETHICS 217 (2000); James W. Jones & Bayless Manning, *Getting at the Root of Core Values: A “Radical” Proposal to Extend the Model Rules to Changing Forms of Legal Practice*, 84 MINN. L. REV. 1159 (2000); Laurel S. Terry, *A Primer on MDPs: Should the “No Rule Become a New Rule?”*, 72 TEMP. L. REV. 869 (1999).

3. Bruce A. Green, *The Disciplinary Restrictions on Multidisciplinary Practice: Their Derivation, Their Development, and Some Implications for the Core Values Debate*, 84 MINN. L. REV. 1115 (2000) (tracing the restriction against sharing fees with non-lawyers to a 1909 New

market for legal services,⁴ and the history of the American Bar Association's ("ABA") effort to investigate the issue in the late 1990's have been ably presented elsewhere.⁵ Attorneys' varying views of multidisciplinary practice ("MDP") and how their views overlap, however, has not been fully explored. This Article examines the results of a study designed to contemplate differing views on MDP.

The main reason for undertaking the study discussed in this Article was to build a more nuanced picture of attorneys' concerns and beliefs underlying their views of MDP. The Bar leaders who commissioned this study wanted to explore potential areas of agreement among attorneys. Our findings of common ground among the attorneys who participated in the study can furnish a basis for discussions, negotiations and possible compromise on these issues.

This Article begins by briefly touching on recent actions taken concerning MDP.⁶ It then presents the inception, design and methodology of the study that is the basis of this article.⁷ Next, the sharply delineated constellations of opinions regarding MDP that emerged from the analysis of the raw data are described.⁸ Finally, the Article examines the precise issues that present possible areas of consensus among the three groups identified in this study.⁹ This was accomplished by using the participants' prioritization of the concepts presented in the study to create a more detailed model of the array of opinions held by the members of each of the three groups.

II. BACKGROUND

A. Recommendations of the ABA MDP Commission

MDP has been a contentious issue for a number of years. Recently, the ABA considered whether to recommend that lawyers be allowed to form MDPs. In 1998, the ABA appointed the Commission on

York State statute prohibiting corporations from practicing law, including furnishing lawyers to clients, and imposing criminal penalties for violations).

4. See, e.g., John S. Dzienkowski & Robert J. Peroni, *Multidisciplinary Practice and the American Legal Profession: A Market Approach to Regulating the Delivery of Legal Services in the Twenty-First Century*, 69 *FORDHAM L. REV.* 83 (2000); Daniel R. Fischel, *Multidisciplinary Practice*, 55 *BUS. LAW.* 951 (2000).

5. See, e.g., Ted Schneyer, *Multidisciplinary Practice, Professional Regulation, and the Anti-Interference Principle in Legal Ethics*, 84 *MINN. L. REV.* 1469 (2000); Charles W. Wolfram, *The ABA and MDPs: Context, History and Process*, 84 *MINN. L. REV.* 1625 (2000).

6. See *infra* Part II.A (discussing recent actions taken by the ABA concerning MDP).

7. See *infra* Part II.B (providing the background on this study).

8. See *infra* Part III (discussing the study and its results).

9. See *infra* Part IV-V (discussing areas of possible common ground on the issue of MDP).

Multidisciplinary Practice (the “MDP Commission”) to study the extent to which professional services firms not run by lawyers were offering legal services. On June 8, 1999, the MDP Commission recommended that the ABA’s Model Rule 5.4 be amended and proposed Model Rule 5.8 be adopted to allow lawyers to offer legal services with multidisciplinary practice.¹⁰ The members of the ABA’s House of Delegates decided at the 1999 annual meeting not to adopt any changes to the Model Rules unless further investigation supported the conclusion that MDPs were in the public interest, and posed no danger to the “core values” of the legal profession.¹¹

In May 2000, the MDP Commission wrote a formal report and recommendation to the ABA House of Delegates in which the Commission approved fee-sharing and the concept of lawyer-controlled MDPs, while reiterating the importance of protecting the legal profession’s core values.¹² Although the ABA’s House of Delegates definitively ended the work of the MDP Commission when it voted by a three-to-one margin to reject the Commission’s May 2000 recommendation,¹³ the on-going transformation of the market for the delivery of legal services has kept discussion of the issue alive.

Although the focus of attention regarding potential action related to the issue has returned to the state level,¹⁴ the national discussion regarding the propriety of permitting MDP has continued. Academic conferences on the issue have recently been held in a variety of forums, including the law schools at Vanderbilt and Wake Forest.¹⁵ Many

10. 15 ABA-BNA, LAWYERS’ MANUAL ON PROFESSIONAL CONDUCT 250 (1984).

11. *Id.* at 396.

12. The MDP Commission’s report stated, “Lawyers should be permitted to share fees and join with non-lawyer professionals [identified as] . . . members of recognized professions or other disciplines that are governed by ethical standards . . . in a practice that delivers both legal and nonlegal services (Multidisciplinary Practice) . . .” Report to the House of Delegates (May 11, 2000), available at <http://www.abanet.org/cpr/mdpfinalrep2000.html>.

13. At the ABA’s annual meeting on July 11, 2000, the House of Delegates voted down the MDP Commission’s proposal 314 to 106, preferring to maintain unchanged the language in Model Rule 5.4. At the same meeting, the House also voted to disband the MDP Commission, voting 292 to 152 against deferring final consideration of MDP. 16 ABA-BNA, LAWYERS’ MANUAL ON PROFESSIONAL CONDUCT 368 (1984).

14. See, e.g., Sheryl Stratton & Lee A. Sheppard, *American Bar Association Says No to Multidisciplinary Practice*, 88 TAX NOTES 311 (2000) (discussing the end of the ABA’s effort to articulate standards on the leading edge of this debate). Delegate Robert Keatinge declared the view that further ABA action will likely be limited to ABA sections “acting as clearing houses for information regarding what the states are doing.” *Id.* at 316; see also Dzienkowski & Peroni, *supra* note 4, at 87.

15. The articles written for the conference held on March 30, 2001 at Wake Forest are published in a symposium issue of the Wake Forest Law Review.

commentators, including the authors of this Article, see the MDP issue as one whose final resolution has not yet become clear.

B. Development of the Study

While what the legal community will ultimately decide concerning MDP is not yet apparent, it is clear that lawyers across the country will have to face this issue in the future. Studying public opinion on an emerging controversy is unwieldy because large segments of the relevant public are not yet fully aware of the pertinent issues. A random survey of the public would squander resources because many people contacted would obviously not have thought through a topic of which they are still unaware. Also, measurement error is likely when people are asked about a topic on which they are not knowledgeable.

The debate over whether or not lawyers should be allowed to practice in a multidisciplinary entity is such an emerging controversy. Permitting MDP would require changing the current rules of professional responsibility governing lawyers' conduct. Under the current regulations, lawyers cannot practice law in partnership with members of other professions. In addition, law firms cannot be owned, in part or full, by a non-lawyer or an entity not controlled by lawyers. Although questioning these rules goes back as far as 1982 when the Kutak Commission proposed a revision that would have allowed MDP in certain circumstances, the issue was temporarily shelved when the ABA House of Delegates defeated the proposed revision in 1983. It is likely that only a small group of those active in the ABA in the early 1980's were highly aware of the issues involved at that time. In the late 1990's, a new reform effort began within the ABA. Despite considerable publicity within the legal profession, it is likely that only a very small proportion of the nearly one million American lawyers have closely followed developments on this issue after it re-surfaced in 1998.

The leadership in the Missouri Bar wanted to respond in a timely way to the ABA's request for reaction to the MDP Commission's proposal. It originally considered doing a membership survey of attitudes toward MDP so that its members' preferences could guide its MDP Committee. Initial discussions involving Jennifer Gille Bacon, Jack Wax, Keith Birkes and one of the authors culminated in the realization that the issue was so novel that many members of the Bar had not yet developed firm opinions about it.

The issue of undue elitism also arose. Specifically, development of a survey instrument to measure attitudes on such a new idea risked advantaging facets of the issue deemed important by the authors of the

survey. Questions posed in an initial survey might later become key premises in discussion and argument on the issue, to the detriment of peripheralized alternative issues. Survey results are often treated as officially recognized knowledge, and issues initially peripheralized might remain submerged. Not only would this make the parameters of the debate unduly reflect the pet ideas of the survey initiators, it would also keep the debate from representing submerged views on MDP held by Bar members. To show a democratic regard for how members of the Bar thought about the issue, a more grass-roots approach to exploring their views was used.

Faced with the need to formulate a state bar response to the ABA initiative on the issue of MDP, and wishing to take into consideration its members' preferences (insofar as those preferences had crystallized), the leaders of the Missouri Bar decided on an approach combining qualitative and quantitative techniques. Our study was a result of that decision. Working from the premise that lawyers are quick learners, we decided that most lawyers could quickly determine where they stood if they had good information on the issue. But what information should be given them? Much of the material already available strongly advocated positions, often in a polarized way (either "pro" or "con"), and many arguments in this literature were highly speculative. Much of the literature was also highly formal in style, even when not particularly partisan. Could we develop information on MDP expressed in objective terms, containing shorter, pithier arguments, using more colloquial wordings to make the information more accessible to Missouri attorneys?

A two-step process of inquiry was used. In the first stage, a highly varied sampling of Missouri lawyers was interviewed about its views of MDP and its implications. In the second stage, these lawyers' perceptions, views, stories and opinions on MDP became raw material for the information compiled and given to the subjects participating in the study.

1. Initial Inquiry Stage

Individual interviews, focus groups and group interviews were conducted in late Fall 1999. Lawyers in varied practice settings were selected for interviews: those working in accounting firms, managing partners of law firms, attorneys practicing in large law firms, and those practicing family law, eldercare law and international law. Each of these groups of lawyers had incentive to be informed about MDP. Lawyers who practice in the areas of family law and eldercare have indicated that they might be more likely than lawyers with other types

of practices to be interested in forming or joining an MDP with professionals in other disciplines if the professional responsibility rules were changed to permit them to do so. International lawyers can be expected to have a greater degree of exposure to the concrete realities of the issue, since in their practice they have the opportunity to encounter lawyers from countries that permit MDPs.¹⁶ Lawyers that are currently employed by accounting firms have experience with some of the issues that are central to the MDP debate (since they are working closely with members of a profession that has gone furthest towards acquiring law practices). Finally, managing partners of large law firms have a unique vantage point from which to view the pressures of economic competition facing lawyers.

Members of other professions, including accountants, financial planners, psychologists, counselors and consumer advocates, were also interviewed on the topic of MDP. Like the attorneys interviewed, these professionals also have an incentive to develop opinions on the creation of MDPs with lawyers. Some of these professions, such as financial planning and psychology, do not impose prohibitions on forming partnerships with lawyers, while others, such as accounting, may impose some restrictions but also have an economic incentive towards certain mergers. Finally, consumer advocates' relative lack of direct economic self-interest gives them a valuable perspective on the delivery of professional services to the public.

The individual interviews were relatively unstructured. Subjects were asked open-ended questions about what they had heard regarding MDPs. This usually led to considerable expression of opinion on the subject. Using a standard protocol, they were then asked to imagine a hypothetical law firm. If the rules were changed to permit MDPs, would this firm merge with an accountancy firm? Would it have a greater number of clients as an MDP, or fewer as a result of conflicts of interest or other reasons? Further questions sought opinions on how confidentiality would work in a merged firm and whether conflicts should be imputed to the non-attorney members of the MDP. After eliciting opinions on the unauthorized practice of law ("UPL") in an MDP, the interview turned to issues related to the types of clients who would want to retain the members of an MDP. In the participant's opinion, would these be primarily businesses or primarily ordinary people who wanted one-stop shopping? Next, the participant read

16. For an excellent discussion of the experience of lawyers in Germany, a country that expressly permits practice within an MDP, see Laurel S. Terry, *German MDPs: Lessons to Learn*, 84 MINN. L. REV. 1547 (2000).

through the text of the changes in the Model Rules of Professional Responsibility suggested by the ABA MDP Commission. Those suggested changes were discussed. Finally, the interviewer sought the participant's overall opinion: Should the Missouri Bar change its rules and permit MDPs?

Although some interviewees knew little at the outset and did not develop much opinion during the discussion, most warmed to the topic and articulated incisive perceptions, opinions and usable quotes on the topic. Interviews were conducted either individually (most by telephone, some in person) or in groups. The focus groups (i.e., the group interviews) were held in Kansas City, St. Louis and Columbia, a mid-state college town near the capital. These cities were also the locations of most of the interviews in this phase of the study. One of the focus groups contained only lawyers while the other two included members of other professions in addition to attorneys.

A professional facilitator guided the focus group participants through a list of topics similar to those covered in the individual interviews. The facilitator asked each participant to recount what he or she had heard about MDPs. Then a hypothetical professional service firm involving lawyers and members of all the professions represented at the table was suggested, and each participant was asked for reactions to this firm. The consumer advocate was asked how it might seem to consumers, and all were queried on how it would impact the ability to keep the client's confidences. The discussion then turned to several other topics, including: fee sharing between the members of the various professions, marketing of services, handling conflicts of interest, UPL, regulation of the professions, the types of clients who might want to receive legal services from an MDP, as well as the types of clients who might prefer a traditional law firm. Each focus group discussion took about two hours to complete.

Transcripts and notes from these discussions were then mined for statements about MDP and related topics. We extracted 749 separate statements, propositions, notions and concepts. The statements on MDP were then sifted through to choose the statements to be given to those participants in the second stage.

2. Balanced Design Stage

The selected statements were provided in the second stage of the inquiry to a second, larger sampling of attorneys.¹⁷ Of course, not all

17. The larger grouping contained some who were interviewed earlier and who had contributed comments, as well as others new to the study at this point.

749 statements could be presented to this second group; only a sample of statements could be effectively used. So a subset of 55 statements, highly varied in content, tone, length and voice, was chosen for this phase of the study.¹⁸

The following procedures were used to cull out statements and leave only 55 statements. The opinions expressed in the focus group and individual interviews were transcribed, redacted for brevity and grammatical correctness, and printed on separate pieces of card-stock. Working with the raw text of the statements, Professor Casey physically separated them by theme. The categories that emerged as key themes were: (1) the clients' needs and interests; (2) law practice and its problems; (3) MDP and its economic/business potential; (4) regulation of the legal profession; (5) UPL; and (6) core values of the legal profession, including privilege and conflict of interest.

All statements made in the focus groups and individual interviews could reasonably be sorted into one of these six categories. Within each category, all statements were further sorted according to the direction of opinion which they expressed (whether it was implied or direct): (a) positive towards MDP; (b) neutral, indifferent, ambivalent or non-committal regarding MDP and (c) negative towards MDP. This exercise in textual analysis left a balanced design with 18 groupings of opinion statements. We eliminated similar statements within each of the groups. Then, serious choices were made to narrow the number of statements to 72.

In making this last reduction, keen attention was given to preserving particular slants, voices and sub-themes. For instance, if a positive statement on the notion of "one-stop shopping" was culled out, a negative or a neutral one would be kept, to ensure representation of a label or buzzword that could in its precise phrasing be more meaningful for particular respondents. Balanced design heightens representation of broad themes, and judicious choice of statements from the grid of balanced design helps ensure variance in sub-themes, even in micro-themes. In this way, subjects can work with a highly varied body of

18. One wants a number of statements great enough to permit high variation in the statements, but low enough to make working with the statements easy for the subjects. Using 25 statements would be easy for the subjects, but probably would not be enough to encompass a high level of variety in the rhetoric. Conversely, using 100 statements would encompass highly varied rhetoric, but would be unwieldy for the subjects who would probably balk, frustrating the purpose of the study. As the number of statements presented to the participants is increased, the variance in themes becomes more reliable. However, if the number of statements presented is too high, there is a risk that some of the participants may fail to complete the sorting process.

rhetoric on MDP.¹⁹ At this point, Bar staff helped eliminate more statements until only 55 were left. At least one statement came from each of the 18 categories. Some categories were represented by as many as four statements. This procedure ensured that the resulting set of statements used to measure attitudes towards MDP was broadly based and reflected the variety of views and opinions given by lawyers and other professionals who had discussed MDP in the focus groups and initial interviews. Each statement was printed on a separate card, and randomly assigned a number from 1 through 55. Such a set of statement-cards is termed a "Q-sort,"²⁰ and the method used is called "Q-methodology."

3. Q-Sorts & Q-Methodology

A number of published Q-studies have investigated matters of legal interest. Specifically, a study weighing the competing influence of gender and ethnic loyalties in interpreting the controversial Justice Thomas confirmation hearings has been completed.²¹ Further, a Q-study has demonstrated that judges have five separable ways of viewing

19. For example, on the issue of one-stop shopping, two negative (i.e., anti-MDP) statements were retained: #8 ("One-stop shopping pressures the consumer. Suddenly there's a referral; one's hand is forced a little."), and #20 ("The idea that MDP is motivated by the desire to promote one-stop shopping is just smoke."). One-stop shopping was a sub-theme nestled within the general category (1) the clients' needs and interests. Many positive statements of this sub-theme within this larger category were culled out. For instance, one professional stated: "Many people complain about the round robin of appointments with various professionals." Another commented: "It would be better if professionals could work more in tandem than out of separate compartments." Both these latter statements justify one-stop shopping and are, therefore, pro-MDP, but to keep the balance in the final set of fifty-five statements they were culled because other pro-MDP statements had been selected to keep other sub-themes represented. It matters little whether the statements are negative or positive; working with the statements, subjects can disagree or agree to express their views on any statement regardless of the way the statement is phrased.

