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When public policies collide: legal "self-help" software and the unauthorized practice of law.

As computer technology advances at an astonishing rate, the law often struggles to keep pace with the corresponding development of new issues of law or, at the very least, new twists to existing law. Such is the case with the unauthorized practice of law, a creature of both state constitutional and statutory construction. Throughout the years, defining and regulating the practice of law has been the focus of many attempts by state legislatures and courts alike, with the result being that there is no one universally accepted definition.<sup>(1)</sup> Legal "self-help" books and instructional "kits," facilitating the production of legal documents, have often been scrutinized for potential unauthorized practice violations.<sup>(2)</sup> It is no surprise, then, that publishers of software used for the creation of legal documents have also been examined for possibly engaging in the unauthorized practice of law.<sup>(3)</sup> For instance, in 1999 a federal district court judge held that Quicken Family Lawyer 8.0 ("QFL 8.0") and Quicken Family Lawyer 99 ("QFL 99") violated Texas's unauthorized practice statute.<sup>(4)</sup> An injunction was granted banning the further sale of the software in Texas,<sup>(5)</sup> but subsequent legislation effectively nullified the injunction and authorized the sale of the product.<sup>(6)</sup>

This note examines the unauthorized practice of law as it relates to legal "self-help" computer software ("legal software").<sup>(7)</sup> Part I discusses the unauthorized practice of law, its history, definitions and underlying policies, as well as the various methods of state regulation and enforcement. Part II examines the unauthorized practice of law in the context of legal "self-help" books and "do-it-yourself" kits, the logical predecessors of today's legal software. The two approaches used to analyze these products for possible unauthorized practice violations (the "majority state" approach and the "minority state" approach) are identified and discussed. Part III summarizes and discusses the Texas Quicken Family Lawyer case, since it is particularly instructive as to the issues raised by legal software.

In Part IV, legal software, specifically the most updated Quicken product, Quicken Family Lawyer 2000 ("QFL 2000"), is examined and discussed in relation to the various definitions of the practice of law. The conclusion is drawn that legal software can and has been found to constitute the unauthorized practice of law in minority states, and might very well be found to constitute the unauthorized practice of law in majority states as well. Part V discusses whether legal software should be banned or regulated. This evaluation is conducted in the context of reconciling and honoring the two important public policies involved with legal software: (1) providing greater public access to legal information and assistance, and (2) protecting the public from products that may be inaccurate, harmful, and which may foster misplaced consumer reliance. It is argued that the three-pronged test suggested by the American Bar Association's Commission on NonLawyer Practice should be applied in making this evaluation.<sup>(8)</sup> That test involves (1) assessing the risk of harm to the consumer; (2) assessing the ability of the recipient to evaluate the provider's qualifications; and (3) determining whether regulation would produce a net public benefit.<sup>(9)</sup> Employing this analysis, it is contended that with appropriate regulatory requirements, mostly in the area of comprehensive disclosure language, legal software should be allowed for sale in every state, since sale under such conditions would honor the two aforementioned public policies. Finally, there is a brief discussion about how state bar associations can move to the forefront of the legal software phenomenon and, in the process, further both public policies, as well as increase the business opportunities of many of their members.

## I. WHAT IS THE UNAUTHORIZED PRACTICE OF LAW?

Historically, under the separation of powers doctrine, state judiciaries have been responsible for defining and regulating the practice of law.<sup>(10)</sup> Judicial power to regulate the practice of law is

"inherent," with its rationale rooted in enabling courts to "effectively perform their judicial functions and to protect their dignity, independence and integrity."(11) State legislatures may use their police power to protect the public interest; however, in doing so they may only act in aid of the judiciary and do not "supercede or detract from the power of the courts" to regulate the practice of law.(12)

Since defining and regulating the practice of law is a state function, there is no universal definition of actions that can be said to constitute the practice of law.(13) The practice of law, however, is commonly accepted to include activities other than "conducting litigation," such as "preparing instruments and contracts by which legal rights are secured."(14) Beyond that declaration, other activities may or may not constitute the practice of law, depending on the particular state and the method of analysis employed. For example, some states when conducting unauthorized practice of law analysis focus on the degree of legal skill and knowledge required for the activity in question.(15) Other states concentrate on whether the activity involves or affects the binding legal rights of the recipient.(16) Still others limit the inquiry to whether "the activity is one customarily performed, or commonly understood to be performed, by lawyers."(17) In 1995, the American Bar Association's Commission on NonLawyer Practice recommended that a more flexible, balancing inquiry be used to determine whether an activity might constitute the unauthorized practice of law.(18) The proposed inquiry evaluates the challenged activity by analyzing (1) the risk of harm to the consumer; (2) the ability of the service's recipient to evaluate the provider's qualifications; and (3) whether regulation would produce a net public benefit.(19)

The principal justification offered for unauthorized practice of law prohibitions is "to protect the public from the consequences of inexpert legal services."(20) Requiring practitioners to first complete a course of study and training, as well as maintain a standard of character and moral fitness, protects the public from "the inexperienced and unlearned" and ensures the "efficient administration of justice."(21) The goal of protecting the public from unqualified practitioners has existed since the earliest days of the legal system. In 1292, King Edward I was forced to limit the number of practitioners because of the "increasing number of unskilled persons practicing around the king's courts."(22) In the post-colonial United States, however, regulation of the practice of law was initially thought to be neither necessary nor desirable, and, therefore, regulation was a much more gradual process.(23) As one historical review of the practice of law notes, "[t]he first 100 years of the new American nation were marked by an unregulated legal profession ... [and saw] virtually all colonial era restrictions on admission to practice ... removed."(24)