20. Professor William Stephenson devised this technique for attitudinal measurement in the 1930s as a psychologist teaching at Oxford University. Later, he continued his work on the technique at the University of Chicago and at the University of Missouri. The classic presentation of the theory is contained in two of his books. See WILLIAM STEPHENSON, *THE PLAY THEORY OF MASS COMMUNICATION* (1967); WILLIAM STEPHENSON, *THE STUDY OF BEHAVIOR: Q-TECHNIQUE AND ITS METHODOLOGY* (1953). A brief tutorial on the method is available at <http://facstaff.uww.edu/cottlec/Qarchive/qindex.html>. Steven Brown and other social scientists have continued Stephenson's work with the technique. See STEVEN R. BROWN, *POLITICAL SUBJECTIVITY: APPLICATIONS OF Q-METHODOLOGY IN POLITICAL SCIENCE* (1980); see also BRUCE MCKEOWN & DAN THOMAS, *Q-METHODOLOGY* (1988); Greg Casey, *Intensive Analysis of a "Single" Issue: Attitudes on Abortion*, 10 *POL. METHODOLOGY* 97, 97-124 (1984) (demonstrating how the multiple competing concerns driving discussion of a controversial politico-legal issue can be better understood with Q-method).

21. Dan Thomas, Craig McCoy & Allan McBride, *Deconstructing the Political Spectacle: Sex, Race, and Subjectivity in Public Response to the Clarence Thomas/Anita Hill "Sexual Harassment Hearings,"* 37 *AM. J. POL. SCI.* 699, 699-720 (1993).

their role on the bench.²² Finally, a Q-study has been conducted demonstrating the variety of responses among members of the public indicating politically cohesive groupings when confronted with reports of an overtly politicized judicial selection process.²³

Professor William Stephenson dubbed this technique of psychological measurement "Q" because the type of factor analysis²⁴ it employs inverts the matrix from the form used in conventional psychological measurement, a form often referred to as "R" factor analysis. In R-methodology, for example, the matrix is aligned with the subjects²⁵ each occupying one column, while each particular statement to which they are reacting occupies a row. When the data are reduced by extracting underlying factors, the respondents are left intact. The questions, however, are reduced from many to a few, each drawing a similar response pattern from the subjects. The matrix below (Table 1) provides a graphic representation of the process used in R-methodology. The letters B through G across the top indicate individual persons. The numbers 1 through 5 down the left side represent different statements,²⁶ and the numbers in the columns represent each person's responses to statements 1 through 5. After R-factor analysis, B through G would still be discernable individuals, but 1, 2, 3, 4 and 5 would be consolidated to fewer than the five original underlying ideas or sentiments.

In Q-methodology, the matrix is aligned in the same way. When the data are reduced in a Q-factor analysis, however, all the statements remain, while the respondents are consolidated from many to a few. Each remaining set of respondents left at that point reflects an attitude, segment, outlook or school of thought shared by a group that recorded similar responses to the statements. Each remaining group of individuals is now termed a "Type." After performing the Q-analysis, each statement from 1 through 5 would still remain. Similarly minded individuals, however, would now be represented by a cluster or Type. For example, the first cluster would include C and G, a second cluster would include D and F and a third would include B and E.

22. Thomas D. Unga & Larry R. Baas, *Judicial Role Perceptions: A Q-Technique Study of Ohio Judges*, 6 LAW & SOC. REV. 343, 343-66 (1972).

23. Greg Casey, *Public Perceptions of Judicial Scandal: The Missouri Supreme Court 1982-88*, 13 JUST. SYS. J. 284, 284-307 (1988-89).

24. Factor analysis is a statistical procedure used to reduce data.

25. Meaning, the people who respond to the measurement.

26. In reality, of course, the number of respondents in the matrix would exceed six. We could denominate the persons as B, C, D, . . . n₁. Similarly, the number of statements would far exceed five, and we can denominate the statements as 1, 2, 3 . . . n₂.

Table 1. Q vs. R Matrix

	B	C	D	E	F	G
1	+4	+2	-1	+3	+1	0
2	-3	0	+2	-3	-3	-2
3	+3	0	+3	+4	+4	-1
4	+2	+4	+1	+1	+1	+3
5	-4	+1	+4	-4	+2	0

It bears mention that the Q-method, which is a balanced sampling method, is unlike surveys in that its predictive value neither needs nor relies on representative samples of subjects. A well-constructed survey would seek a representative sample of subjects because it would use those subjects' responses to generalize to the overall population's responses. For example, representative sample surveys are used in political polling. People in a randomly chosen sample are asked whether they plan on voting for the candidate for a certain office running as a Republican, Democrat, Libertarian, member of the Reform Party, the Green Party and so on. If 56% of the sample indicates that it intends to vote for the Democrat, the pollsters (having randomly sampled the general public) use the properties of the normal distribution to specify an interval, such as between 52% and 60%, within which they are 95% confident that the true number lies.²⁷ This means that the polling form warrants that 19 out of 20 such polls would report a number within the interval of 52% to 60%. This would be a reassuring result for the Democratic candidate, because there is only one chance in twenty that the true number²⁸ lies outside that range. Moreover, the true number could be higher, such as 63%, or lower but still a majority, such as 50.2%.

Although surveys using the representative sample method are valuable, they do have some limitations. One significant difficulty is that of timing. Generally, the longer the time span between the poll and election day, the more likely it is that voters' intentions could shift before they step into the polling place, rendering the poll results less reliably predictive of the election results. Polling until the last minute helps counter this problem.

27. To be 99% confident, the confidence interval would have to be larger, e.g., between 49% and 63%.

28. That is, the percentage of voters intending to vote for him or her.

A second difficulty in the reliability of the results in the representative sample method concerns the possibility that the polling firm might have manipulated (whether knowingly or unwittingly) the procedure by which respondents are selected, resulting in a non-random sample. In a telephone poll, for instance, the interviewers might ignore certain telephone prefixes, or the results might be skewed because some categories of voters (those intending to vote for a "fringe" party's candidate, or municipal employees, for example) might be less willing than others to declare their true intentions to the pollster. In a field study, interviewers might avoid houses that look shabby, and arrange to interview only in attractive suburban areas. In a mail out survey, the return rate might be quite low. In any of these circumstances, the choice of respondents who actually participate in the survey is no longer as random. When the sample is not randomly chosen, the normal distribution cannot be used to determine that the probability of the sample being representative of the population set. Therefore, the survey designer no longer has statistical theory to back up an assertion that the true number (in this example, the percentage of voters planning to vote for each candidate) bears a known relationship to the number found in the subset polled.

A third difficulty centers on the wording of the questions the participants answer. With good sampling and careful interviewing, many of the difficulties discussed above can be kept at bay. But wording of the question can lead those surveyed into giving set answers or can confuse them. For instance, on the topic of MDP, the Marist Institute for Public Opinion, a reputable polling center, questioned a representative sample of members of the public.²⁹ Because the general public is quite unaware of the issues of UPL enforcement and the ABA MDP Commission's proposal concerning MDP, the query first provided a fairly lengthy factual description:

Most states allow only lawyers to perform certain services such as real estate transactions, estate planning, wills, and some financial planning matters. These state rules do not allow other professionals such as accountants, financial planners, real estate consultants, and insurance specialists to provide these services to consumers.

29. The Marist poll took place from October 18 through October 20, 1999. *Americans Support Lawyers Partnering with other Professionals*, LEGAL MGMT., Mar.-Apr. 2000, at 8, 16-17. The poll surveyed 1,013 adults via telephone. *Id.* Seven of ten respondents agreed that "the legal profession's rules should be changed to allow lawyers and other professionals to work together in the same firm." *Id.* The margin of error for the Marist poll is +/- three percent. *Id.* For further discussion of this poll, see *Poll Shows Americans Support MDPs*, LAW FIRM PARTNERSHIP & BEN. R. 2, Jan. 2000, at 5.

In asking the follow-up question, the two alternative choices presented were rotated, so that the order in which the propositions were expressed would not affect the response given. The key question asked next by the interviewer was:

Which opinion is closer to your own: some people think these rules mainly benefit lawyers and should be changed to increase competition and allow other professionals to provide these routine services; [or] some people think these rules should not be changed because lawyers have the expertise and other professionals should not be allowed to provide these services.

A large majority of the people polled agreed with the first alternative (66%), and a much smaller group (27%) agreed with the second, while 7% were unsure. A problem in the phrasing of the alternatives could have skewed the results. Each alternative is a compound statement. In evaluating the second alternative, for example, it is impossible to determine the degree to which the subjects were responding to the idea that “lawyers have the expertise” as distinguished from the idea that “these rules should not be changed.” Similarly, the first alternative statement that “these rules mainly benefit lawyers” could have pulled in agreement from people who have negative views of the legal profession³⁰ whether or not they agreed with the rest of the sentence. In addition, the wording of the alternatives is not even-handed. Characterizing the services that non-lawyers are prohibited from providing as “routine” has the effect of skewing the response in a pro-change direction. Furthermore, participants may harbor different ideas about which specific services are included within the category of “routine services.”

In addition, the reason presented to support the “no change” position omits mention of the impact of the potential loss of the attorney-client privilege and the varying standards used to assess conflicts of interest.³¹ Measurement error could easily have taken place in the Marist survey. The difficulty of being certain that a representative sample survey has been conducted in a manner that ensures the data collected can be

30. The finding that a significant number of people in the United States hold a negative view of attorneys has been reported. See, e.g., Russell G. Pearce, *Law Day 2050: Post-Professionalism, Moral Leadership, and the Law as Business Paradigm*, 27 FLA. ST. U. L. REV. 9, 9 n.4 (1999) (citing a series of polls indicating that the public generally views attorneys in a negative light and lacks confidence in the legal profession); Randall Samborn, *Anti-Lawyer Attitudes Up*, NAT'L L.J., Aug. 9, 1993, at 22 (describing a poll which revealed that the most commonly articulated reason given for holding a negative opinion of lawyers is that “lawyers are too interested in money”).

31. The dimensions of these critically important aspects of the MDP debate are discussed elsewhere. See, e.g., Dzienkowski & Peroni, *supra* note 4, at 174-91.

reliably interpreted illustrates the difficulties encountered when public response to a poll question dominates discourse on an issue, even though measurement error may be suspected.

When using the Q-method, these types of eventualities do not affect the reliability of the data collected. A random sample is not needed. Rather than seeking to determine how many individuals have a particular opinion or intention (such as a plan to vote for a certain candidate), the Q-study sets out to uncover how people in various situations assemble opinions and thoughts together to form an overall viewpoint or philosophy. A sample for a Q-study needs variance, but it need not be precisely in proportion to the variance found in the population.

Thus, if it is possible that male and female lawyers might see the opportunities and challenges presented by MDPs differently, it would be important to arrange for some lawyers of both genders to participate in the Q-sort, so that the views of both genders are represented. Additionally, we might be concerned that the views of attorneys in rural areas might differ from those of lawyers practicing in urban settings. If so, it would be important to obtain Q-sort responses from some lawyers practicing in each relevant type of geographic area. Alternatively, we might think that firm size has an impact on one's views on the desirability of MDPs. If so, we should ensure that the sample includes respondents from firms of various sizes.

Finally, the Q-sort method permits the inclusion of statements that are short or long, simple or compound, terse or verbose, and neutral or studded with symbolic opinion cues. Each person revealing his or her opinion will have a chance to contrast statements from a very large field of statements. Instead of four questions on MDP as in the Marist study, we used 55 statements, encompassing much more variety. As a result of using the Q-sort method, we will be able to characterize our subjects in a much more nuanced way than would be possible with a survey.

The Q-sort is a way to study people's subjective ideas and thoughts on a particular topic, in this case, the advisability of permitting attorneys to join MDPs. Instead of asking people to react to the partisan and formal positions organized groups had presented on their issue, we asked lawyers and members of other professions to respond to open-ended questions, then distilled the responses for presentation to the study participants. Our subjects thus had the opportunity to respond to statements that reflected the opinions of people similar to themselves, giving our opinion measures a grass-roots "bottom-up" quality distinct

from the elitist, “top-down” quality of many other methods used to measure opinion.³²

In this study, the deck of cards containing the 55 statements to be used was printed in hundreds of copies, each copy a Q-sort kit. Besides the statement cards, each kit contained a scoring sheet with instructions on how to perform the Q-sort. Each candidate for the study was directed to read the cards and then to begin sorting them out into those presenting propositions with which the participant agreed, those with which he or she disagreed, and those with which he or she neither agreed nor disagreed.³³ After forming three piles of cards, the participant was then instructed to sort out the statements into degrees of agreement and disagreement according to a set distribution, shown in Table 2. This distribution results in a normal curve, which permits informative and robust statistical tests, and is also “forced,” meaning that the sorter is induced to make many comparisons among the statement cards to produce the final scoring distribution.

Table 2. Scoring Distribution for Missouri Bar MDP Q-Sort

Score:	+5	+4	+3	+2	+1	0	-1	-2	-3	-4	-5
How Many Cards?	3	4	5	6	6	7	6	6	5	4	3
Meaning:	←High Agreement			→Zone of Relative Indifference←				High Dis-agreement→			

The Missouri Bar sent out approximately 300 of these kits. All participants from the first stage of the research received one, as did all persons initially contacted for participation in the first stage but who could not be scheduled for interviews or focus groups because of time constraints. In addition, all 21 members of the MDP Committee of the Missouri Bar received a kit, as well as five additional kits for

32. SONDR A MILLER RUBENSTEIN, *SURVEYING PUBLIC OPINION* 212-15 (1996) (demonstrating that many surveys use ill-thought-out questions authored by scholars or experts, and concluding that more reliable information can be elicited through more extensive pretesting of survey questions, use of focus interviews to induce subjects to “think aloud” while answering, and efforts to get typical subjects to paraphrase wording authored by surveyors).

33. The subjects’ reasons for including a statement in this non-reaction category could include befuddlement, ambivalence, or indifference, among other rationales.

distribution to other lawyers. Ultimately, 77 lawyers performed the Q-sort, together with 10 members of other professions. This article explores only the Q-sorts of the lawyers, although Appendix II gives the results for the non-lawyer professionals as well.

In reading this Article, these basic terms will help the reader navigate some of the technical language occasionally used.

- A Q-sort is a sorting of statements about a matter of opinion, each statement having been printed on a separate card. Each subject in this study performed the Q-sort with the same 55 statements about MDP.³⁴
- After doing his or her Q-sort, each subject records and reports his or her responses, or the scores, which he or she assigns to each of the 55 statements. The score sheet requires respondents to record the numbers of all statements assigned the score of +5, with only enough room to record the proper number of statements permitted (in this case, 3). The completed score sheet gives us that subject's array, or distribution of statement scores.
- All subjects' arrays are then analyzed to bring out underlying patterns in response, grouping subjects who respond similarly to the statements together as a factor type. Each factor type represents a distinct way of thinking shared by the subjects who form the factor. Factors are given Roman numerals (I, II)
- To form a factor, at least two subjects have to "load" on the factor: their scores have to show that they are inclined towards that factor's way of thinking. Using the normal curve, we look for statistically significant loadings on factors.
- Subjects inclined to a factor contribute to the reconstruction of that factor's typical array, or the ideal Q-sort that would be typical of all participants who load on the factor. Subjects loading with higher scores contribute more greatly, subjects loading with lower scores contribute less, so that the typical array represents our best estimate of how people typical of that way of thinking sort out the opinion-statements.
- Finally, the typical arrays of each factor can be read and interpreted to achieve insight into that factor-type's outlook, which reflects those people's pattern of thoughts, as reflected in the way they have arranged their opinion-statements hierarchically to show how they operate from first premises to specific and concrete applications of those values.

34. For the exact wording of these statements, see *infra* Appendix I.

III. THE STUDY AND ITS RESULTS

In reading this description of attorneys' views on the possibility of permitting the practice of law in multidisciplinary entities, all statements from the typal arrays are given in *this type font* and are inset to give readers a visual cue that wording is coming from the Q-sort itself. The analysts' commentary on the typal array is in the type font used in these paragraphs.

In Q-studies, statements with high scores are most important. These are the opinions and arguments subjects accept (or reject) most strongly—the ideas most central, or integral, to their viewpoint. In this Q-study, statements with scores from 3 to 5, either positive or negative (i.e., scores of +5, -5, +4, -4, +3, or -3) are those most significant to the outlook of the subjects. Statements with lower scores (+2, -2, +1, -1, or 0) are, relatively speaking, in a “zone of indifference” and, therefore, less deserving of note.³⁵

As analysis of the themes of statements proceeds, a theme present in some highly scored statements may be found to continue to reverberate in statements with lower scores. This commentary may point to some statements with scores less than +/-3; when doing so, it will quote the statements, but the statements appear in italics in *this type font*. Most commentary on statements with scores below +/-3 is subordinated into footnotes.

Finally, note that statements presented to the subjects can be either positive or negative in form, and that the participants can choose to either agree or disagree with each statement. If a factor type agrees with a positive statement, meaning is most clear; if a factor type disagrees with a positive statement or agrees with a negative statement, meaning is still fairly clear-cut. Interpreting meaning can become convoluted, however, when a factor type disagrees with a negative statement. Untangling the inversion of meaning may require some close reading. To alert the reader that disagreement with a negative statement is coming up, a negative term is used in the commentary, such as disputes, not, never, does not like, or disagrees. This visual cue cautions the reader to watch out for inversion of meaning. This cue is also

35. It should be noted that everyone's zone of indifference is personal and subjective; thus one subject might, with a given Q-sort, find 40 statements with which he agrees, 5 with which he disagrees, and 10 to which he is indifferent. In this case, following the analyst's instructions, this subject would give some statements with which he agrees negative scores and will also give some high negative scores to some statements on which he is indifferent. Thus, we must consider the zone of indifference relative.

occasionally used where disagreement with a positive statement could be misunderstood in context.

A. *The Factor Solution*

Various factor solutions were evaluated. The simplest solution that accurately described the results brought out two factors.³⁶ This solution maximized the number of attorneys situated on factors, thus permitting the maximum number of attorneys to contribute to the reconstruction of the typal arrays.³⁷

The solution is illustrated graphically in Figure 1 below.³⁸ With two factors, we only need two dimensions to depict individual attorneys' location in the factor space.³⁹ Each participant in the Q-sort shows a loading on each factor. Each loading is a number ranging from +1.0 to -1.0 (in practice loadings rarely come close to 1.0 in value). The vertical axis (y-axis) locates each attorney on Factor I, while the horizontal axis (x-axis) locates each attorney on Factor II. Each attorney is represented by a point at his or her co-ordinates; #26, for instance, is near the top of the Figure, with a high loading of +.78 on Factor I and an infinitesimal loading of +.03 on Factor II. Looking to the right along the x-axis, we see #60, who has a high loading of +.60 on Factor II but a low loading of +.12 on Factor I. Looking down, we see #51, who has a high negative loading of -.70 on Factor I and a low loading of +.04 on Factor II. Loadings on Factor II to the left of the y-axis would be negative, and we should note that only one person, #18, has a negative loading (of -.13) on Factor II; all other attorneys load positively, even if weakly, on Factor II.

The attorneys are fanned across about half of the factor space available; except for #18, nobody is on the left side of the y-axis. The distribution forms an arc sweeping from the top around the right side to the bottom. Some attorneys huddle on the inside of the arc, while others

36. We considered alternative factor solutions before settling on the two-factor solution. One rejected alternative extracted four factors, and the second pulled out eight. Although more complex, these solutions anchored fewer lawyers on factors. The rejected four factor solution accommodated 56 lawyers, while the rejected eight factor solution brought in 57. The two factor solution situated 62 lawyers. A separate report contrasting these solutions is available from the authors on request.

37. This is termed a "reconstruction" because the subjects construct their views, while the interpreters of those views assemble a new construction of those views after conducting an analysis that involves dissection (i.e., recording scores for individual statements).

38. See *infra* p. 636.

39. Factor space is a graphic representation of the location of the study participants relative to one another; the physical grouping permits a more visual appreciation of the contiguities, juxtapositions and distances among participants outlooks.

locate farther out toward its extremity. The closer an attorney is toward the center, the more idiosyncratic his or her thinking is on MDP; the farther out an attorney, the more he or she has thought it through along the same lines as other attorneys. The scattering of the attorneys along the arc is notable: it graphically demonstrates the lack of consensus on MDP.

Based on these factor loadings, we could create two types: one with high loadings on Factor II, and the other with high loadings on Factor I. But, Factor I has people with both positive and negative scores. Although most are positive, the large number of attorneys with negative loadings makes the case for splitting the bipolar factor into its two separate sides; by doing this, we can adequately portray attitudes at all occupied areas in the arc of opinion. Thus, subjects at the top of the figure, who load high (and positively) on Factor I, form Type I. Reflecting these respondents' primary concerns, we have termed this group "Ethics Conservatives." Subjects at the bottom of the figure, who load high (and negatively) on Factor I, form Type II. We have denominated this group as "Eclectic MDP Enthusiasts." Finally, subjects at the right of the figure, who load high on Factor II, form Type III, whom we refer to as "Liberals" in this study. In effect, three Types are obtained from two factors by separating one factor into two Types.⁴⁰ It is important to note that respondents which cluster into these groups when considering the issues related to MDP do not necessarily share common views on other topics. For example, study participants who are members of Type III, whom we refer to as Liberals, may hold views regarding environmental regulations, gun control, tax policy, capital punishment and other public policy issues that would place them on the conservative end of the political spectrum.

40. Since Factor II is not bipolar (only one negative loading, and very low), it is inappropriate to split it; it is pointless to seek to characterize a location in factor space unoccupied by attorneys.

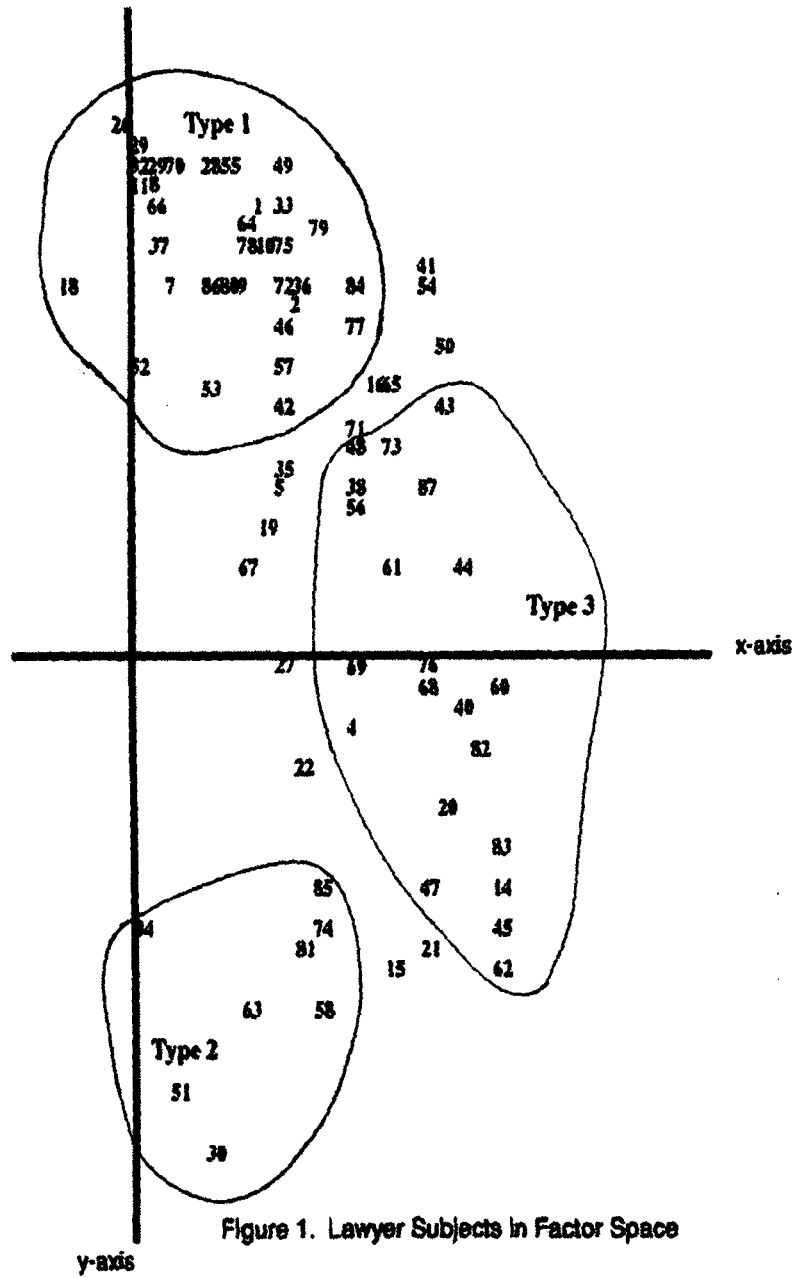


Figure 1. Lawyer Subjects in Factor Space

B. Demographics of Subjects

In all, 87 subjects completed usable Q-sorts. Seventy-seven of these were attorneys. (The ten non-lawyer professionals who completed sorts are included in the dataset, but do not contribute to the construction of types, and are not included on Figure 1; see Appendix II for details.) This level of participation reflects an excellent rate of return and includes more than enough attorneys to reliably test the differences between the respondents' positions.

We asked for a small amount of demographic information from attorney participants: attorneys could indicate their gender; whether they were in private practice, government work, business, or other; and whether their firm size (if private practice) was solo, 2-5 lawyers, 6-15 lawyers, 16-40 lawyers, or over 40 lawyers.

Participation in the Q-sort was entirely voluntary and confidential. Results were mailed directly to the University of Missouri Research Center. Subjects could give their name, and many did, or could remain anonymous. The identities of those who gave their names are protected under research ethics. As expected, many Q-sort sets were not returned—attorneys are busy people, and those not contacted in the fall phase of the study were probably less invested in the project. Many other attorneys may have intended to do the sort but were rushed by other deadlines. The final 77 attorneys self-selected themselves to be in the study, and we, therefore, had little control over their demographics.

Of the 77 attorneys, 16, or 21%, were women and 61, or 79%, were men. About 28% of Missouri Bar members are female,⁴¹ so we have a subset that reflects gender fairly well. Given our low control over demographics, we have enough women that we can be confident of reflecting the thinking of female attorneys in the study.

Private practice settings predominated among the 77 attorneys; 66, or 86%, were in private practice. Only 11 attorneys in our subset were in government, business, or "other" types of work. "Other" could include consulting for a CPA firm, teaching law, or retirement, and was also used if the lawyer doing a Q-sort did not check off his or her practice setting. Of the 11, 3 lawyers were in government, 3 in business and 5 in "other." Fifty-eight percent of the members of the Missouri Bar are in private practice. Clearly, private practitioners were more inclined than other lawyers to participate in this study. In part, this may be due to the

41. Missouri Bar Economic Survey, at 1 (1999), at http://www.mobar.org/info/econ_survey99.htm.

fact that permitting MDPs to operate may have a more immediate impact on the lives of attorneys in private practice. If professional responsibility regulations were changed to permit MDPs, market developments such as potential formation of MDPs, increased competition from Financial Services providers and new opportunities for lateral movement are likely to directly affect private practitioners. In contrast, lawyers working in government or as in-house counsel will not experience as dramatic a shift in their work environment.⁴²

However, changes in the regulations governing the structure of the practice of law would potentially affect lawyers working in certain “other” settings—such as CPA firms, banks or other providers of professional and financial services—even more directly than most other attorneys would be affected.⁴³ If and when the Bar considers new rules that would liberalize practice to allow lawyers working in settings other than traditional law firms to “hold themselves out” as attorneys in those settings, a follow-up study should be conducted to ascertain their views more accurately, given their scant representation in the set of respondents in this study. Contrastingly, if the Bar considers stricter enforcement of existing rules—such as a crackdown on the unauthorized practice of law by out-of-state lawyers giving legal advice outside traditional law firms—these lawyers’ views again should be represented in greater numbers than are included in this sample group. Since few statements in the Missouri MDP Q-sort bear on UPL enforcement or holding out, these are subsidiary issues in this study and

42. Note that an important work environment change for in-house counsel would be to expand the choices available to them as representatives of major consumers of legal services, as well as to permit some in-house counsel to potentially oversee profit-generating operational sources of revenue for their employers rather than simply remaining a cost-center.

43. The ABA focus group study conducted in 2000 of lawyers’ concerns demonstrated that most attorneys were unconcerned about global trends such as MDP and internet startup firms, where they saw these trends as having no immediate effect on their work. The two types of lawyers most concerned about these trends were firm decision-makers and the youngest cohort of associates in the largest firms. The group interviews were held in May and June, 2000. See *The Pulse of the Legal Profession, Phase I*, REPORT TO THE MARKET RESEARCH OF THE AMERICAN BAR ASSOCIATION 27 (Nov. 22, 2000). Some confirmation of this trend is seen in a survey conducted by Edward L. Summers. See Edward L. Summers, *Attitudes of Professionals Toward Multidisciplinary Professional Practices* 8 (2000), Current Research Projects, available at <http://bevo2.bus.utexas.edu/faculty/ed.summers>. In Summers’ data, younger attorneys and attorneys in larger firms were both more favorable to forming MDP firms and likelier to believe that MDPs would become a viable market force. Neither the Summers nor the ABA data can be considered generalizable, unfortunately. The ABA studies were focus groups putting forth only exploratory and suggestive findings. Summers’ study, while mailed out to a random sample of the Texas State Bar, had only a 20% return rate, too low to allow for statistical inference. *Id.* at 10. Nonetheless, the convergence of these results is an interesting demographic correlate for later exploration.

the relative silence of lawyers in these practice settings is not a matter of significant concern.

Firm size among private practitioners in the study is fairly well distributed. Of the 66 attorneys in private practice, 7, or 11%, are in solo practice; 16, or 24%, are in firms with 2-5 lawyers; 13, or 20%, are in firms with 6-15 lawyers; 8, or 12%, are in firms with 16-40 lawyers; and 22, or 33%, are in firms with over 40 lawyers. The Missouri Bar Economic Survey permits some comparison to this distribution: in 1998, 30% of lawyers were engaged in solo practice, 20% in firms with 2-4 lawyers, 15% in firms with 5-9 lawyers, 11% in firms with 11-19 lawyers, 5% in firms of 20-29 lawyers, 2.5% in firms of 30-49, and 16.5% in firms over 50.⁴⁴ Solo practitioners are obviously underrepresented among the subjects in the current study. Lawyers in large firms are overrepresented, while intermediate firm sizes are proportionally represented.⁴⁵

C. Demographics of Types

Sometimes a Q-study will suggest that a particular demographic trait is tied to a particular viewpoint. This can be a useful theory for later testing, but proves little, because we do not have a representative sample of people with that demographic trait. Here we look at how the demographic traits we measure relate to the three viewpoints that we identify. Gender provides an intriguing look at how this works. Table 3 (below) shows that male attorneys show all three viewpoints, while female attorneys show only two of the three, not loading on Type II. This does not mean that female attorneys do not share in Type II's considerations or concerns, but simply that we did not find a female attorney who did so. If we had continued the Q-sort, one or more women lawyers of Type II might have appeared, but we cannot say for sure. A random sampling of women lawyers participating in a Q-sort might bring to light many women who share in Type II's views. All that we can say given the current data is that only male attorneys showed a Type II viewpoint.

44. Missouri Bar Economic Survey, *supra* note 41.

45. It should be noted that 24% of those performing this Q-Sort were private practitioners at law firms with 2-5 lawyers, while 20% practice in firms with 6-15 attorneys, and 33% work in firms of 40 or more attorneys.

Table 3. Gender and Distribution of Attorney Viewpoint Types

Gender:	Type I:	Type II:	Type III:	Unassigned:	Totals:
Male:	28	8	14	11	61
Female:	8	0	7	1	16
Totals:	36	8	21	12	77

Table 4 (below) shows the distribution of practice settings among the viewpoint types. Attorneys from firms of all sizes think in terms of the viewpoints of Type I and III, but only two firm sizes are represented in the viewpoint of Type II. If this were a random sample, we might be drawn to the idea that Type II is the thinking of lawyers in very large firms and of lawyers in business and "other" practices, with a few exceptions (the one lawyer in a firm with 2-5 lawyers). But such a conclusion is unwarranted because our lawyers are not selected randomly.

Table 4. Practice Settings and Distribution of Attorney Viewpoint Types

Private Firm Size:						Settings Other than Private Practice:			
Type:	Solo Atty	2-5 Attys	6-15 Attys	16-40 Attys	> 40 Attys	Gov't	Bus.	Other	Totals
I:	3	9	10	3	8	2	0	1	36
II:	0	1	0	0	3	0	1	3	8
III:	2	2	1	4	9	1	2	0	21
Untyped	2	4	2	1	2	0	0	1	12
Totals:	7	16	13	8	22	3	3	5	77

Instead, we can suggest that Type II might be somewhat unusual among attorney viewpoints in several ways:

- Type II has the fewest attorneys, with only 8; more attorneys (12) were unassignable to types than appeared on this type;
- Type II is the negative pole of Type I, which had the largest number of attorneys (36), so without reference to specific opinions in this viewpoint, we know already that it is a contrarian outlook;
- Type II attracted no women lawyers in our study. The significance of this fact may merit some additional attention in later studies; and

- Type II is bunched into larger firms and non-private practice, which suggests the possibility of segmentation—i.e., that certain practice settings are more likely than others to nurture this outlook.