The regulation of the legal profession in America began with the formation of bar associations, the most influential being the Association of the Bar of the City of New York.(25) An objective of that bar association was "to condition bar membership upon various educational requirements;"(26) other states establishing such associations shared this goal as well.(27) Bar associations often assumed the mantle of public protectors by forming unauthorized practice of law committees.(28) The New York County Lawyers appointed the first unauthorized practice of law committee in 1914, and the American Bar Association appointed its Committee on Unauthorized Practice in 1931.(29) These committees proved very popular, and many local and state bar associations followed suit; by 1938 over 400 such committees had been established.(30) Early on, committees often negotiated agreements with other occupations and disciplines, called "Statements of Principles," and defined the parameters within which they could operate in relation to services affecting legal rights.(31)

Today, most states, to varying degrees, establish and empower unauthorized practice of law committees to investigate complaints and, if warranted, take appropriate action.(32) In many states, an unauthorized practice of law committee is established and supervised by the state supreme court.(33) In other states, local bar associations handle the task, but are still subject to supreme court authority.(34) In some states where the supreme court appoints committees, appointment of a designated number of laymen to the committee is also required.(35) Investigation and adjudication procedures for unauthorized practice also vary from state to state. Once a violation has been found to exist, enforcement mechanisms and remedies "include

injunctions, striking pleadings, restitution and monetary sanctions."(36) In many states, the unauthorized practice of law is also a crime and prosecution can result.(37)

The exclusive defining and monitoring of the practice of law by attorneys has, not surprisingly, generated much criticism. Charges of promoting and maintaining a monopoly have been raised,(38) along with concerns that overly stringent regulation thwarts the public policy of facilitating broad public access to legal assistance and information.(39) Others have objected to what they consider due process violations, arguing that the definition of what exactly constitutes the unauthorized practice of law is vague and fails to provide adequate notice to potential wrongdoers.(40) First Amendment freedom of speech and press concerns have also been raised when unauthorized practice of law prohibitions have been applied to self-help books,(41) do-it-yourself legal kits,(42) and even legal software.(43)

Certainly, it is impossible for any definition to encompass all of the practices and activities that constitute the practice of law.(44) However, many cases have addressed whether, and under what circumstances, certain activities might be said to do so. As noted previously, it is generally acknowledged that the practice of law consists of more than litigation,(45) and can include the preparation of documents such as wills and leases.(46) Self-help books and do-it yourself kits that aid or effect the preparation of legal documents became very popular and the subject of much attention and judicial scrutiny, especially in the late 1960's and 1970'S.(47) The area is very complex, with fine distinctions made by different state courts. Legal software packages are quite similar to these products and, as such, have also begun to receive scrutiny. Besides the Texas case involving Quicken Family Lawyer, there have been rumblings from other state unauthorized practice of law committees regarding legal software and the unauthorized practice of law. (48) Eric C. Landman, chairman of the New Jersey Bar Association's Unlawful Practice Committee, recently commented on whether legal software would violate that state's statute: "If the software simply provides examples or general information on how to proceed with a will or a divorce, there's no problem... But if it tells people specifically what not to do, what to put in and how to put it in, they may have a problem."(49)

It is, then, helpful to discuss the long and rich history of legal books and document preparation kits in the context of the unauthorized practice of law.

## II. LEGAL SELF-HELP BOOKS, DO-IT-YOURSELF KITS AND THE UNAUTHORIZED PRACTICE OF LAW

As noted in the previous section, the preparation of legal instruments is generally understood to constitute the practice of law, since "the exercise of judgment in the proper drafting of legal instruments, or even the selecting of the proper form of instrument, necessarily affects important legal rights."(50) However, documents may certainly be prepared on one's own behalf,(51) and that is where kits, books, and the like come into play. The question of exactly what services these products provide has been the subject of spirited discussion by various state courts. Most courts considering the issue have opined that mere information and forms enabling an individual to self-prepare legal forms and documents are inviolate of unauthorized practice of law prohibitions.(52) Crucial to the majority determination is that the use of a book or kit does not involve the personal relationship between the provider and the recipient, which is "so necessary to the status of attorney and client."(53) Another link in the analysis employed by the majority of courts, and one which is rooted in the underlying policy of public protection, is an examination of the degree to which the product or person providing the service at issue might lead the public "astray improperly or incorrectly."(54)

A minority of courts, however, have held that kits containing legal forms and instructions as to their completion do indeed violate unauthorized practice of law prohibitions.(55) Personal contact is not a prerequisite to finding that an activity or product constitutes the practice of law.(56) The differing approaches and results of the majority and minority state courts considering the issue are best represented by a 1967 New York case, *New York County Lawyer's Association v.*

Dacey.(57)

In Dacey, a layman published a book entitled, *How to Avoid Probate!*, which proved to be enormously popular, selling over 600,000 copies by the time the five-member New York State Appellate Division panel considered the case.(58) Noting that the defendant, Dacey, had "prepared and drafted the many forms of legal instruments and documents contained in the book," the four-member majority held that Dacey had engaged in the unauthorized practice of law.(59) One member of the panel dissented, however, declaring that the mere publishing of a book with forms and information regarding their completion did not meet the definition of the practice of law.(60) New York's highest court later adopted the dissenting view,(61) and a majority of other courts considering the same or similar issues have followed the dissenting opinion's logic.(62)