Despite these concerns about Type II (which can only be resolved by performing further studies), Types I and III cause no concerns, since they are well distributed among the practice settings and genders. We can, thus, proceed to analysis of the three outlooks on MDP with relatively good assurance that we have gotten a good subset of attorneys, representing both genders and varied types of work settings, to grapple with the issues underlying MDP.

1. Type I: Ethics Conservatives

The single largest grouping of respondents, those in Type I, can most accurately be termed “Ethics Conservatives” from the key premise from which most of their ideas about MDP derive. This large group of attorneys (N=36) is most concerned with ethical aspects of the legal profession’s core values: avoiding conflicts of interest, maintaining client confidences and confidentiality, and derivative procedures for safeguarding these important values. In the top two scoring categories of the Q-sort, nearly half of these participants’ statements bear on this theme; in the top three scoring categories, more than a third embody it.⁴⁶ Legal ethics is the anchor of this group’s thinking. Table 5 shows how the typical Ethics Conservative would prioritize concepts related to MDP. This table indicates that the classic Ethics Conservative would strongly agree with statements #20, #28 and #26, while strongly disagreeing with statements #47, #49 and #11.

46. The top two scoring categories (+5, -5, +4, and -4) contain 14 slots for statements (3 each for the 5 values, 4 each for the 4 values); of these 14 slots, 6, or 43%, are filled by legal ethics statements in Type I’s typical sort. If we extend the breakdown to the +3 and -3 scoring categories, each of which contains 5 slots, we get a total of 24 slots, of which 9 are filled by legal ethics statements, for a percentage of 37.5%.

Table 5. Typal Array of a Classic Ethics Conservative

Scores:										
-5	-4	-3	-2	-1	0	+1	+2	+3	+4	+5
47	39	14	32	35	21	37	25	48	3	26
49	42	4	44	27	40	54	8	5	41	28
11	24	2	52	45	19	53	10	18	16	20
	22	50	29	1	15	31	33	55	36	
		34	43	12	51	46	38	13		
			6	9	30	7	23			
					17					

a. Legal Ethics

First, Ethics Conservatives strongly agree that the main reason for preserving current rules is the importance of core values (#26, +5):

The principal arguments for retaining such prohibitions relate to concerns about the profession's core values, specifically professional independence of judgment, the protection of confidential client information, and loyalty to the client through the avoidance of conflicts of interest.

It is important for the client to keep other professionals in practice groups separated from the attorneys representing the client. This separation protects the client's interest by providing a check and balance (#28, +5):

Currently, if you have an attorney and an accountant who are independent of each other, the client has the advantage of having two separate professionals, each looking over the other's shoulder. You are going to lose that by putting them both in one firm. Their interest will be the same and you've lost the objectivity that comes from having two independent professionals.

The chief problem posed by MDP is, therefore, not its economic or business aspect, but rather its ramifications for confidentiality (#3, +4):

There may not be a business problem with MDP but there is a confidentiality problem. It gets back to the hard ethical questions that

govern lawyers but not accountants or any of the folks that we're talking about combining with.

A particular difficulty with an MDP firm is the way conflicts of interest might mushroom for lawyers (#41, +4):

For the purposes of a conflict of interest analysis, the lawyer would have to treat each and every client of the MDP as his/her own client.

A further concern is that MDP might put non-lawyers in charge of the ethical decisions that lawyers alone should be making (#16, +4):

If lawyers would be in the minority in an MDP, conflict of interest as lawyers see it could be overruled.

Ethics Conservatives disagree that experience resolving conflicts in large law firms could serve as a model for handling conflict of interest in MDP firms (#24, -4):

If conflict of interest can be resolved in a large law firm, it can be resolved in a merged accountancy-law firm.

They further dispute that conflict of interest problems can be resolved through disclosures to clients and client waivers (#14, -3):

The key way to avoid conflict of interest is to make a disclosure to the client: does the client want the relationship to continue despite this?

Moreover, they think that the existence of a conflict of interest itself is more significant than is the severity of the conflict (#2, -3):

Conflict of interest is based not just on the existence of a conflict but on the volume of that interest.

Disagreement with this statement seems based on its premise that existence of a conflict of interest might be discounted if it is minor, or moot; Ethics Conservatives may not countenance any watering down of strict ethics, nor any lawyer action/decision not upholding a narrow interpretation of the rules. Ethics Conservatives are also quick to sound the alarm on the difficulties the non-lawyer members of an MDP might face in continuing to adhere to their profession's ethical standards within an MDP. Even where attorneys might not transgress the legal profession's ethical norms, they are concerned that attorneys going all out for their clients would present ethical quandaries for the non-lawyer members of the MDP (#18, +3):

If an MDP formed with a counselor and a lawyer, the counselor could get referrals from the in-house lawyer. But the problem is that in a divorce case the lawyer would want the mental health person to support one side—the firm's position. This would compromise the professional ethics of the mental health professional.

Here the subjects seem to be extending their concern with ethics beyond the individual attorney-client relationship to cover actions attorneys might take that would damage that same client's relationship to other professionals. In other words, to avoid temptation for professionals and trouble for the client, Ethics Conservatives want all professions to remain independent of one another. Embedded in concerns about ethics are some derivative themes; Ethics Conservatives also focus on themes hinting of ethical standards without dwelling primarily on them. One of these is concern for the client, a subtext in many statements on core values.⁴⁷ In these statements lawyers worry about the client being deceived or suffering a disadvantage from an initial lack of objectivity in the handling of a conflict of interest.⁴⁸ Ethics Conservatives also bring in the client-centered issue of one-stop shopping, which relates indirectly to MDP (having frequently been cited as a rationale for adoption of MDPs). But they roundly dismiss the one-stop shopping issue (#20, +5):

The idea that MDP is motivated by the desire to promote one-stop shopping is just smoke.

This is not from disdain for consumers or consumerism; rather, they argue that one-stop shopping would manipulate consumers rather than benefit them (#8, +3):

One-stop shopping pressures the consumer. Suddenly there's a referral; one's hand is forced a little.

They further deny that MDP would provide economies of scale for the middle class (#42, -4):

MDP could bring into existence some economies of scale in legal services that would help middle class people.

47. See, for example, the -3 response to statement #14. *Supra* p. 643 (discussing the score and complete statement given).

48. In addition to statement #14, see also the discussion of statements #28 and #41. *Supra* pp. 642, 643.

b. Maintaining Control by Lawyers

Another concern related to core values is lawyers' desire to maintain control. Fear of losing control is a subtext in #16 (+4), which bears more directly on core values. Ethics Conservatives think that lawyers should be concerned about becoming a minority in firms and, therefore, becoming unable to exercise professional judgment regarding conflicts of interest.⁴⁹ But even if lawyers maintain voting control of a law firm, it would be unacceptable for non-lawyers to own the firm (#11, -5):

I wouldn't have a problem with a corporation of attorneys directed by and officered by attorneys being owned in a nonvoting capacity by a CPA firm.⁵⁰

c. Economic Concerns

In general, for Ethics Conservatives, concerns about macro-economic trends, the future of the profession, where law firms are going, and the accountancy Big Five⁵¹ play second fiddle to their central focus on ethics. Interestingly, however, they do focus on legal careers, in which they do not want accountants or MDPs involved. They show strongest possible disagreement with propositions suggesting that adopting MDP or dealing with the profession of accountancy would be good for law careers or for creation of more work for lawyers (#47 and #49, both -5):

MDP contains no pitfalls for lawyers; it would enhance most lawyers' careers. (47)

49. These attorneys might find reassurance in Edward L. Summers' 1999 survey of CPA and attorney attitudes towards MDP. *See* Summers, *supra* note 43, at 7. His results showed that both CPAs and attorneys believed legal services would take the lead over accounting services in MDPs and, furthermore, that CPAs believed this more strongly than did attorneys. *Id.* As Summers notes, his return rate was not high enough to permit generalization, but the trend he reports suggests that attorneys might not need to fear losing control in MDPs. *Id.*

50. Moreover, control over the boundaries of the profession should not be sacrificed by sharing lawyers' privilege with other professionals, not even on a case-by-case basis (#1, 0):

Staff in law firms now share in the lawyer's privilege; other professionals in the law firm could come to share in the privilege also. For instance, an accountant and lawyer who work together on a client's problems should both enjoy privilege.

And meanwhile, within the profession, internal controls on conflict of interest are important to maintain (#31, +1):

Attorneys from the same firm, even a very large firm, even unacquainted, can meet and pool information; therein lays [sic] the conflict of interest and the reason for imputation.

51. The "Big Five" accounting and financial services firms are Arthur Andersen, Deloitte & Touche, Ernst & Young, KPMG and PricewaterhouseCoopers.

With accountancy firms involved in the law, there would be more jobs for lawyers. (49)

Aside from these two statements, they put the economic facets of law practice on the back burner, giving lower scores to such statements. That they entertain some fear of economic trends is evident; MDP is scary, because it would promote oligopoly in the law (#48, +3):

If MDP arrives, the big will get bigger, while small and middle sized specialized accountants and attorneys will get squeezed out.

Not even niche practices such as family law would be safe (#50, -3):

Family lawyers are in this little boutique area where people hire them because they have experience with the judges and custody issues. MDP won't encroach on this type of practice.

Despite accountants' experience and success,⁵² the assets they would bring to any law firm they might acquire are not worthwhile, not beneficial, and not welcome (#4, -3):

One of the things that the Big Five bring to the table is an enormous amount of capital. They can hire additional staff, and they can provide economies of scale and efficiency. There's some benefit to this.

Finally, MDP holds no advantages; neither small nor large firms would benefit if it is permitted (#52, -2):

There would be advantages for a small firm to be able to team up with someone else and be able to provide more services to its clients. But a large firm would also like MDP because large firms are always trying to add practice areas to service their clients.

52. Law firms are perceived as weaker than accountancy firms and thus liable to lose out in competition (#23, +2):

If MDP is permitted, law firms would be unlikely to buy out accountancy firms. The law firms don't have enough money, and the legal mindset would also prevent it.

CPAs are tougher and more experienced in this competition (#38, +2):

The consolidators in the CPA profession are piranhas. They come in and gobble up. They want you to work for a pittance and tell you what to do.

d. Regulation Issues

Ethics Conservatives are skeptical that regulation could safeguard lawyers from these dangers. First, accountants are not going to accept regulation willingly (#39, -4):

In acquiring law firms, accountants would embrace regulation. Accountants are always subject to regulation and are used to it; AICPA rules are very strict.

Secondly, the ABA's proposal for regulation of MDPs is inadequate (#33, +2):

The ABA proposal for regulating MDPs is just a sop put in to make MDP more palatable.

More specifically, regulation would have to protect lawyers in an MDP against unethical orders from non-lawyer superiors (#55, +3):

The MDP regulatory body would need to protect the lawyer from his or her superiors; that lawyer would need Supreme Court backup if there were any interference with attorney judgment.

But would regulation do so? Would it work? This is problematic.⁵³

e. View of Change

These attorneys are conservative in their attitude towards change as well as in their thinking on professional ethics: they prefer the status quo for reasons unrelated to ethics. They believe the MDP movement can be stemmed (#36, +4):

If enough people stand up and say that MDP is not inevitable, it won't be inevitable.

Hence, MDP is not inevitable (#34, -3):

This is going to happen. Whether it's going to be this year, next year, or five years from

53. When considering possible sanctions, these attorneys seem to disagree that the sanction should apply to the MDP as a unit, rather than to the attorney who works within it (#32, -2):

If the members of the MDP deliver legal services and violate one of the rules, there would be a sanction—such as the MDP losing the right to provide legal services.

Why would these subjects not agree to apply the sanction to the firm as a unit? From statement #55, we know they want protection by regulation from non-lawyer bosses. Yet their rating of #32 suggests that if they want the support of a regulatory agency in ringing the bell on violations by an MDP type of firm, they do not believe they would get it. The wording of #32 uses the conditional form of the verb: "... there would be a sanction ...". Ethics Conservatives may be skeptical that sanctions would be applied, and much of the history of regulatory policy would support such a cynical reading of the prospect for enforcement of such rules against large and influential entities.

now. It's just a question of when will Missouri change its rules somewhat to allow MDP.

Moreover, they see no need for a change (#5, +3):

I don't think the system is broken. I don't really think it needs that big of a fix. I think all the disciplines need to work together. I'm not sure we all have to work in the same office together.

The system of loose alliances and cross-referrals among professional firms works better anyway⁵⁴ (#13, +3):

A system of loose alliances among professional firms is a lot more comfortable and less constraining than MDPs.

Since there is no gain in value in a combination or MDP firm, Ethics Conservatives deny the value of the one MDP explicitly mentioned in the Q-sort: a lawyer, an accountant, and a financial planner would not make a viable professional team (#22, -4):

A partnership with a lawyer, an accountant, and a financial planner would work well.

It is possible, of course, that the articulated concern about the ethical ramifications of an MDP is not, in fact, the only reason that members of this group oppose the idea. They might be saying that they are trying to protect the legal profession's "core values" when they are also motivated by a disinclination to disrupt the status quo.

2. Type II: Eclectic MDP Enthusiasts

This grouping is eclectic in that it mixes ideas from many different facets of the overall topic of MDP, and it is as supportive of MDP as Type I is negative. Recall that these two types hold exactly opposite views, and that the demographics of this type suggest a contrarian posture on the issues of MDP. Table 6 displays the typical array, or abstracted classic Q-sort, that reflects the views of the archetypal Eclectic MDP Enthusiast.

54. Furthermore, they do not disagree that it is possible to serve clients now through such means as sharing offices with other professionals (#46, +1):

MDP is not a rules change motivated by the desire to provide better service to clients. It is possible to do this now by sharing offices.

Table 6. Typal Array of the Classic Eclectic MDP Enthusiast

Scores:										
-5	-4	-3	-2	-1	0	+1	+2	+3	+4	+5
26	16	9	17	18	43	35	6	52	39	34
3	26	21	55	2	37	32	47	11	19	24
20	8	46	48	40	7	45	14	22	1	4
	38	41	10	33	25	50	53	42	29	
		5	36	54	27	44	49	12		
			13	51	15	23	30			
					31					

a. View of Accountants

Among the ideas setting them apart from Ethics Conservatives is admiration for accountants (#4, +5):

One of the things that the Big Five bring to the table is an enormous amount of capital. They can hire additional staff, and they can provide economies of scale and efficiency. There's some benefit to this.

They disagree with the negative characterization of accountants (#38, -4):

The consolidators in the CPA profession are piranhas. They come in and gobble up. They want you to work for a pittance and tell you what to do.

These lawyers have great respect for market forces, are outward looking in various other ways and probably view market consolidators positively. They also do not object to the idea of allowing non-voting accountants to direct the operation of a law firm (#11, +3):

I wouldn't have a problem with a corporation of attorneys directed by and officered by attorneys being owned in a non-voting capacity by a CPA firm.

Of course, since they support MDP, they also probably wouldn't mind a law firm with accountants in a voting capacity.

b. Regulation Issues

Another issue integrated into their view is regulation. Besides their favorable view of accountants' successful market activity, they also

consider the accountancy profession highly regulated and, thus, a good candidate for regulation under MDP (#39, +4):

In acquiring law firms, accountants would embrace regulation. Accountants are always subject to regulation and are used to it; AICPA rules are very strict.

In several other statements, these attorneys show that they believe regulation of MDPs could work.⁵⁵ Contrastingly, they show disdain for the legal profession's current lack of enforcement of its prohibitions on UPL (#29, +4):

The Big Five accountancy firms have been using lawyers for years; we have Unauthorized Practice of Law (UPL) now. We ought to come out into the open with it and let it be regulated.

Since they think regulation is functioning poorly in the law and well in accountancy, and they admire the profession of accountancy and favor MDP, these lawyers believe regulation of MDP would result in more regulation of lawyers practicing within accounting firms than is currently the case.

c. Legal Ethics

Eclectic MDP Enthusiasts are concerned with the core values of the legal profession, but less so than Ethics Conservatives.⁵⁶ Primarily, this group shows a broad interpretation of core values, in contrast to the Ethics Conservatives' strict interpretation. Thus, MDP Enthusiasts

55. With their view that regulation can work, and that it would work under MDP, they do not accept cavalier dismissal of the ABA's regulatory plan (#33, -1):

The ABA proposal for regulating MDPs is just a sop put in to make MDP more palatable.

Since regulation can and does work, MDPs would have to keep shipshape, or face the adverse consequences (#32, +1):

If the members of the MDP deliver legal services and violate one of the rules, there would be a sanction—such as the MDP losing the right to provide legal services.

Because MDP regulation would work, lawyers would not need protection if they worked for an MDP, so MDP Enthusiasts exempt the regulator from the obligation to be a guardian angel (#55, -2):

The MDP regulatory body would need to protect the lawyer from his or her superiors; that lawyer would need Supreme Court backup if there were any interference with attorney judgment.

56. Eclectic MDP Enthusiasts had 7% fewer statements on core values among their top two scoring categories than did Ethics Conservatives and about 9% fewer statements on core values in their top three scoring categories than did Ethics Conservatives.

most strongly disagree that core values require the profession to keep its prohibitions (#26, -4):

The principal arguments for retaining such prohibitions relate to concerns about the profession's core values, specifically professional independence of judgment, the protection of confidential client information, and loyalty to the client through the avoidance of conflicts of interest.