The dissent in Dacey, which ultimately prevailed, emphasized the lack of a personal relationship between the author and the reader,(63) the absence of specific advice given to specific individuals regarding particular problems,(64) and the absence of any showing that the public has been exploited or led astray by the book.(65) The dissent conducted separate unauthorized practice analyses of the book's two components: (1) forms and information, and (2) instructions regarding the completion of the forms.(66) First, the dissent found that a book purporting to state what the law is does not amount to legal practice.(67) Next, it found that the publication of legal forms could not be considered the practice of law.(68) In fact, the dissent noted the prevalent use of legal forms by courts, lawyers, and the public in general, stating that "many statutes and court rules contain the forms to be used in connection with them."(69) With that foundation laid, the issue was framed as, "[a]pparently it is urged that the conjoining of these two ... the text and the forms, with advice as to how the forms should be filled out, constitutes the unlawful practice of law."(70) The dissent noted that the essence of the practice of law is "the representation and the advising of a particular person in a particular situation[,]" which was absent in the case at hand.(71) "At most," it declared, "the book assumes to offer general advice on common problems, and does not purport to give personal advice ... to a designated or readily identified person."(72)

The dissent then proceeded to evaluate the material at issue in the context of the public protection policy underlying the prohibition against the unauthorized practice of law.(73) Observing that the record was silent on factual evidence of the effect of the book's publication and sale, the dissent stated that "in order to sustain petitioner's position one has to conclude that the book by its very nature comprises the unauthorized practice of law."(74) Noting the right of individuals to represent themselves and assume the risks of doing so, the dissent pointed out that persons requiring trusts and wills "are persons of some common sense and, normally, would hardly be expected to rely completely and unquestioningly upon a mass-printed form, even with accompanying instructions. However they have the right to do so."(75)

The later disfavored Dacey majority opinion is also relevant, since it represents the viewpoint of a minority of states which have held that it is the unauthorized practice of law to publish kits containing certain legal forms, along with instructions as to their proper completion.(76) The Dacey majority's elaboration on the topic is particularly telling:

Where a person, as here, advises that this form or that form is the proper form to be used to carry out a particular legal transaction, then he is doing just what a lawyer does when a client seeks advice. The copying or completion of a form may consist merely of clerical work but the selecting of the proper form or telling a clerk what to copy and how to fill in the blanks is lawyers' work.(77)

The majority stated that public protection is the purpose and policy underlying unauthorized practice of law prohibition.(78) The court placed particular emphasis on possible consumer reliance on Dacey as a quasi-lawyer, evidenced by what it viewed as Dacey's intent and suggestion, through the book's marketing, that his forms were to be used and his advice to be followed by purchasers in property and estate matters.(79) Perhaps most significant, however, was Dacey's marketing language that "the forms contained in the book were prepared and designed by 'one of the country's leading professional estate planners.'"(80) The fact that Dacey did not have personal contact or a confidential relationship with the users of his products was said by the majority to be irrelevant, since Dacey's intent was that purchasers of his book would act on his "legal advice."(81) The court also dismissed Dacey's contentions that he was merely engaged in a very narrow subject area, mainly the preparation of specific legal forms and documents, and that he was "particularly competent" in that area.(82) Instead, the court opined that the unsupervised drafting of the documents contained in Dacey's book could have "very harmful results" and be the "direct cause of unnecessary expense and costly future litigation."(83)

The Dacey majority opinion, subsequently overturned by New York's highest court, has been followed by a minority of state courts. For instance, the Florida Supreme Court held that a divorce kit including forms, instructions and advice as to their completion constituted the unauthorized practice of law.(84) The court stated that the "advice given in the 'Divorce Kit' as to the use of the forms is quite comprehensive and specific [and] parallels much of what an attorney would customarily advise his clients who seek dissolution of marriage."(85) Further, the court attempted to harmonize its holding with the public protection policy ostensibly driving the enforcement of unauthorized practice of law prohibition, noting:

[I]t is in the filling out and use of such legal forms that legal advice is inextricably involved and that therein lies the danger of injury and damage to the public if not properly done in the accordance with law. Such law changes from time to time regarding the subject matter of such forms, not only by the change of the statute on the subject but in court opinions. It therefore usually becomes a matter for one trained in the law to provide the safeguards inherent in the law then applicable to such forms.(86)

Texas, too, has followed the Dacey majority. In *Palmer v. Unauthorized Practice of Law Committee*,(87) the Texas Court of Civil Appeals held that "an untrained layman's ... dealing with such an involved legal subject as wills [by producing and selling a will kit] falls within the statutory prohibition which bars an unlicensed person from practicing law in this State."(88) It is no surprise, then, that Texas was also the battleground for an action brought by that state's Unauthorized Practice of Law Committee against Parsons Technology, the developer and distributor of QFL 8.0 and QFL 99.(89) This case will be discussed in the next section.

### III. THE CASE AGAINST COMPUTER SOFTWARE: IS QUICKEN FAMILY LAWYER ACTUALLY A "CYBERLAWYER?"

In *Unauthorized Practice of Law Committee v. Parsons Technology, Inc.*, the Texas Unauthorized Practice of Law Committee accused Parsons of violating that state's unauthorized practice of law statute,(90) and sought to enjoin it from selling the product in the state of Texas.(91) Parsons argued that the selling of books or software could not violate the statute, since under a plain language interpretation of the Texas unauthorized practice statute, some form of personal contact between the publisher/developer and the consumer was required.(92) Parsons also argued that

the application of the statute to the sale and distribution of its software would violate Parsons' constitutional right of free speech.(93) Finally, Parsons maintained that the statute should be found void for vagueness.(94)

Each party brought motions for summary judgment, respectively contending that as a matter of law the product did or did not violate the unauthorized practice of law statute.(95) The judge acknowledged that there were no genuine issues of material fact or disputed acts and granted the Unauthorized Practice of Law Committee's motion, holding that the QFL products violated the statute.(96) In reaching that conclusion, the judge considered three major issues: (1) Did the product violate the Texas unauthorized practice of law statute?; (2) If so, did the statute's application to Parsons' design and distribution of QFL infringe upon Parsons' First Amendment rights?; and (3) Was the statute itself unconstitutionally vague?