On this point, MDP Enthusiasts are almost diametrically opposed to conservatives, who assign this statement a +5.⁵⁷ We see clearly the bipolar features of these two factor types in this and in other contrasts. This group also denies that MDP poses a confidentiality problem (#3, -5):

There may not be a business problem with MDP but there is a confidentiality problem. It gets back to the hard ethical questions that govern lawyers but not accountants or any of the folks that we're talking about combining with.

Furthermore, it defines conflict of interest narrowly, giving broad scope to ethics calls involving conflict of interest (#24, +5):

If conflict of interest can be resolved in a large law firm, it can be resolved in a merged accountancy-law firm.

Going even further, MDP Enthusiasts deny that the legal profession's definition of conflicts of interest would be in danger in an MDP firm, even if the lawyers were outnumbered (#16, -4):

If lawyers would be in the minority in an MDP, conflict of interest as lawyers see it could be overruled.

They use a more liberal working definition of conflict of interest, in the sense that they would more narrowly define situations that present impermissible conflicts of interest. Thus, they vehemently disagree with the following statement (#41, -3):

For the purposes of a conflict of interest analysis, the lawyer would have to treat each and every client of the MDP as his/her own client.

57. The statistical probability of this outcome happening by chance is less than one in a million. Many scoring differences in this study are of similar improbability.

Moreover, they deny that professional mergers will necessarily cause loss of objectivity (#28, -5):

Currently, if you have an attorney and an accountant who are independent of each other, the client has the advantage of having two separate professionals, each looking over the other's shoulder. You are going to lose that by putting them both in one firm. Their interest will be the same and you've lost the objectivity that comes from having two independent professionals.

With their respect for accountants and their broad understanding of core values, it is not surprising that they believe that the attorney-client privilege can be extended to protect legal advice discussed between the client and professionals other than licensed attorneys⁵⁸ (#1, +4):

Staff in law firms now share in the lawyer's privilege; other professionals in the law firm could come to share in the privilege also. For instance, an accountant and lawyer who work together on a client's problems should both enjoy privilege.

d. Consumer Issues

Another topic is the role of the consumer of legal services. Eclectic MDP Enthusiasts are outward-looking here, too; they strongly support the notion of one-stop shopping and strongly insist that this is an important feature of a client-centered system of delivering legal services (#20, -5):

The idea that MDP is motivated by the desire to promote one-stop shopping is just smoke.

Further, they deny that one-stop service shopping contains an element of coercion for consumers (#8, -4):

One-stop shopping pressures the consumer. Suddenly there's a referral; one's hand is forced a little.

58. Also, they do not see a lawyer putting pressure on a fellow professional as violating the ethics of that particular field [in this instance psychology] (#18, -1):

If an MDP formed with a counselor and a lawyer, the counselor could get referrals from the in-house lawyer. But the problem is that in a divorce case the lawyer would want the mental health person to support one side - the firm's position. This would compromise the professional ethics of the mental health professional.

They also defend the notion of MDP as inspired by the desire to serve clients better, disagreeing with a statement to the contrary (#46, -3):

MDP is not a rules change motivated by the desire to provide better service to clients. It is possible to do this now by sharing offices.

In the following statement, they seem to believe that the public needs safeguards, rather than thinking that the legal profession lacks the ability to develop safeguards (#9, -3):

When firms get huge, the public needs safeguards, but the legal profession is very good at developing these safeguards.

They also deny, although less strenuously, another assertion regarding one-stop shopping (#21, -3):

Most of the larger businesses have the opposite of one-stop shopping: instead of wanting all services from one provider, they are splitting up their legal work among several law firms.

This response indicates a disagreement regarding the prevalence of the need for one-stop shopping, which may be illuminated by further empirical investigation. These were the only statements on one-stop shopping in the Q-sort; by inadvertence, each was phrased negatively. Eclectic MDP Enthusiasts took issue with each statement; they are "sold" on the idea of one-stop shopping.

e. Economic Concerns

The economic benefits of MDP are an important theme for MDP Enthusiasts whose interest seems entrepreneurial and marketing-oriented. Thus, members of this group felt that a small firm could benefit if MDPs were allowed (#22, +3):

A partnership with a lawyer, an accountant, and a financial planner would work well.

But a large firm could also reap benefits from MDP if it allied with or were absorbed by a particularly well-known company (#19, +4):

Publicly-held clients would accept consolidated service providers easily because they would feel comfortable getting service from a provider with a well-known trademark name.

All kinds of law firms would realize benefits (#52, +3):

There would be advantages for a small firm to be able to team up with someone else and be able to provide more services to its clients.

But a large firm would also like MDP because large firms are always trying to add practice areas to service their clients.

The consolidations, acquisitions and buyouts necessary to accomplish this economic regrouping are accepted with equanimity (#11, +3):

I wouldn't have a problem with a corporation of attorneys directed by and officered by attorneys being owned in a non-voting capacity by a CPA firm.

The benefits would spread beyond the legal profession to help the potential clients in under-served populations (#42, +3):

MDP could bring into existence some economies of scale in legal services that would help middle class people.

One specific way the general population could benefit is if it were made easier to make out a will (#6, +2):

By most estimates more than half the adults in the United States don't have a will. What if an individual's financial advisor could pair with a lawyer to provide this service? That individual could get advice on how to invest for retirement and then step down the hall to work with a lawyer on a will.

Change will come about anyway and is inevitable. In other words, this group feels there is no resisting this change, no matter how determined lawyers might be to prevent it (#36, -2):

If enough people stand up and say that MDP is not inevitable, it won't be inevitable.

In a number of other ways these subjects see the changes they believe are happening as acceptable, and non-threatening.⁵⁹ Given their good

59. Creating new markets and generating new business would boost life and work for lawyers (#47, +2):

MDP contains no pitfalls for lawyers; it would enhance most lawyers' careers.

Not just better working conditions, but better employment opportunities would be available (#49, +2):

With accountancy firms involved in the law, there would be more jobs for lawyers.

Some statements portrayed changes as threatening, but adherents of this view dismiss such doomsaying (#48, -2):

If MDP arrives, the big will get bigger, while small and middle sized specialized accountants and attorneys will get squeezed out.

Trial lawyers would not be isolated under MDP (#40, -1):

opinion of the potential benefits of MDP, these people actively favor adoption of MDP, and think it likely as well (#34, +5):

This is going to happen. Whether it's going to be this year, next year, or five years from now. It's just a question of when will Missouri change its rules somewhat to allow MDP.

The members of this group tend to hold a series of iconoclastic views. They focus more on the business of delivering legal services to clients and are less concerned than Ethics Conservatives about the potential threat to the legal profession's core values that MDPs may present.

3. Type III: Liberals

Whereas Types I and II are inversely related to each other (i.e., approximately reversed in their thinking), Type III's approach to MDP is nearly unrelated to Type I's outlook.⁶⁰ In practical terms, this means that Type III's viewpoint sets out on a different course than Type I's typical array. Type III represents a viewpoint completely distinct from that shared by the members of the Type I group. In the language of factor analysis, Type III would be considered "orthogonal" to, or "independent" of, Type I. Table 7 gives the typical array, or archetypal Q-sort, which would reflect the views of a classic Liberal.

Adoption of MDP will make boutiques out of trial lawyers; it will become like the division in the United Kingdom between barristers and solicitors.

But some practice areas, such as family law, might be more sheltered from change (#50, +1):

Family lawyers are in this little boutique area where people hire them because they have experience with the judges and custody issues. MDP won't encroach on this type of practice.

However, not all changes would be rosy; without reference to any MDP firm, this view does not disagree with the difficulties lawyers can encounter working for non-lawyers (#30, +2)

When a member of the bar works for a non-law firm, you're not an attorney, you're an employee with legal skills.

They disagree with this statement contending nothing is wrong with the status quo (#5, -3):

I don't think the system is broken. I don't really think it needs that big of a fix. I think all the disciplines need to work together. I'm not sure we all have to work in the same office together.

60. The correlation coefficient between Types III and I is -.17, while that between Types III and II is +.40. But Types I and II have a high correlation of -.77, indicating their degree of polarization.

Table 7. Typal Array of the Classic Liberal

Scores:										
-5	-4	-3	-2	-1	0	+1	+2	+3	+4	+5
33	36	11	51	23	10	7	24	3	12	26
47	20	49	9	27	13	35	41	4	1	14
2	30	16	37	45	48	25	22	6	52	55
	38	39	50	54	44	42	32	19	34	
		43	46	31	5	18	53	29		
			8	15	17	40	21			
					28					

a. Legal Ethics

The Liberal view sets out from the same premise of core values as do Ethics Conservatives (#26, +5):

The principal arguments for retaining such prohibitions relate to concerns about the profession's core values, specifically professional independence of judgment, the protection of confidential client information, and loyalty to the client through the avoidance of conflicts of interest.

Then, those holding the Liberal view take a somewhat different stand regarding conflicts of interest. As they see it, the key question is whether or not a conflict exists, rather than the scope of that conflict (#2, -5):

Conflict of interest is based not just on the existence of a conflict but on the volume of that interest.

This view maintains that tough stand in considering conflict of interest problems in potential MDPs (#41, +2):

For the purposes of a conflict of interest analysis, the lawyer would have to treat each and every client of the MDP as his/her own client.

At this point, Liberals diverge and define core values very differently by holding that even if a conflict of interest exists, it may be avoidable or waivable (#14, +5):

The key way to avoid conflict of interest is to make a disclosure to the client: does the client want the relationship to continue despite this?

This view is in sharp contrast to Ethics Conservatives (who assign a -3 to #14). This difference of opinion over whether or not disclosure and client waiver are ethically sufficient in handling conflict of interest problems may be the crux of one element of the MDP controversy. Liberals extrapolate from a general view that since conflicts of interest can be and are habitually resolved, conflicts of interest could be resolved easily in an MDP (#24, +2):

If conflict of interest can be resolved in a large law firm, it can be resolved in a merged accountancy-law firm.

Here, they use the large law firm as a model. Moreover, in contrast to Ethics Conservatives, Liberals would be willing to extend the protection of the attorney-client privilege to clients' communications with members of other professions (#1, +4):

Staff in law firms now share in the lawyer's privilege; other professionals in the law firm could come to share in the privilege also. For instance, an accountant and lawyer who work together on a client's problems should both enjoy privilege.

With their positive stance on collaboration among professionals, Liberals do not mind the prospect of other professionals at the helm of their firms, and thus do not see how this would interfere with attorneys' calls on conflicts of interest problems (#16, -3):

If lawyers would be in the minority in an MDP, conflict of interest as lawyers see it could be overruled.

Like Ethics Conservatives, Liberals are quite pre-occupied with core values, conflicts of interests and maintenance of professional ethics—but they take different positions. Although they depart from the same first premises as Ethics Conservatives, they then narrow their definition of conflict of interest by transplanting a liberal concept of client waivers and, thereby, proceed to a permissive view.

b. View of Accountants

In particular, Liberals see accountants completely differently than do those who oppose MDPs. In contrast to Ethics Conservatives' agreement with statement #38, Liberals strongly reject the negative characterization of CPAs as consolidators (#38, -4):

The consolidators in the CPA profession are piranhas. They come in and gobble up. They

want you to work for a pittance and tell you what to do.

Liberals, however, are not completely unwary of Big Five accounting firms. For example, they acknowledge the existence of UPL in the Big Five, and would like to have better regulation of lawyers now practicing within CPA firms, a view in line with their general commitment to openness (#29, +3):

The Big Five accountancy firms have been using lawyers for years; we have Unauthorized Practice of Law (UPL) now. We ought to come out into the open with it and let it be regulated.

Nor do they see MDP as a solution for excess capacity in the legal labor market (#49, -3):

With accountancy firms involved in the law, there would be more jobs for lawyers.

Indeed, they are slightly suspicious that accountants would be less than fully willing to submit to regulation,⁶¹ hence their disagreement with this proposition (#39, -2):

In acquiring law firms, accountants would embrace regulation. Accountants are always subject to regulation and are used to it; AICPA rules are very strict.

Significantly, despite their realistic reservations, Liberals would be willing to share the lawyer's privilege with accountants and other professionals (#1, +4). They view the legal profession as able to hold its own with other professions; they do not think that lawyers would be transformed into minions or reduced to menial ranks (#30, -4):

When a member of the bar works for a non-law firm, you're not an attorney, you're an employee with legal skills.

This may be tied to Liberals' rejection of the caricature of CPA consolidators as "Scrooges" bent on reducing lawyers' incomes and

61. Collaboration with other professionals is not ethically distasteful; liberals are indifferent to whether cooperative efforts among professionals would jeopardize professional objectivity (#28, 0):

Currently, if you have an attorney and an accountant who are independent of each other, the client has the advantage of having two separate professionals, each looking over the other's shoulder. You are going to lose that by putting them both in one firm. Their interest will be the same and you've lost the objectivity that comes from having two independent professionals.

forcing them to do as they are told (#38, -4). For them, lawyers are strong and can compete openly with the other professions without need of barricades or fences.

c. Consumer Issues

One-stop shopping, the concept of the service superstore, has only a minor role in Liberals' views. They see one-stop shopping as a true and sincere motivation behind the MDP movement, and deny the argument that it is a manipulative public relations ruse (#20, -4):

The idea that MDP is motivated by the desire to promote one-stop shopping is just smoke.

Consistent with their support for professionals working together, Liberals are indifferent to the idea that service superstores coerce the client (#8, -2):

One-stop shopping pressures the consumer. Suddenly there's a referral; one's hand is forced a little.

This grouping is less concerned about other statements involving consumer ideology.⁶²

62. But another statement that might have become prominent in liberals' thinking on one-stop shopping fades instead into only the mildest agreement (within the zone of indifference) (#44, 0):

Often, clients must bounce from office to office, and those professionals in the various disciplines have to adjust and readjust to members of the team the client has already selected.

Liberals have possibly not, as lawyers, had to face the adjustments and readjustments to which this proposition attests; conceivably, lawyers are dominant when clients do rounds of professionals and, therefore, adjust less than other professionals (e.g., accountants, financial planners). It is also possible that Liberals are more accustomed to dealing with business clients than with individual clients, so that they are less exposed to clients who might be complaining about the roundrobin visits back and forth. But might Liberals then be more familiar with the problems of pooling professional services in transactional law? The managing partner of a major firm (in a metropolitan area) contributed the next comment. Its subtext is that business clients don't necessarily want one-stop shopping and have indeed now advanced beyond this stage. But liberals are not attuned to this market development (#21, +2):

Most of the larger businesses have the opposite of one-stop shopping: instead of wanting all services from one provider, they are splitting up their legal work among several law firms.

Conceivably the difficulty of marketing legal services dawns most on managing partners, less on the partners and associates providing client services.

d. View of Change

Liberals view MDP as inevitable, but want to control the process and time sequence of phasing in rules changes leading to the formation of MDP (#12, +4):

Big groups with money can push MDP and nobody's going to have the money to really keep it from happening. The real question is: If it's going to happen, can it be done in a controlled way that will lead to the best outcome for the consumer as well as being realistic for the professionals?

Liberals' attitude toward change⁶³ is progressive: they embrace change and expect MDP to win out sooner or later (#34, +4):

This is going to happen. Whether it's going to be this year, next year, or five years from now. It's just a question of when will Missouri change its rules somewhat to allow MDP.

They dismiss the argument that the Bar can hold out against MDP (#36, -4):

If enough people stand up and say that MDP is not inevitable, it won't be inevitable.

Liberals are indifferent to one statement that gently defends the status quo (#5, 0):

I don't think the system is broken. I don't really think it needs that big of a fix. I think all the disciplines need to work together. I'm not sure we all have to work in the same office together.

They are anxious to reposition law practice, and all sizes of law firms, to work the market for legal services better (#52, +4):

There would be advantages for a small firm to be able to team up with someone else and be able to provide more services to its clients. But a large firm would also like MDP because

63. In the back of their minds, Liberals view the status quo as a sort of "restraint of trade," a set of guild rules limiting professional activity (#35, +1):

I don't think it's a question of whether you need to fix something. I think the question is, do you need to inhibit something? Do you need to restrict something? We're talking about a restraint on activities and whether the restraint should be there or not.

large firms are always trying to add practice areas to service their clients.

For larger firms, MDP would help by permitting repackaging law firms under renowned brand names guaranteeing quality (#19, +3):

Publicly-held clients would accept consolidated service providers easily because they would feel comfortable getting service from a provider with a well-known trademark name.

Meanwhile, smaller firms⁶⁴ would do better if more estate practice could be generated (#6, +3):

By most estimates more than half the adults in the United States don't have a will. What if an individual's financial advisor could pair with a lawyer to provide this service? That individual could get advice on how to invest for retirement and then step down the hall to work with a lawyer on a will.

The accountants would bring to the practice of law ingredients helpful to lawyers—cash and business acumen (#4, +3):

One of the things that the Big Five bring to the table is an enormous amount of capital. They can hire additional staff, and they can provide economies of scale and efficiency. There's some benefit to this.