At the time, Texas' definition of the practice of law included the following language:

a service rendered out of court, including the giving of advice or the rendering of any service requiring the use of legal skill or knowledge, such as preparing a will, contract, or other instrument, the legal effect of which under the facts and conclusions involved must be carefully determined.(97) [This] definition ... is not exclusive and does not deprive the judicial branch of the power and authority ... to determine whether other services and acts not enumerated may constitute the practice of law.(98)

Besides the statute itself, prior Texas court interpretations of the unauthorized practice of law were considered by the court.(99) As noted in Part II, an earlier Texas case, *Palmer v. Unauthorized Practice of Law Committee*, held that the preparation of legal instruments such as wills, and even the mere selection of the proper form of instrument, did indeed constitute the practice of law.(100) A later Texas case, *Fadia v. Unauthorized Practice of Law Committee*, dealt with the publication and marketing of a will manual entitled, "You and Your Will: A Do-It-Yourself Manual," and held similarly.(101) In that case, a layman appellant, Vijay Fadia, published a will manual which contained information on how to prepare wills, along with various "fill-in-the-blank forms?(102) The Fadia court, in upholding the trial court's summary judgment in favor of the Unauthorized Practice of Law Committee, granted an injunction prohibiting further sale and distribution of the manual.(103) In doing so, the court noted that "[b]ecause a will secures legal rights and involves the giving of advice requiring the use of legal skill or knowledge, the preparation of a will involves the practice of law."(104) It also rejected Fadia's suggestion that the court abandon the position expressed in *Palmer* and to recognize the "new age of legal self-help clinics."(105)

It is against this backdrop that the Texas District Court would evaluate the QFL software. The Unauthorized Practice of Law Committee argued that QFL 8.0 and QFL 99 did indeed provide legal advice and selected documents for users, both of which constituted the practice of law.(106) Further, the Committee contended that the products were in essence "high-tech" lawyers, which interacted with a "client" for the purposes of document selection and preparation.(107) Defendant Parsons contended it was not engaged in the unauthorized practice of law because the plain language of the statute required that the "services" provided by its software be completed "on behalf of" a client.(108) The trial judge dismissed this argument, noting that even if that specific portion of the statute so limited the definition of the practice of law, a subsequent section

specifically granted courts the authority to "determine that other acts constitute the unauthorized practice of law."(109) Parsons then made the same argument that failed in Fadia,(110) urging the court to mandate, as a pre-requisite to finding an unauthorized practice of law violation, the existence of a personal relationship between the provider and recipient of the material or service.(111) This method of analysis, Parsons contended, "is the logic of almost every other court to consider the issue."(112) Parsons further argued that even though the Fadia court rejected this line of reasoning, the Texas Supreme Court would follow the majority of states if it reviewed the matter.(113) While noting that it was not "Erie bound" to follow Fadia, the court nonetheless determined that were the Texas Supreme Court to consider the issue, it would find Fadia to be "persuasive precedent?"(114)

The court proceeded to declare Parsons' QFL software to be in violation of the Texas unauthorized practice of law statute.(115) In reviewing the software, the court found that QFL 8.0 and QFL 99 included over 100 different legal forms, such as will forms and employment and premarital agreements, along with instructions for their completion.(116) The court also pointed out that the software contained a feature called the "Document Advisor," which upon the initial use of the software would request the user's name, state of residence, and whether the user would like documents suggested for use.(117) Finally, the court took note of the fact that the software packaging itself did not contain disclosure language as to the product's actual legal limitations.(118) In fact, it was troubled by the overall "air of reliability" created by the product, as evidenced by packaging language pronouncing that the software has been "updated by legal experts" and will "interview you in a logical order, tailoring documents to your situation."(119) In light of these features, the court concluded that although "no single one of QFL's acts, in and of itself, may constitute the practice of law, taken as a whole Parsons, through QFL ... has ventured into the unauthorized practice of law."(120)

The next issue the court addressed was whether its application of the statute infringed upon Parsons' First Amendment rights. The court began by noting that the applicable rights were Parsons' First Amendment free press protection.(121) In determining whether the statute ran afoul of Parsons' constitutional rights, the court first determined that the statute was content neutral and, therefore, subject to intermediate scrutiny.(122) In applying that scrutiny, the court utilized the four-part O'Brien test:(123) 1) Does the statute fall within the constitutional power of the state?; 2) Does the statute further a substantial or important governmental interest?; 3) Is the governmental interest unrelated to the suppression of free expression?; and 4) Is the restriction of speech no greater than essential to further the governmental interest?(124) The court found that the statute met each requirement.(125) Identifying the legitimate state interest as protecting the citizens of Texas from being misled or harmed by the unauthorized practice of law,(126) the court found that the statute was sufficiently "tailored" so as to not "substantially burden" any more speech than necessary to secure the state's interests.(127)

The court also examined the statute under the equivalent provision in the Texas Constitution, the test for which subjects statutes and regulations to a higher standard by requiring a "showing of immediate and irreparable harm before issuing an injunction."(128) The court found that the Unauthorized Practice of Law Committee sufficiently demonstrated such harms, but also questioned whether such a requirement was warranted at all.(129) It noted that the higher standard is limited to cases involving prior restraints, which was not the case, since the injunction sought by the plaintiff would only involve software already designed and marketed.(130)