With their overall orientation towards marketing of legal services and advancing towards new ways of delivering those services, Liberals are concerned with serving clients—and they see client service as more than just convenient office location. Thus, they deny this next assertion (#46, -2):

MDP is not a rules change motivated by the desire to provide better service to clients. It is possible to do this now by sharing offices.

However, Liberals do not believe the road ahead is completely easy. Instead, they feel that MDP presents problems for lawyers (#47, -5):

MDP contains no pitfalls for lawyers; it would enhance most lawyers' careers.

64. For smaller firms, (#22, +2):

A partnership with a lawyer, an accountant, and a financial planner would work well.

e. Regulation Issues

The issue of professional regulation also concerns Liberals, who defend the regulation proposal by the ABA's MDP Commission, strenuously denying that it is only a ploy to put MDP over on the profession (#33, -5):

The ABA proposal for regulating MDPs is just a sop put in to make MDP more palatable.

They would want the MDP regulator to have power to reach within an MDP firm to protect lawyers who might face overbearing bosses lacking respect for legal ethics (#55, +5):

The MDP regulatory body would need to protect the lawyer from his or her superiors; that lawyer would need Supreme Court backup if there were any interference with attorney judgment.

Furthermore, regulation of MDPs should be tough enough to disqualify any MDP found not playing by the rules (#32, +2):

If the members of the MDP deliver legal services and violate one of the rules, there would be a sanction—such as the MDP losing the right to provide legal services.

Liberals disagree that current regulation of the legal profession is ineffective and do not see the need to make it stricter (#43, -3):

No lawyers are now audited for misconduct; someone should be looking at things more closely. The lawyer disciplinary process should be more proactive.

They do, however, acknowledge that lawyers in accountancy firms and banks may engage in UPL without fear of discipline. But rather than calling for more enforcement (or total enforcement) of rules against UPL, Liberals relate this anomaly to the need for MDP, which would acknowledge and regulate it, as contrasted to the status quo, in which such UPL largely eludes detection or regulation (#29, +3):

The Big Five accountancy firms have been using lawyers for years; we have Unauthorized Practice of Law (UPL) now. We ought to come out into the open with it and let it be regulated.

This goes on also in banks (#53, +2):

Law officers of banks do give contracts to bank customers and people do sign them without going to see an independent attorney. They trust the bank, and they don't have an attorney.

Liberals are indifferent, however, to one way of avoiding difficulties under MDP—the notion of charging a high fee to firms that want to adopt an MDP form (#17, 0):

An expensive annual fee in connection with doing MDP would limit MDP to the big boys: only the megabanks and financially driven accountancy firms could afford such a cost.

Possibly it is too early in the MDP debate for them to want to focus on such specifics.

Liberals' view blends the dedication to core values and traditions of the law so palpable in Ethics Conservatives with attunement to the economic realities stirring and affecting the practice of law. Liberals do, however, differ on some crucial definitions of core values and are much more permissive than Ethics Conservatives. This is most notable where Liberals accept a narrower definition of conflict of interest, so that conflict problems can be more readily resolved in favor of taking a case and working with a client, and in their willingness to share the lawyer's privilege with other collaborating professionals. With this approach, Liberals can embrace MDP as not threatening to their conception of core values. Their openness to the other professions and to the one-stop shopping ideology and their acceptance of change are key motifs in their outlook. If Ethics Conservatives are the traditionalists of the law, and MDP Enthusiasts are post-modern, Liberals are somewhere in between traditional and post-modern. This is where they place on the arc of opinion, and it is an apt characterization of view of MDP.

IV. ANALYSIS

Exploration of patterns of consensus among the three Types discovered in the Q-sort shows that Types II and III have many more points (propositions) in common, while neither Types II nor III have many points in common with Type I. Type I thus stands off by itself more, and even though Types II and III are clearly separate with distinctive agendas, these last two Types are more likely to discover agreement between them on many issues of MDP. In contrast, Type I has so few areas in common with Types II and III that discussion of each issue may be the only way to work out agreement, since so few areas of agreement occur naturally. Type I represents traditionalism, while Types II and III represent reform and revitalization. Despite disagreement between Types II and III that may become more evident over time as the impetus for reform declines, for purposes of the debate over MDP issues, Types II and III may often sound quite similar.

A. Searching for Consensus

One reason the Missouri Bar commissioned this study was to explore potential areas of agreement among attorneys. Any common ground among them can furnish a basis for discussions, negotiations and compromises. Therefore, shifting from a focus on the particular opinion mixes of each Type, this Article will now turn to areas of consensus among the Types.

One way to determine whether consensus exists is to look at the particular Q-statements to which Types assign similar scores. Here the Types not only agree (or disagree) with that statement, but go further, also giving it the same level of importance in their viewpoints. Out of all the possible scoring combinations of statements, the people in that subset of two Types independently choose to assign the same, or nearly the same, score to the same item. Finding such statements is particularly significant when they are central in both Types' ways of thinking (i.e., in the scoring range of 3 to 5), because a strong common belief in a particular proposition can often help two otherwise opposed groups begin serious discussion, or solidify an otherwise elusive agreement.

With three Types, we have three pairs of Types: I with II, I with III, and II with III. We also have the combination of all three Types. Our measure is the difference in scores the two Types give each statement (when considering all three Types, we use a three-way contrast of the three scores). We ran a statistical test to determine whether the scoring difference is statistically significant or not. If the difference is not significant at the .05 level (i.e., if there is less than one chance in twenty that the two (or three) scores are truly different), we consider the statement to be a "consensus" statement.

Table 8 illustrates the extent to which consensus exists between each pair of Types (and among all three Types). If we consider only the number of statements reaching consensus status, pairing Types II and III shows the highest possibilities for consensus: 38% of the 55 statements show statistically identical scores as between the two Types. Neither of the other pairs comes close: Types I and III, even though adjacent on the arc of opinion, only reach consensus on 14.5% of the statements, and Types I and II, clearly opposite in so many ways, attain consensus on only 10.9% of the statements. Looking for consensus among all three Types seems practically futile: only 3.6% of the statements (2 out of 55) elicit consensual reactions from all three Types.

We can also look at magnitude of scores. Higher statement scores signify that the two (or three) Types agree on a cardinal issue in their

thinking, while lower statement scores signify they agree on matters to which they are relatively indifferent. The statements on which Types I and III reach consensus show the highest average score (2.29 out of 5), and the statements on which Types II and III agree also have a high average (1.58). In contrast, Types I and II come to consensus largely on statements to which they assign low scores: .44 means an average score lower than +1 or -1 (i.e., in the zero range).⁶⁵ The average score for consensus statements across all Types is only a little higher, at .54.⁶⁶ The best place to look for consensus is where it flourishes: between Types I and III, and between Types II and III. We canvass other consensus possibilities, but without high expectations.

Table 8. Consensus Possibilities of Paired Types and All Types

	All Types:	Types I & II	Types I & III	Types II & III
Number of Consensus Statements Between/ Among Types:	3.6% (2)	10.9% (6)	14.5% (8)	38.0% (21)
Average Score of Consensus Statements	.54	.44	2.29	1.58

In presenting these statements, scores assigned by each of the two (or three) Types in a comparison are given in parentheses after the statement itself. The scores are in order of Types (i.e., Type I's score first, if it is in the comparison; Type II's score second, unless Type I is not in the comparison, in which case Type II's score is first, etc.). In contrasts involving all three Types, when a significant statistical difference separates the scores of one or two pairs of the Types, that information is given after the Types' scores, also in parentheses. Note also that some statements on which two Types share consensus also

65. Recall that the Q-sort permitted scores as high as +5 or as low as -5.

66. The average differences between Type II and III's scores on consensus statements and those between Type I and II are significant ($p < .001$), and the difference between the average scores of Type I and III's consensus statements and those of Type I and II is also significant ($p < .01$), but no other contrasts reach statistical significance.

attract the third Type for a three-Type consensus, a particularly probable situation when both Types assign the statement a low score. When statements recur in this way, the commentary makes note.

B. Consensus between Types II and III

The largest area of consensus between any pair of Types is between Types II and III. More than a third of the statements in the Q-sort⁶⁷ elicit similar reactions—scores in the same range—from the members of these two groups.⁶⁸ Many such scores are high and when this is so, the corresponding statements are central propositions in the viewpoints. Since many of the statements are consensual, the discussion is organized around statement themes.

1. Consumerism

A key issue surrounding MDP is its potential effect on the way in which many types of professional services will be marketed and delivered to clients as consumers. Types II and III are in general agreement on how MDP will affect consumers, and they believe that consumers both want and deserve MDP. The most consensual statement between this pair of Types is statement #20:

The idea that MDP is motivated by the desire to promote one-stop shopping is just smoke. (-5, -4)⁶⁹

Their joint rejection of this critique of the consumerist and altruistic base of the MDP movement goes to show that both Liberals and MDP Enthusiasts genuinely believe the one-stop shopping argument for MDP; they deny the insinuation that it is a sophistic maneuver reflecting a hidden agenda. Seeing MDP as at least partially a program to deliver better service to clients, they disagree with statement #46:

MDP is not a rules change motivated by the desire to provide better service to clients. It is possible to do this now by sharing offices. (-3, -2)

67. N=21, =38%.

68. Another way of putting this is that these two types assigned scores that were not significantly different (in a statistical sense, i.e., $p > .05$) to 21 statements, but assigned scores that were significantly different (in a statistical sense, i.e., $p < .05$) to the remaining 34 statements.

69. As discussed, the Analysis Section of this Article is focussed on comparing the three Types. Consequently, when specific statements are examined, there will be at least two different scores for that statement. These scores are indicated after the statement is given. When these scores are given they will be in numeric order according to the Types being discussed. For example, if Type I scored a question -4, and Type II scored a question as +3, the score would be given after the statement as: (-4, +3).

Sharing offices is insufficient to establish one-stop shopping, it wouldn't go far enough to do the job. When Ethics Conservatives argue that MDP has no relation to consumer desires and is only really wanted by some segments in the bar—and Ethics Conservatives are tempted to argue along these lines, for they agree with #20 with a resounding +5—their arguments probably will go nowhere when Liberals and/or MDP Enthusiasts are present in good numbers for the debate. This is an issue central to all three views, yet polarizing one from the other two. Of course, if MDP Enthusiasts and Liberals try to defend the consumerist base of the MDP issue, they similarly will get nowhere when Ethics Conservatives are around.⁷⁰

2. Markets for Legal Services

Another area of consensus concerns the market for professional services. Types II and III see it as seamless; they do not focus only on the market segment for legal services, but rather see that market segment as closely interrelated to the overall market for accountancy, financial planning, etc. We see this in their attitude toward accountants. Rejection of statement #38 is central to both Types:

The consolidators in the CPA profession are piranhas. They come in and gobble up. They want you to work for a pittance and tell you what to do. (-4, -4)

Why do they reject the negative characterization of accountants? Given their respect for market forces, they probably respect the accountancy profession's growth and development. (Note that this issue also divides Types II and III from the Ethics Conservatives, who are in mild agreement with statement #38, giving it a score of +2.) Since both Types favor lawyers' expansion of their marketing advantage, they can also see merit in forming MDP firms, and they further believe that law firms of all sizes can benefit, as seen in their reactions to statement #52:

There would be advantages for a small firm to be able to team up with someone else and be able to provide more services to its clients. But a large firm would also like MDP because

70. MDP Enthusiasts and Liberals are, however, less worried about the physical aspect of client convenience, or about the time consumed by professionals getting up to speed on the client's situation, as seen in their indifferent agreement with statement #44:

Often, clients must bounce from office to office, and those professionals in the various disciplines have to adjust and readjust to members of the team the client has already selected. (1, 0)

large firms are always trying to add practice areas to service their clients. (3, 4)

It is noteworthy that Type I rejects #52 with a -2, indicating a substantial difference of opinion between Ethics Conservatives and members of the other two groups on this issue. Types II and III also agree on the economic and marketing advantage of consolidating legal services with a better-known entity, as seen in their reactions to statement #19:

Publicly-held clients would accept consolidated service providers easily because they would feel comfortable getting service from a provider with a well-known trademark name. (4, 3)

Their interest in cross-professional mergers explains the appeal of a merged law and financial planning firm in statement #6:

By most estimates more than half the adults in the United States don't have a will. What if an individual's financial advisor could pair with a lawyer to provide this service? That individual could get advice on how to invest for retirement and then step down the hall to work with a lawyer on a will. (2, 3)

Their focus on marketing legal services continues with additional consensus statements of less centrality to their views.⁷¹

71. Types II and III also agree on other economic matters, centering mainly on the valuation of firms in cases of potential buyout. They react similarly to statement #51 (which is nearly consensual among all three types):

In buying professional practices, outside firms look for an annuity practice—an assured annual income. But most law firms don't have this. (-1, -2)

Ironically, this comment was offered by an accountant—it is an accountancy analysis of law firm value! Despite their ecumenism with accountants, Type II and III mildly deny this putdown. They react similarly also to statement #27 (which is nearly consensual among all three types):

Some large law firms see MDP as a way of saving their practice; it is a godsend. These firms anticipate being bought out. (0, -1)

This comment, from a managing partner in a large litigation firm, is mildly rejected. It conveys a picture of economic troubles for large law firms on the horizon, but lawyers don't find that the observation has much relevance. They also agree on statement #54 (which is nearly consensual among all three types):

Law firms would be very tempted by an acquisition, whether by another law firm or an accountancy firm. For senior partners, it boils down to a question of who is going to pay me my money? (-1, -1)

Again, despite Type II and III's focus on marketing and economics, this statement is too detailed to capture their interest, and they mildly reject it. Finally, they agree also on statement #25:

3. Views Regarding Lawyers Working with Other Professionals

Types II and III also agree with liberalization in the usage of privilege, seeing the benefit of sharing it with other professionals such as accountants, etc., in statement #1:

Staff in law firms now share in the lawyer's privilege; other professionals in the law firm could come to share in the privilege also. For instance, an accountant and lawyer who work together on a client's problems should both enjoy privilege. (4, 4)

Extending the attorney-client privilege to protect client communications with members of other professions would go a long way towards making MDP feasible, since the clients' confidential information revealed to his or her attorney would remain protected even if members of other professions were brought in on a team workup of the clients' problems. Again, both Types are open to other professionals' involvement, defend other professionals and are willing to share the attorney-client privilege with them. Furthermore, both Types like many of the ideas behind MDP. In contrast, Type I rejects statement #1 with a -1. While this opinion is neither central nor polarized, it is still quite far from where MDP Enthusiasts and Liberals come down. Types II and III may also be defending large firms, as seen in their reaction to statement #9 (a three-way consensual statement):

When firms get huge, the public needs safeguards, but the legal profession is very good at developing these safeguards. (-3, -2)

We can't say conclusively that they are standing up for large firms; since the statement is double-barreled, they may be saying that the legal profession is not very good at coming up with safeguards. Their denial of statement #16:

If lawyers would be in the minority in an MDP, conflict of interest as lawyers see it could be overruled. (-4, -3)

suggests that they see little peril for lawyers in MDP because they see the legal profession as strong and able to hold out against cross-pressures. In their view, lawyers would not be forced to adopt the other professions' definitions of a conflict of interest, even if the members of

Many accountancy firms would buy out law firms quickly if the rules of legal practice were liberalized. (0, 1)

Types II and III do not focus on buyouts of law firms at all. They are interested in law firm growth through expansion and merger more than in acquisitions of passive law firms and the particulars of pricing and of who profits.

the other professions made up the majority of the firm. Participants who belong to Types II and III anticipate that lawyers in an MDP would be able to insist that the MDP treat conflicts of interest in a manner consistent with the norms of the legal profession.⁷²

4. Need for Change

Another noteworthy area of agreement is on whether MDP will happen or can be resisted. Members of both Type II and III see MDP as inevitable, as shown by their common disagreement with statement #36:

If enough people stand up and say that MDP is not inevitable, it won't be inevitable. (-2, -4)

The 19th century French author Victor Hugo once wrote, "[G]reater than the tread of mighty armies is an idea whose time has come."⁷³ Members of these two groups view MDP as an idea whose time has come. Originally contributed by a managing partner of a litigation firm, the statement actually asserts the exact opposite—that one can successfully resist an idea whose time has supposedly come, and Type I, the Ethics Conservative, strongly agrees that the tide of change can be resisted (+4).

5. Concerns about UPL

Type II and Type III attorneys both prefer to tolerate activities that technically violate UPL prohibitions, rather than to seek full enforcement of UPL rules. This can be seen in their agreement with statement #29:

The Big Five accountancy firms have been using lawyers for years; we have Unauthorized Practice of Law (UPL) now. We ought to come out into the open with it and let it be regulated. (4, 3)

72. We see this view of law firms as strong also in the downplaying of acquisitions of law firms and in the view that law firm prices are not threatened (see previous footnote). Another statement of consensus in this vein is #31 (which is nearly consensual among all three types):

Attorneys from the same firm, even a very large firm, even unacquainted, can meet and pool information; therein lays [sic] the conflict of interest and the reason for imputation. (0, -1)

Types II and III aren't worried much about conflict of interest in a large firm, or with whether the need for imputation is as crucial there.