The final issue the court tackled was whether the statute violated due process because it was unconstitutionally vague as applied to Parsons, so as to effectively deny Parsons prior notice that its conduct was illegal.(131) While acknowledging that the statute "is not a model of clarity," the court stated that the statute and applicable case law provided a "core of prohibited conduct" that was sufficiently definite so as to "guide those who must interpret it."(132)

Clearly, the Parsons court was constrained by the language of the Texas statute and subsequent court interpretations as to what constitutes the unauthorized practice of law. The Texas definition

of the practice of law effectively prohibited any dissemination of the law by non-attorneys to any individual in the context of the preparation of at least certain documents.<sup>(133)</sup> In fact, at the time the Parsons case was being litigated, the Texas Unauthorized Practice of Law Committee was also investigating Nolo Press, the largest publisher of legal self-help books for possibly also engaging in the unauthorized practice of law.<sup>(134)</sup> Still, the court, perhaps wary of deciding the case based upon such a narrow interpretation of the statute and rigid definition of the practice of law, incorporated the general policy behind unauthorized practice statutes (public protection) into its decision. The court noted that the product was troublesome, in part, because it created an "air of reliability."<sup>(135)</sup> While Parsons was still on appeal, however, the Texas Legislature expressed its dissatisfaction with the decision by enacting an "emergency" amendment to its statute declaring, "[T]he 'practice of law' does not include ... books, forms, computer software, or similar products if the products clearly and conspicuously state that the products are not a substitute for the advice of an attorney."<sup>(136)</sup>

Despite this seemingly neat ending to a fierce battle, the enacted statute fails as a model for future analysis of software and the unauthorized practice of law. In fact, such a sweeping pronouncement that software can never constitute the practice of law could prove troublesome. It is not inconceivable that in the near future, with the development of more advanced software and the proliferation of powerful artificial intelligence, significantly more sophisticated products will be developed and marketed, which might cross the line into the practice of law. In an age where a computer has already been programmed to defeat chess master Gary Kasparov, the possibility that software could be developed which could provide analysis of case law and pleading preparation, for instance, is certainly not far-fetched. A bright-line rule stating that either all software can always, or can never, constitute the practice of law is unwise and shortsighted.

In the sections to follow, legal software and the unauthorized practice of law will be closely examined. Areas where legal software may indeed encroach on the practice of law as currently defined will be noted and discussed. Alterations in approach as to defining and regulating the practice of law will be proposed. Finally, there will be an examination of ways in which state bar associations and unauthorized practice committees can benefit from the proliferation of legal software, while honoring the goals of protecting the public and facilitating greater public access to legal information and assistance.

#### IV. CAN SOFTWARE PRACTICE LAW?

As the previous sections have outlined, the practice of law is generally understood to include the preparation of documents having a legal effect.<sup>(137)</sup> The primary point of contention between the opposing camps of state courts addressing unauthorized practice as it applies to books, kits and legal software has involved the issue of whether, and to what extent, such items are viewed as transcending mere facilitation of an individual's self-preparation of legal documents. At some point, the product may instead be considered as providing legal advice and selecting content, so as to effectively produce the documents on behalf of the user. The methods of analysis used in the past when considering self-help books and kits, however, are ill equipped for effective applicability to legal software. Both the majority and minority approaches fail.

Under the minority state approach, the threshold for a product crossing over into the unauthorized practice of law is very low. Summarily, the minority view states that information and forms provided in connection with the selection and completion of certain legal documents is the practice of law.<sup>(138)</sup> Therefore, in minority states, legal software can be and has been found to constitute the unauthorized practice of law. This approach, however, seems too broad and over-inclusive. As one court noted, "[c]oncededly the practice of law ... includes the drafting of many documents which create legal rights [but it] does not follow ... that the drafting of all such documents is always the practice of law."<sup>(139)</sup> To follow the minority approach would basically end the use of legal software.

The majority view, however, also suffers limitations in its applicability to legal software. This view

focuses on the existence of a personal relationship and whether specific advice is provided to the user.(140) Books and kits have been found to lack these elements, but they are not so clearly absent in legal software. Due in part to the speed with which the information exchanges are effected, software is a much more interactive process than books and kits. Further, if a particular software program provides Internet links for users to post questions and receive downloads and additional information, the product becomes much more "personal" and "specific" to the user.(141) Applying the majority approach to software, then, is a difficult and dicey proposition for courts to undertake. Majority state courts strictly following the precedents of the self-help book and kit cases may indeed find that software is so different, especially in the area of interaction, as to constitute the unauthorized practice of law.

Were a majority state to consider the issue of legal software and the unauthorized practice of law, the threshold inquiry would be focused on the nature of the software. Is legal software the modern equivalent of self-help books: merely a self-contained informational tool with a fixed amount of data imparting generalized information and forms to the user? If so, in majority states, the software would not be found to violate the prohibition against the unauthorized practice of law. But if legal software were instead viewed as an interactive product that mimics the attorney-client process and relationship, providing specific advice and assistance to the user in drafting legal documents, it would likely be found to violate unauthorized practice prohibitions in majority states. Likely, a court employing the majority approach would discover that the analysis employed is a futile exercise in semantics that reaches near philosophical proportions. After all, to what extent can software, programmed by humans, be said to have a "personal" relationship with the user? Can the software provide legal advice to the user? Can it "select" forms for the user? Can it do anything more than provide legal information, albeit information that may be accessed more quickly and conveniently than by conventional means? Observers have raised these and other questions with varying interpretations.

In *Parsons*, of course, the Texas Unauthorized Practice of Law Committee argued that the QFL software acted as a "high tech lawyer by interacting with its 'client' in suggesting and preparing legal instruments, and providing legal advice."(142) Other observers, such as the Oregon State Bar Association Board of Governors, have also weighed in on the issue. In 1994, the Oregon Bar responded to a query regarding whether an interactive online legal information system would be promoting the unlawful practice of law in that state.(143) Noting that in Oregon the majority approach would be applied and, therefore, the relevant inquiry would be whether there is "personal contact" present and individualized advice provided,(144) the Bar concluded that the system was merely the high-tech equivalent of a "self-help legal book or divorce kit."(145) In support of its conclusion, the Bar found that the computerized, interactive legal information service "[provided] customized information by generating responses from a database through the use of 'decision-tree' software, similar to using the index or table of contents in a book."(146) Further, it found that the requisite "personal contact" was lacking since, although the system was interactive, it was the customer that was actually operating the software and who would be doing the customizing, much in the same manner that a user of a self-help book or kit would do.(147) The Bar did, however, acknowledge the possibility that one day "artificial intelligence [might] develop to the point [where] its applications [would] require resolution" of the question whether computer-generated legal services would constitute the practice of law.(148)

An alternative view was expressed, interestingly enough also by a member of the Oregon Bar, in an article suggesting that legal software could indeed constitute the unauthorized practice of law.(149) In support of that argument, the author, a former Oregon Unauthorized Practice of Law Committee member, argued that legal software:

acts upon the user's information and performs a legal task ... [going] far  
beyond ... self-help legal materials ... by providing an analysis of the  
specific user's problem ... [and imitating] the attorney-client

relationship to the extent [of engaging] the user in a question and answer

session for the purpose of drafting legal documents.(150)

This interactive experience, it was said, constitutes "substantially more than filling in the blanks [because] the software determines what blanks go where and the selection and structure of the language in the document."(151) In light of these observations, the author concluded that such products could cause users to be "lulled into a false sense of security because the computer appears to be offering legal advice and making complex decisions...."(152)

As these diverse opinions illustrate, legal software arguably contains elements of both the general-form-and-information-provider model that has passed majority states' unauthorized practice of law scrutiny, and the personal-relationship-specific-advice-provider model, which has not passed such scrutiny. The most recent QFL product, QFL 2000, serves as an excellent example of the conundrum presented by subjecting the software to majority approach analysis.(153)

Certainly, QFL 2000 does much more than passively provide legal information and forms. In fact, its packaging language trumpets in part that "Quicken Family Lawyer creates a customized will...."(154) Once loaded into a personal computer, the program begins by asking the user a series of questions regarding state of residence, marital status, dependents and the like. Based on the answers provided, the program suggests particular forms that may be of interest to the user. To create documents, the program guides the user by asking a series of pertinent questions with default answers provided, along with information that might be helpful in selecting the proper answer. For instance, with the "Living Trust" document, questions in the areas of "Excluding Spouses" and "Choosing a Trustee" are posed, along with dropdown informational screens explaining the issues at stake and the effects of choosing an answer other than the default answer provided. If at the end of the process an answer is not provided by the user, the program issues a warning that failure to answer all the questions may render the document produced "legally invalid." The user can then instruct the software to produce a document based upon the answers provided. A "Final Checklist" is also provided which, at least with certain documents, contains sections on "Reasons to Update" and "When to Consult a Lawyer."(155)

The experience of using QFL 2000, then, could certainly be said to constitute the unauthorized practice of law in majority states, since the user is arguably not self-preparing the document at all, but merely providing information to the "cyberlawyer," which then analyzes the answers and prepares an individually tailored document. However, it could just as easily be argued that QFL 2000 does not constitute the unauthorized practice of law because the experience merely provides faster access to information that assists the user in the self-preparation of a legal document. In short, there just is no definitive answer to the semantic nightmare produced by evaluating legal software for possible unauthorized practice of law violations. The current definitions applied and analyses undertaken are simply ill suited to the complex and highly interpretive functions of present day computer software. Consequently, the unauthorized practice of law analysis must be brought into the computer age, with the goal being the development of a new method of analyzing and defining the practice and unauthorized practice of law.

In the next section, an alternative unauthorized practice of law analysis will be proposed for legal software. Additionally, suggestions as to how state bars can embrace and incorporate the popularity of legal software into their members' practices will be discussed. The use of legal software, it will be contended, can be consistent with the goals of public protection and promoting greater access to legal information and assistance.

V. SHOULD LEGAL SOFTWARE BE BANNED, REGULATED OR SIMPLY LEFT ALONE?  
PUTTING IT TO THE (PROPER) TEST

There is an inherent tension between the two important public policies involved in the analysis of the unauthorized practice of law. As discussed earlier, a primary concern driving the prohibition against the unauthorized practice of law is to protect the public from harm caused by those untrained in the law.(156) A competing concern, however, is that the public should have broad access to legal information and assistance. Indeed, various state courts have stressed the importance of facilitating maximum public access to legal information and legal assistance. For instance, the Florida Supreme Court, as early as 1979, stated that "[w]ithout question, it is our responsibility to promote the full availability of legal services"(157) In the context of do-it-yourself divorce kits, a New Jersey court lamented the difficulties experienced by large numbers of the general public in obtaining legal assistance: "[A] significant number of people take advantage of this particular method of obtaining a divorce [based on] the existence of what appears to be a genuine and, to a significant degree, unfulfilled need for low-cost divorces by a substantial segment of the community."(158) More recently, the Arizona Supreme Court took the initiative by establishing courthouse-based interactive multimedia systems, which provide public access to legal information and court-approved forms.(159)