73. VICTOR HUGO, *HISTOIRE D'UN CRIME*, Conclusion (1859). The usual English translation takes some liberties with the original French, which can be translated more literally as "you can withstand invading armies, but you can't withstand invading ideas."

Despite little concern about current UPL in the Big Five, lawyers are interested enough in rules to want to make them effective in MDPs. They believe that the regulations governing MDPs should have teeth, as seen in their acceptance of statement #32:

If the members of the MDP deliver legal services and violate one of the rules, there would be a sanction—such as the MDP losing the right to provide legal services. (1, 2)

Types II and III may feel that current UPL rules have outlived their usefulness. One situation in which they see current UPL rules as prohibiting conduct that should be permissible is that encountered by attorneys employed by banks who give some advice to the banks' customers. This is shown in statement #53, which is nearly consensual among all three Types:

Law officers of banks do give contracts to bank customers and people do sign them without going to see an independent attorney. They trust the bank, and they don't have an attorney. (2, 2)

They think some kind of UPL, in letter or in spirit, is occurring, but aren't concerned; they are willing to tolerate this deviation, especially given the trust of the bank's customer.⁷⁴

C. Consensus Between Types I and III

Types I and III are neighbors on the arc of opinion, but share a smaller area of agreement than Types II and III. Only eight statements do not differentiate significantly between these two Types, and only three of the eight are central to their views. These are reviewed here. The five statements that elicited relative neutrality from the respondents who placed them in the middle of their sorts, are identified along with their scores but not interpreted.

Types I and III both strongly reject Statement #47:

MDP contains no pitfalls for lawyers; it would enhance most lawyers' careers. (-5, -5)

74. Another statement that attracts consensual response is #15, which expresses an irony about the rules now and what the rules might be under MDP:

Paying an ambulance driver for a referral to a medical malpractice case is a moral outrage; but under MDP, it would not be a moral outrage to pay a financial planner for a referral to draw up a will. (0, -1)

Types II and III want new rules, believe the old rules may be outdated and unenforceable, so the moral contrast doesn't bother them: it will be resolved satisfactorily through the renewal process that will include new realistic UPL rules.

A Big Five accountant originally made this statement, and lawyers in these two schools of thought vehemently disagree with it. The Ethics Conservatives (Type I) disagree out of preference for fencing the law off from other professions, out of concern for core values, and because they prefer the status quo. Liberals (Type III) who want change are nonetheless wary about the dangers of MDP and prefer to proceed cautiously. Ethics Conservatives also might find gradual change preferable to any precipitous action (even though their true preference is for no change at all). Avoiding the pitfalls of MDP is one bridge—a bridge involving caution about change—between these two otherwise divergent views.⁷⁵ Although it is less central to their points of view, both Types also reject the model of proactive prosecution of lawyer misconduct, as seen in their response to statement #43:

No lawyers are now audited for misconduct; someone should be looking at things more closely. The lawyer disciplinary process should be more proactive. (-2, -3)

Certainly the participants in these groups reject the idea of stepping up enforcement of professional responsibility regulations, including the enforcement of UPL regulations against out-of-state lawyers. All Types' responses to #53 indicate that they are not eager to increase the enforcement of sanctions against bank lawyers who give legal advice to bank customers (statement #53, 1, 2, 2). So another policy theme that might find great support along the upper right quadrant of the arc of opinion is sidestepping tough UPL rules enforcement as a means of dealing with the MDP challenge.⁷⁶ Lastly, statement #9 also draws out agreement between Types I and III:

75. A specific pitfall of MDP to which these Types are consensually indifferent is the threat that MDP is needed to save the financial status of large law firms. A specific potential danger of MDP dismissed by both of these Types is the idea that MDP is needed to enhance the financial strength of large law firms. It is noteworthy that reaction to statement #27 is consensual among all three types:

Some large law firms see MDP as a way of saving their practice; it is a godsend. These firms anticipate being bought out. (-1, -1)

The large law firms are so prosperous, pay such high salaries, that lawyers may find extravagant the proposition that their financial status is in any jeopardy. Both types also dismiss another specific pitfall with statement #40:

Adoption of MDP will make boutiques out of trial lawyers; it will become like the division in the United Kingdom between barristers and solicitors. (0, 1)

This notion of increasing segmentation of the legal profession doesn't seem either threatening or promising, but the two types do agree on it.

76. Moreover, neither Type indicated a strong reaction to the possibility of increasing

When firms get huge, the public needs safeguards, but the legal profession is very good at developing these safeguards. (-1, -3)

This was actually a consensus statement for all three Types. Unfortunately, because the statement is double-barreled, it is difficult to discern which part of it they reject. This response may mean that neither Type finds the legal profession good at developing safeguards for the public. Or, it might also mean that neither Type thinks the public needs additional protection from lawyers practicing in larger firms. Without a determination about precisely what the participants were reacting to in their response to the statement, it is difficult to know how to use this theme to bridge the divide separating the Types. One other statement attracts consensus between the two Types. Dealing with consumerism, it is statement #21:

Most of the larger businesses have the opposite of one-stop shopping: instead of wanting all services from one provider, they are splitting up their legal work among several law firms. (0, +2)

They both think that businesses are distributing their legal work to an increasing number of providers, rather than consolidating it in search of one-stop shopping. Type III strongly thinks that individual consumers seeking legal advice support one-stop shopping, while Type I thinks that consumers do not want it. Neither group finds the one-stop argument applicable in the business setting.

enforcement of UPL restrictions against people currently giving legal advice within Big Five CPA firms. Both Types recorded a rather neutral response to statement #45:

Accountancy firms recruit attorneys at very substantial salaries; these attorneys do much the same work as in a law firm, only for higher salaries. Their work is called legal planning to suit ethical rules. (-1, -1)

The threat of UPL in this context leaves both Types I and III unruffled. And, both are also indifferent to a potential mechanism for enforcement of practice rules under MDP: a heavy fee imposed on MDPs. They have virtually no reaction to statement #17:

An expensive annual fee in connection with doing MDP would limit MDP to the big boys: only the megabanks and financially driven accountancy firms could afford such a cost. (0, 0)

So, besides not minding gaps in the present system of UPL enforcement, they are not eager to increase enforcement of UPL violations either. A significant annual fee for establishing and maintaining an MDP firm could finance ongoing audits of MDP in a proactive supervisory system, but these lawyers are not worried about controls over practice.

D. The Meager Area of Consensus Between Types I and II

Since Types I and II are polar opposites, there is little consensus between them: only six statements out of the 55 come in with scores close enough to rate as non-differentiating items. Each of the six statements on which they do agree is relegated to the middle of their sorts. In brief, these viewpoints agree only on points that are of relative unimportance to them. In the interest of better understanding their outlooks, these six statements are scrutinized here.

Ethics Conservatives and MDP Enthusiasts agree most on statement #27 (a three-Type consensual statement):

Some large law firms see MDP as a way of saving their practice; it is a godsend. These firms anticipate being bought out. (-1, 0)

Both Types disagree that large firms are embracing MDP out of financial duress. So members of each of these opposed schools of thought discount at least one alleged hidden motive behind the drive to permit MDPs. Statement #31 (nearly consensual among all three Types) also elicits agreement:

Attorneys from the same firm, even a very large firm, even unacquainted, can meet and pool information; therein lays [sic] the conflict of interest and the reason for imputation. (1, 0)

Here they neither reject nor acknowledge the reasoning behind the imputation rule. It is simply unproblematic for them. Statement #15 (nearly consensual among all three Types) also is consensual:

Paying an ambulance driver for a referral to a medical malpractice case is a moral outrage; but under MDP, it would not be a moral outrage to pay a financial planner for a referral to draw up a will. (0, 0)

Neither side acknowledges the parallel between the present rule and the proposed change. Both sides agree also on statement #7 (which is nearly consensual among all three Types):

There is a dichotomy between a large user of services and an individual small user of services. Larger users of services often deal with a lot of money, and they're concerned about the best, the quickest, and the most efficient services. It doesn't have to be the cheapest. (1, 0)

The low scores mean both Types are uninterested in this key distinction among different types of consumers of legal services. Both Types are

also uninterested in how non-lawyer superiors treat attorneys working in non-law firms, even though these attorneys' workplace experience is a quasi-experiment (and potential predictor) of how attorneys might fare in a multidisciplinary practice entity. This subject is broached in statement #30:

When a member of the bar works for a non-law firm, you're not an attorney, you're an employee with legal skills. (0, +2)

Finally, statement #37 focuses on conditions of competition with other providers of legal services which does not particularly interest either Type I or Type II respondents:

What if corporations cut law firms out because they say, "Well, gee, I can go to the accounting firm and get this package and I really don't need you guys. You know, you just make it more complicated with all the rules and strictures you have." (1, 0)

There is little basis for building bridges between Types I and II on any MDP issues that have much meaning, since the members of these two groups are so far apart in their thinking. They do agree on two points. First, neither group believes that lawyers in large firms are campaigning for MDP so that they can be bought out. Second, neither disputes the importance of imputing conflicts of interest. Furthermore, they share a lack of concern regarding the problems encountered by lawyers who would be working for non-lawyers, the increasingly competitive conditions some law firms face, the moral ironies that MDP rules might cause and the distinction between types of clients.

E. Consensus Among All Three Types

The three Types showed strong differences of opinion over the specific MDP issues mentioned in most Q-statements, as could be anticipated from the wide spread of subject placement across the arc of opinion (see Figure 1).⁷⁷ Only two statements in the entire set of 55 did not provoke statistically significant differences in scores among at least one pair of the three Types. Six other statements showed fairly low point spreads among the three Types, but for each of these statements one or two pairs of Types assigned scores showing statistically significant differences. Most of these statements figure into shared views between pairs of Types. Moreover, only one of these eight statements is central to any Type's viewpoint (i.e., is a statement

77. See *supra* p. 636 (displaying Figure 1).

receiving a score from 3 to 5), so subjects bury consensual statements in the middle of their sorts, while finding the controversial statements more relevant and appealing. Despite both the general lack of agreement and the lack of centrality to subjects' views of the topics on which there was agreement, some understanding can still be gleaned from looking at these areas of consensus.

The two most consensual statements were #27 and #9. Statement #27 asserts:

Some large law firms see MDP as a way of saving their practice; it is a godsend. These firms anticipate being bought out. (-1, 0, -1)

All views disagree, but only slightly. This statement, originally made in a telephone interview by a managing partner of a large law firm, may strike most subjects as conjectural since no aspect of MDP is close to being adopted. Statement #9 bears on a core value of the profession, protecting the general public:

When firms get huge, the public needs safeguards, but the legal profession is very good at developing these safeguards. (-1, -3, -2)

The disagreement, especially from Types II and III, could reflect either disagreement that the public needs safeguards, or that the legal profession is good at developing safeguards, or possibly, that the safeguards the legal profession does develop are good. The scoring difference of Type I (not statistically significant) is what one would expect from Ethics Conservatives, who are much more insistent on the need for such safeguards and barriers than are members of the other two groups.

Six other statements are only slightly less consensual (on these, one pair, or two pairs of Types, do disagree significantly). Statement #53 hints at suspicions regarding UPL activities among those working as in-house counsel for banks:

Law officers of banks do give contracts to bank customers and people do sign them without going to see an independent attorney. They trust the bank, and they don't have an attorney. (1, 2, 2).

The difference between Type I and Type III is significant at .01 level.

All viewpoints agree that this is occurring but are not upset about it; the statement itself gives an excuse for UPL (the bank customers' trust of his or her financial institution). Type III is more alert on this subject, which probably plays into Liberals' other reasons for wanting change

and for supporting MDP. It is noteworthy that no Type in this study shows a particular desire for the pro-active crackdown on UPL which can be read into the resolution adopted by the ABA's House of Delegates⁷⁸ and exhibited by prosecutors in New Jersey and Florida.⁷⁹ All accept that UPL goes on, but it's not central to their thinking about MDP at present. Statement #7 focuses on differences between the various consumers of legal services:

There is a dichotomy between a large user of services and an individual small user of services. Larger users of services often deal with a lot of money, and they're concerned about the best, the quickest, and the most efficient services. It doesn't have to be the cheapest. (1, 0, 1)

The difference between Type I and Type III is significant at .05 level, while the difference between Type II and Type III is significant at .01 level.

This proposition seems self-evident but is far from central to any Type's thinking on MDP. Type III agrees with it more than do Types I and II, possibly from the Liberals' concern with consumers and also their marketing focus. Statement #15 presents an irony:

Paying an ambulance driver for a referral to a medical malpractice case is a moral outrage; but under MDP, it would not be a moral outrage to pay a financial planner for a referral to draw up a will. (0, 0, -1)

The difference between Type I and Type III is significant at the .001 level.

The irony doesn't play well, sinking to nearly everyone's zone of indifference. Type III shows significantly more disagreement. Concern with core values is seen in statement #31:

Attorneys from the same firm, even a very large firm, even unacquainted, can meet and pool information; therein lays [sic] the conflict of interest and the reason for imputation. (1, 0, -1)

78. On July 11, 2000, the delegates adopted a resolution urging, among other things, that "[s]tate bar associations and other entities charged with attorney discipline should reaffirm their commitment to enforcing vigorously their respective law governing lawyers" and "[e]ach jurisdiction should reevaluate and refine to the extent necessary the definition of the 'practice of law.'" 16 ABA-BNA, *LAWYERS' MANUAL ON PROFESSIONAL CONDUCT* 367 (1984).

79. Information regarding the enforcement of provisions prohibiting the unauthorized practice of law is on file with the authors.

The difference between Type I and Type III is significant at .001 level. But the specific rationale for imputation is unproblematic for all, although Type III, in disagreeing more strongly, may doubt that attorneys from the same firm necessarily pool information. The next two statements bear on buyouts of law firms. Statement #51 addresses the question of market value:

In buying professional practices, outside firms look for an annuity practice—an assured annual income. But most law firms don't have this.
(0, -1, -2)

The difference between Type I and Type III is significant at .001 level; the difference between Type I and Type II is significant at .001 level.

This declaration is obviously speculative, because the market value of law firms to non-attorney purchasers seeking to profit from the sale of commodified legal services has not been tested.⁸⁰ All Types are indifferent to the notion that law firms might be put up for sale, but Types II and III are less willing to entertain the speculation. This statement is double-barreled, so we are unsure whether they are disagreeing with the idea that outside firms look for an assured annual income, or the idea that most law firms lack such an annuity income. Since there is little experience with selling law firms (and virtually none in selling law practices to non-attorneys), the idea that outside acquirers look for an annuity income could be considered speculative, so that the lawyers may be rejecting the idea that law firms do not yield an annuity income. Statement #54 has to do with the motivation for selling a law firm:

Law firms would be very tempted by an acquisition, whether by another law firm or an accountancy firm. For senior partners, it boils down to a question of who is going to pay me my money? (1, -1, -1)

80. For a discussion of the commodification of legal services, see Carol A. Needham, *Permitting Lawyers to Participate in Multidisciplinary Practices: Business as Usual or End of the Profession as We Know It?*, 84 MIN. L. REV. 135 (2000). See also Kenneth Anderson, *A New Class of Lawyers: The Therapeutic as Rights Talk*, 96 COLUM. L. REV. 1062 (1996); James A. Fanto, *When Those Who Do Teach: The Consequences of Law Firm Education for Business Law Education*, 34 GA. L. REV. 839, 848 (2000); Steven H. Hobbs, *Ethics in the Age of Entrepreneurship*, 39 S. TEX. L. REV. 599 (1998); Douglas E. Litowitz, *Young Lawyers and Alienation: A Look at Legal Proletariat*, 84 ILL. B.J. 144 (1996); Karl S. Okamoto, *Reputation and the Value of Lawyers*, 74 OR. L. REV. 15, n.7 (1995); Mark C. Suchman, *Working Without a Net: The Sociology of Legal Ethics in Corporate Litigation*, 67 FORDHAM L. REV. 837, 857-58 (1998); Allan W. Vestal, *Special Ethical and Fiduciary Challenges for Law Firms Under the New and Revised Unincorporated Business Forms*, 39 S. TEX. L. REV. 445 (1998).

The difference between Type I and Type III is significant at .001 level.

The difference between Type I and Type II is significant at .01 level.

Again, all react with indifference, but Type I is more willing to consider the idea than are Liberals and MDP Enthusiasts.

V. CONCLUSION

Our data suggest that the legal profession is not yet fully prepared to face MDP. We write this from varying standpoints: one author, a lawyer, a law teacher and an ethicist, sees MDP from inside the legal profession; the other, a non-lawyer political scientist and opinion analyst, sees it from the outside. Most attorneys participating in this study were Ethics Conservatives (Type I), while fewer were Liberals (Type III), and fewer still were MDP Enthusiasts (Type II). Our sampling procedures give us no way of knowing how well this proportional distribution of Types reflects the feelings of members of the Bar, but some conjecture can be justified.

The Ethics Conservative view is probably the most predominant view held by lawyers who have thought about MDP. Of course, many lawyers have not yet thought about the issue in much detail at all, and find it remote from their lives and work. The ABA group interviews of lawyers in three locations showed that most lawyers were unconcerned about MDP and cutting-edge internet practice issues because they didn't consider their work affected by these issues.⁸¹ The two types of lawyers who were most concerned about these trends were firm decision-makers and the youngest cohort of associates in the largest firms.⁸² This is a sensible assumption for several reasons. First, ethical conservatism is the ideology to which attorneys have been exposed from the time they entered law school. Second, we would expect conservative views to be most common in areas of the profession less sensitive to economic challenges in the practice of law. Even if lawyers are threatened by some economic shifts, they may be so busy tending their practices and doing their work that they do not look ahead. Third, we would expect that lawyers becoming aware of the MDP issue would generate ideas about it from the worldview they already have, and that worldview is probably ethical conservatism. If the Ethical Conservative view represents the status quo, any gains among lawyers for the Liberal or the

81. The group interviews were held in May and June 2000. *The Pulse of the Legal Profession*, Phase 1, Report to the Market Research Department of the American Bar Association, at 27 (Nov. 22, 2000).

82. *See id.*

MDP Enthusiast view must come at the expense of the established ideology.

Granting this presupposition, we must consider what likelihood there is that discussion among lawyers of the three Types will contribute to attitude shifts. MDP Enthusiasts and Liberals find much in common, but any agreement they might reach on MDP would probably be scorned by the Ethics Conservatives. Any effort towards resolution would have to include the Ethics Conservatives, because insofar as lawyers begin to think about this issue they are likely to think in terms of ethical conservatism. The lawyers in this study did think about MDP by working through the Q-sorts, but many lawyers who received the Q-sort did not send in results. They either had no time or started the task and found it displeasing, uninteresting, remote or burdensome. Because many lawyers currently passing on the issue would likely become Ethics Conservatives once they actively consider it, working towards any resolution of the issue without involving the Ethics Conservatives would be pointless.

The Ethics Conservatives are closer to the Liberals and farthest from the MDP Enthusiasts. The MDP Enthusiasts should probably be left out of any preliminary dialogue. They criticize conventional wisdom, and if they pipe up too much, they would provoke a strong negative reaction from the Ethics Conservatives. A dialogue between Liberals and Ethics Conservatives could be more fruitful. But this dialogue should start from matters in which they share a consensus. Both Types see pitfalls in MDP, so discussion could begin with this topic. Liberals' worries about these difficulties could reassure the Ethics Conservatives that they are dealing with kindred people. Participants in these discussions should consider whether there are aspects of MDP that they can accept as less or not at all dangerous. For instance, since both Types reject the idea of pro-active prosecution of UPL, a secondary topic could be the types of UPL that now take place under the status quo, and why these are acceptable. If practices that are not completely legitimate can be tolerated without danger, what other practices currently deemed illegitimate might also be tolerated? Discussion should explore the safeguards that might be devised; should the legal profession devise these safeguards, or is it not particularly adept at doing so (note discussion of statement #9).⁸³ Expanding on these consensus areas shared by Types I and III as bridges to other possible areas of consensus could help generate other areas of agreement, and this process might

83. See *supra* pp. 653, 669, 672-73 and 676

unveil aspects of MDP that would be less alarming to the Ethics Conservatives.

Further discussion between Liberals and Ethics Conservatives could explore the practical meaning of conflict of interest. Liberals conceive of clients as guiding the classification process, as seen in their high agreement with statement #14,⁸⁴ the question for them is whether or not the client wants the relationship to continue despite the conflict. Ethics Conservatives, however, reject client disclosures as a means of circumventing a conflict of interest. A key question in such discussion could be the extent to which clients should be entitled to determine that they do not need protection against a conflict of interest. Working toward an even more central question, the discussion should also focus on the extent to which a *prima facie* conflict of interest is a true conflict of interest. Attorneys involved in such discussions would have to imagine answering these questions in multiple practice contexts, ranging from the large firm to the small firm or solo practice. The different circumstances in practice contexts could mean different answers to the key questions.

The presumption that ethical conservatism is the predominant (even if inchoate) view in the profession may be venturesome, and certainly is empirically untested, but it is grounded in common sense, and may be usefully blended with this study's results. Using it speculatively to bring together not the two most similar Types but the two Types whose views would make for the most fruitful discussions might allow progress towards a broader synthesis of ideas on multidisciplinary practice.

84. *See supra* p. 656-57.

Appendix I:

Q-Statements

1. Staff in law firms now share in the lawyer's privilege; other professionals in the law firm could come to share in the privilege also. For instance, an accountant and lawyer who work together on a client's problems should both enjoy privilege.

2. Conflict of interest is based not just on the existence of a conflict but on the volume of that interest.

3. There may not be a business problem with MDP but there is a confidentiality problem. It gets back to the hard ethical questions that govern lawyers but not accountants or any of the folks that we're talking about combining with.

4. One of the things that the Big Five bring to the table is an enormous amount of capital. They can hire additional staff, and they can provide economies of scale and efficiency. There's some benefit to this.

5. I don't think the system is broken. I don't really think it needs that big of a fix. I think all the disciplines need to work together. I'm not sure we all have to work in the same office together.

6. By most estimates more than half the adults in the United States don't have a will. What if an individual's financial advisor could pair with a lawyer to provide this service? That individual could get advice on how to invest for retirement and then step down the hall to work with a lawyer on a will.

7. There is a dichotomy between a large user of services and an individual small user of services. Larger users of services often deal with a lot of money, and they're concerned about the best, the quickest, and the most efficient services. It doesn't have to be the cheapest.

8. One-stop shopping pressures the consumer. Suddenly there's a referral; one's hand is forced a little.

9. When firms get huge, the public needs safeguards, but the legal profession is very good at developing these safeguards.

10. The reason for the prohibition on fee splitting is to try to keep the lines clear so you can refer clients to me; but I'm not going to give you any money in return for the referral. This process guards my professional independence.

11. I wouldn't have a problem with a corporation of attorneys directed by and officered by attorneys being owned in a non-voting capacity by a CPA firm.

12. Big groups with money can push MDP and nobody's going to have the money to really keep it from happening. The real question is: If it's going to happen, can it be done in a controlled way that will lead to the best outcome for the consumer as well as being realistic for the professionals?

13. A system of loose alliances among professional firms is a lot more comfortable and less constraining than MDPs.

14. The key way to avoid conflict of interest is to make a disclosure to the client: does the client want the relationship to continue despite this?

15. Paying an ambulance driver for a referral to a medical malpractice case is a moral outrage; but under MDP, it would not be a moral outrage to pay a financial planner for a referral to draw up a will.

16. If lawyers would be in the minority in an MDP, conflict of interest as lawyers see it could be overruled.

17. An expensive annual fee in connection with doing MDP would limit MDP to the big boys: only the megabanks and financially driven accountancy firms could afford such a cost.

18. If an MDP formed with a counselor and a lawyer, the counselor could get referrals from the in-house lawyer. But the problem is that in a divorce case the lawyer would want the mental health person to support one side—the firm's position. This would compromise the professional ethics of the mental health professional.

19. Publicly-held clients would accept consolidated service providers easily because they would feel comfortable getting service from a provider with a well-known trademark name.

20. The idea that MDP is motivated by the desire to promote one-stop shopping is just smoke.

21. Most of the larger businesses have the opposite of one-stop shopping: instead of wanting all services from one provider, they are splitting up their legal work among several law firms.

22. A partnership with a lawyer, an accountant, and a financial planner would work well.

23. If MDP is permitted, law firms would be unlikely to buy out accountancy firms. The law firms don't have enough money, and the legal mindset would also prevent it.

24. If conflict of interest can be resolved in a large law firm, it can be resolved in a merged accountancy-law firm.

25. Many accountancy firms would buy out law firms quickly if the rules of legal practice were liberalized.

26. The principal arguments for retaining such prohibitions relate to concerns about the profession's core values, specifically professional independence of judgment, the protection of confidential client information, and loyalty to the client through the avoidance of conflicts of interest.

27. Some large law firms see MDP as a way of saving their practice; it is a godsend. These firms anticipate being bought out.

28. Currently, if you have an attorney and an accountant who are independent of each other, the client has the advantage of having two separate professionals, each looking over the other's shoulder. You are going to lose that by putting them both in one firm. Their interest will be the same and you've lost the objectivity that comes from having two independent professionals.

29. The Big Five accountancy firms have been using lawyers for years; we have Unauthorized Practice of Law (UPL) now. We ought to come out into the open with it and let it be regulated.

30. When a member of the bar works for a non-law firm, you're not an attorney, you're an employee with legal skills.

31. Attorneys from the same firm, even a very large firm, even unacquainted, can meet and pool information; therein lays [sic] the conflict of interest and the reason for imputation.

32. If the members of the MDP deliver legal services and violate one of the rules, there would be a sanction—such as the MDP losing the right to provide legal services.

33. The ABA proposal for regulating MDPs is just a sop put in to make MDP more palatable.

34. This is going to happen. Whether it's going to be this year, next year, or five years from now. It's just a question of when will Missouri change its rules somewhat to allow MDP.

35. I don't think it's a question of whether you need to fix something. I think the question is, do you need to inhibit something? Do you need to restrict something? We're talking about a restraint on activities and whether the restraint should be there or not.

36. If enough people stand up and say that MDP is not inevitable, it won't be inevitable.

37. What if corporations cut law firms out because they say, "Well, gee, I can go to the accounting firm and get this package and I really don't need you guys. You know, you just make it more complicated with all the rules and strictures you have."

38. The consolidators in the CPA profession are piranhas. They come in and gobble up. They want you to work for a pittance and tell you what to do.

39. In acquiring law firms, accountants would embrace regulation. Accountants are always subject to regulation and are used to it; AICPA rules are very strict.

40. Adoption of MDP will make boutiques out of trial lawyers; it will become like the division in the United Kingdom between barristers and solicitors.

41. For the purposes of a conflict of interest analysis, the lawyer would have to treat each and every client of the MDP as his/her own client.

42. MDP could bring into existence some economies of scale in legal services that would help middle class people.

43. No lawyers are now audited for misconduct; someone should be looking at things more closely. The lawyer disciplinary process should be more proactive.

44. Often, clients must bounce from office to office, and those professionals in the various disciplines have to adjust and readjust to members of the team the client has already selected.

45. Accountancy firms recruit attorneys at very substantial salaries; these attorneys do much the same work as in a law firm, only for higher salaries. Their work is called legal planning to suit ethical rules.

46. MDP is not a rules change motivated by the desire to provide better service to clients. It is possible to do this now by sharing offices.

47. MDP contains no pitfalls for lawyers; it would enhance most lawyers' careers.

48. If MDP arrives, the big will get bigger, while small and middle sized specialized accountants and attorneys will get squeezed out.

49. With accountancy firms involved in the law, there would be more jobs for lawyers.

50. Family lawyers are in this little boutique area where people hire them because they have experience with the judges and custody issues. MDP won't encroach on this type of practice.

51. In buying professional practices, outside firms look for an annuity practice—an assured annual income. But most law firms don't have this.

52. There would be advantages for a small firm to be able to team up with someone else and be able to provide more services to its clients.

But a large firm would also like MDP because large firms are always trying to add practice areas to service their clients.

53. Law officers of banks do give contracts to bank customers and people do sign them without going to see an independent attorney. They trust the bank, and they don't have an attorney.

54. Law firms would be very tempted by an acquisition, whether by another law firm or an accountancy firm. For senior partners, it boils down to a question of who is going to pay me my money?

55. The MDP regulatory body would need to protect the lawyer from his or her superiors; that lawyer would need Supreme Court backup if there were any interference with attorney judgment.

Appendix II:

Selected Traits of Subjects

Subject Number	Gender	Profession	Other Information
1	Male	Attorney	Private Practice, firm of 6-15 attorneys
2	Female	Attorney	Private Practice, solo
3	Male	Accountant	Private Practice
4	Female	Attorney	Private Practice, solo
5	Male	Attorney	Private Practice, solo
6	Male	Financial Planner	Agency
7	Male	Attorney	Private Practice, firm of 2-5 attorneys
8	Male	Attorney	Private Practice, firm of 2-5 attorneys
9	Male	Attorney	Private Practice, firm of 6-15 attorneys
10	Male	Attorney	Private Practice, firm of 6-15 attorneys
11	Male	Attorney	Also a CPA
12	Male	Counseling Psychologist	Clinical Practice
13	Male	non-lawyer	anonymous Q-sort
14	Male	Attorney	Private Practice, firm of more than 40 attorneys
15	Male	Attorney	CPA firm, more than 40 attorneys
16	Male	Attorney	Private Practice, firm of 6-15 attorneys
17	Male	non-lawyer	anonymous Q-sort
18	Male	Attorney	Government, more than 40 attorneys
19	Male	Attorney	Private Practice, firm of 6-15 attorneys
20	Male	Attorney	Private Practice, firm of more than 40 attorneys
21	Male	Attorney	Private Practice, firm of 16-40 attorneys

22	Female	Attorney	Other, no other information
23	Female	Counseling Psychologist	Private Practice
24	Male	Counseling Psychologist	Private Practice
25	Male	Financial Planner	Agency
26	Male	Attorney	Private Practice, firm of 6-15 attorneys
27	Male	Attorney	Private Practice, firm of 2-5 attorneys
28	Male	Attorney	Private Practice, firm of 2-5 attorneys
29	Male	Attorney	Private Practice, firm of 2-5 attorneys
30	Male	Attorney	Other, no other information
31	Male	Counseling Psychologist	Private Practice
32	Male	Attorney	Private Practice, firm of more than 40 attorneys
33	Male	Attorney	Private Practice, firm of 2-5 attorneys
34	Male	Attorney	Private Practice, firm of 2-5 attorneys
35	Male	Attorney	Private Practice, firm of 2-5 attorneys
36	Male	Attorney	Private Practice, solo
37	Male	Attorney	Private Practice, firm of 16-40 attorneys
38	Male	Attorney	Private Practice, firm of 6-15 attorneys
39	Female	Financial Planner	Large Agency
40	Female	Attorney	Private Practice, firm of more than 40 attorneys
41	Male	Attorney	Private Practice, firm of 6-15 attorneys
42	Female	Attorney	Private Practice, firm of 6-15 attorneys

43	Male	Attorney	Government
44	Male	Attorney	Private Practice, firm of 2-5 attorneys
45	Male	Attorney	Private Practice, firm of more than 40 attorneys
46	Male	Attorney	Private Practice, firm of more than 40 attorneys
47	Female	Attorney	Private Practice, solo
48	Male	Attorney	Private Practice, firm of 2-5 attorneys
49	Male	Attorney	Private Practice, firm of 2-5 attorneys
50	Female	Attorney	Private Practice, firm of 16-40 attorneys
51	Male	Attorney	Other, no other information
52	Male	Attorney	Private Practice, firm of 2-5 attorneys
53	Male	Attorney	Managing Partner, firm of 16-40 attorneys
54	Male	Attorney	Private Practice, firm of 6-15 attorneys
55	Male	Attorney	Private Practice, firm of 16-40 attorneys
56	Female	Attorney	Private Practice, firm of 16-40 attorneys
57	Male	Attorney	Private Practice, firm of 6-15 attorneys
58	Male	Attorney	Other, no other information
59	Female	Attorney	Private Practice, firm of 2-5 attorneys
60	Female	Attorney	Private Practice, firm of 16-40 attorneys
61	Male	Attorney	Private Practice, firm of more than 40 attorneys
62	Male	Attorney	Business
63	Male	Attorney	Private Practice, firm of more than 40 attorneys
64	Female	Attorney	Private Practice, firm of 6-15 attorneys
65	Male	Attorney	Private Practice, solo

66	Male	Attorney	Private Practice, firm of 6-15 attorneys
67	Male	Attorney	Private Practice, solo
68	Male	Attorney	Managing Partner, firm of 16-40 attorneys
69	Male	Attorney	Private Practice, firm of 2-5 attorneys
70	Female	Attorney	Private Practice, firm of more than 40 attorneys
71	Male	Attorney	Private Practice, firm of more than 40 attorneys
72	Male	Attorney	Private Practice, firm of more than 40 attorneys
73	Male	Attorney	Private Practice, firm of more than 40 attorneys
74	Male	Attorney	Private Practice, firm of more than 40 attorneys
75	Male	Attorney	Private Practice, firm of more than 40 attorneys
76	Male	Attorney	Private Practice, firm of more than 40 attorneys
77	Female	Attorney	Government, group of 16-40 attorneys
78	Male	Attorney	Private Practice, firm of 6-15 attorneys
79	Male	Attorney	Private Practice, firm of more than 40 attorneys
80	Female	Attorney	Private Practice, firm of 2-5 attorneys
81	Male	Attorney	Private Practice, firm of more than 40 attorneys
82	Female	Attorney	Business
83	Male	Attorney	Managing Partner, firm of more than 40 attorneys
84	Female	Attorney	Private Practice, firm of more than 40 attorneys
85	Male	Attorney	Private Practice, firm of more than 40 attorneys
86	Male	Attorney	Private Practice, Solo

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Male	Attorney	Private Practice, firm of more than 40 attorneys
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