At first glance, it would appear difficult to effectively further both goals. In order to provide adequate public protection, broad definitions and rigid interpretations of what constitutes the practice of law have often resulted. On the other hand, in order to provide maximum access to legal information and assistance, less rigid definitions and interpretations are required. In any event, it is clear that existing definitions and analytical approaches to the unauthorized practice of law simply fail in the computer age. Instead, when analyzing legal software and the unauthorized practice of law, it would be far more productive for courts and committees to employ the American Bar Association's NonLawyer Committee's balancing test.(160) As previously noted, that test involves evaluating legal software by: (1) assessing the risk of harm to the consumer; (2) assessing the ability of the recipient to evaluate the provider's qualifications; and (3) determining whether regulation would produce a net public benefit.(161) This test provides an effective method of evaluating the merits and dangers of legal software, freed from the constraints of prior, ill-fitting statutory definitions and case law. Also, since the touchstone is the net public benefit produced by proposed regulation, the goal of facilitating public access to legal information, all but ignored in the majority and minority state approaches, is assured of receiving appropriate weight in the analysis.

In subjecting software such as QFL 2000 to the three-pronged NonLawyer Committee test,(162) it is apparent that its sale should not be prohibited. After all, properly designed legal software provides valuable information and enables the public to create various legal documents. This effect is in accord with the goal of promoting greater public access to legal services. However, regulations with regard to the product's parameters,(163) as well as requiring comprehensive and prominently displayed disclosure language, would be needed so as to honor the policy of providing public protection.

When attempting to evaluate legal software under the first prong of the ABA test (risk of harm to the consumer), the difficulty in doing so quickly becomes evident. Parsons Technology, for instance, contends that four million copies of QFL have been sold with "no evidence anyone has ever been harmed by it."(164) However, that product is relatively new and many documents, such as wills, often do not manifest flaws until years after the document has been drafted. Texas's Unauthorized Practice Committee, not surprisingly, disagrees with Parsons' assertion that its product is reliable and harmless, citing in its arguments during the Parsons case, errors in at least three forms produced by the software.(165) Certainly, errors in programming or mistakes made by the user are possible with any legal software. If, in such instances, the user relied entirely on the product and without knowledge of the product's risks, significant damage could result. But even if flaws were found in documents produced by legal software, it might still be the case that the software is not any more harmful than documents drafted by "human attorneys," which are, after all, not immune from error or challenge. In any event, a consumer who uses a flawed product has available many of the same avenues of redress as the client who uses the services of an attorney.(166)

Other potential harms could arise due to the fact that the software is only programmed with information current to a particular date. No matter how extensive the information contained within and how properly programmed and interactive the product might be, legal software is still, in the end, a self-contained tool. Software published in 2000 cannot remain current of all changes in statutes, court interpretations, and the like. Of course, this concern could be alleviated by providing free downloadable updates via the Internet or through the offering of a supplemental update disc. In fact, QFL 2000 offers Internet-accessible software updates via a "pop-up" screen that offers a "one-click" journey to available updates.

With the risk of harm so difficult to ascertain and measure, it would be better to alter the focus of the first-prong inquiry to developing safeguards that would lessen the risk of harm to an acceptable level. For instance, much of the potential harm in allowing the sale of legal software could be avoided by requiring that the product's packaging plainly and prominently display the product's purposes and limitations. Currently, legal software fails to provide effective disclosure language that would provide adequate consumer protection.

For instance, Quicken's product is called, after all, Family Lawyer, and the prominent language contained on the software's packaging assures the user that it is "[b]acked by 10 years of experience in the legal software business and designed by a team of attorneys."<sup>(167)</sup> Such prominently displayed puffery might serve to create the "air of reliability," which so troubled the Parsons court.<sup>(168)</sup> The problems inherent in the use of potentially misleading language have been discussed, by among others, Douglas Baird, Dean of the University of Chicago Law School, who cautions that for written materials, unauthorized practice of law inquiries are most likely to be found when the materials "might mislead people in a fundamental way."<sup>(169)</sup> Merely contending, as Parsons did when embroiled in its Texas lawsuit, that "[w]hen a person walks into a bookstore and grabs a box off the shelf he doesn't think he is getting a lawyer," may not be enough to dissipate the air of reliability created by marketing and packaging of the product which is inconsistent with that contention.

The QFL 99 disclosure language was particularly woeful and inadequate when measured against the prominence and content of the language contained on the packaging.<sup>(170)</sup> Especially problematic was the fact that the disclosure did not appear anywhere on the packaging, and only appeared to the user upon initial installation and use of the software.<sup>(171)</sup> QFL 2000's disclosure efforts are certainly an improvement over its previous versions, although the language is exactly the same. QFL 2000, like its predecessors, provides the disclosure at installation/first use, but also has the disclosure "pop-up" every time the software program is opened. Further, the disclosure information is also included on the product's packaging, albeit on the inside cover in fine print where a consumer is unlikely to see it, if at all, until after the software has been purchased and opened.<sup>(172)</sup>

Other software packages are not even as thorough and clear as QFL in terms of disclosure language. "PC Attorney," published by Swift Software, has the same "air-of-reliability" product name as QFL, but lacks any disclosure language on its packaging. In fact, the front of its packaging contains the bold pronouncements, "Over 200 Legally Binding Documents" and "Valid in all 50 States."<sup>(173)</sup> Another software package, "Do-It-Yourself Lawyer," published by Expert Software, does include disclosure language of sorts, but the language is phrased instead in typical, boilerplate, "disclaimer" language, tailored to protecting the distributor and not the consumer. The disclaimer warns: "It is understood and agreed that by using this software you are acting as your own attorney [and, accordingly,] the publisher ... shall [not be liable] to any person ... [for] any loss or damage caused or alleged to be caused directly or indirectly by the forms contained in this software."<sup>(174)</sup> Such warnings, however, are counteracted by language appearing on the package in much larger print, to the effect that the software enables the user to "[e]asily create legally binding documents."<sup>(175)</sup>

In order to properly inform and minimize the risk to the consumer, model disclosure language

should be developed and made mandatory. The model disclosure language would be similar to QFL 2000's,(176) but would be required to be prominently displayed on the software's front packaging. Further, QFL 2000's "pop-up" disclosure screen (which appears upon each use of the software) should be required for all legal software. Additionally, all software packages would be required to include language that the product only reflects the law as of the publication date. However, if the product offers downloadable updates, the publisher could also note its availability as a way in which the consumer could keep the software current with the law. Finally, a clearly worded recommendation that the user have an attorney review his or her documents should be incorporated into the disclosure language.(177) Mandating these requirements would ensure that the user is well informed and, therefore, unlikely to blindly rely upon the product. Absent blind reliance, the risk of consumer harm is minimal and, therefore, the first prong is satisfied.

Legal software also measures up favorably when evaluated under the second prong of the test -- the ability of the recipient of the service to evaluate the qualifications of the provider. Of course, if the second prong were given a strict reading, legal software would be found wanting since the average consumer, being unskilled in the law as it pertains to document preparation, would likely be unable to effectively evaluate the qualifications of the legal software provider. After all, an individual's lack of skill in the area of legal document preparation is precisely why the product is being purchased. But the same can be said of many products purchased by consumers, yet potential problems are greatly alleviated by a variety of methods, many of which also apply to legal software. Product information and product ratings, for instance, are available for consumers via magazines, as well as through on-line sites.(178) Also, traditional "word of mouth" cannot be discounted as a means to steer consumers to effective, reliable products. Finally, just as with the first prong analysis, requiring adequate disclosure language, prominently displayed on the product's front packaging, would greatly aid legal software in meeting the second prong of the test. In sum, with the above safeguards required of the publisher and/or readily available to the consumer, the second prong would be satisfied as well.

Besides the availability of product information and improved product disclosure requirements, another way in which the first and second prongs could be met is for state bar associations to provide a forum for, and compile statistics regarding, customer complaints of legal software products.(179) Such a program would have to be well publicized, and could be facilitated through the establishment of a web-site dedicated to the subject. Once complaints have been made, the state's unauthorized practice of law committee could investigate the complaint and perhaps also act as a liaison to the particular software company.

In reviewing the first two prongs of the NonLawyer Committee's test, the answer to the third prong inquiry (whether regulation would produce a net public benefit) becomes clear. A net benefit would only accrue were minimal regulations instituted, primarily in the area of disclosure language. Employing such safeguards would satisfy the goal of public protection and further the goal of facilitating public access to legal information and services. Mandating more extensive regulation, however, would not be advisable. Additional regulation would not significantly provide greater public protection, and in fact would only serve to drive the price of the software up -- an event that would be detrimental to providing public access to the product.

Most importantly, however, very little formal regulation of legal software would be needed if state bars would simply recognize the reality that software is here, popular, and despite initial concerns, may actually prove to be a source of increased business opportunities for attorneys, rather than a threat to their livelihood. Many of the purchasers of legal software are persons that might not have otherwise visited an attorney,(180) and of those purchasers that might have visited an attorney for document preparation, many will likely think it wise to visit an attorney anyway, if only to review their computer-generated documents.(181)

In fact, attorneys, especially younger attorneys and sole practitioners seeking to grow their practices, would be wise to offer low-cost or free legal software document review as a means to establish relationships with potential new clients. The review could be limited to certain

documents, such as wills, trusts and leases. For the general practitioner, today's new client visiting the office for document review may provide tomorrow's tort, estate and real estate closing work. With younger users of legal software, especially, the opportunity to have computer-generated documents reviewed by an attorney at little or no expense, would likely be welcomed; more importantly such outreach would provide the practitioner with potentially thirty or forty years of future business, often involving more complex and lucrative work.

Finally, state bars should consider forming committees to partner with software companies in an effort to jointly develop legal software for use in their states.<sup>(182)</sup> Such software could be marketed as a product designed and approved by the local Bar Association.<sup>(183)</sup> Should such an undertaking prove too cost prohibitive, groups of states could band together and produce regional software. Such an endeavor would be a creative way in which the protection of the public could be better ensured. Any unique features of a particular state or region's laws or practices could be incorporated into the software, and since the software would only apply to a particular state or region (and would be designed by experienced local practitioners), quality control would ostensibly be of a much higher caliber. Further, if state bars really wanted to jump into the software business with both feet, they could also offer an Internet link to "participating" attorneys who would offer free review of the documents produced. Again, this would serve as a wonderful opportunity for participating firms to build up their client base.

## CONCLUSION

While at first glance, legal computer software might appear to be a threat to the public, it is a far cry from the horror envisioned by some. Certainly, the popularity of such software packages presents a challenge to the legal community, which seeks to regulate the practice of law in order to protect the public from the dangers of unskilled practitioners. However, with challenges come opportunities, and the profession should not be so rooted in tradition as to ignore the obvious benefits to the public of increased access to legal information and tools used to foster self-representation. Opportunities also abound for general practitioners who can generate future business for themselves by incorporating the popularity of legal software into their practices, specifically through the offering of low-cost or free legal software document review. Such a service would also provide greater public protection for the users of legal software.

The response of the legal community in general, then, and of unauthorized practice of law committees and state judiciaries in particular, should not be focused on enforcing unauthorized practice of law definitions and regulations best left to another era. However, adopting wholesale changes in unauthorized practice of law definitions, thereby allowing any and all legal software to be sold is also undesirable. Today's software document provider could easily be tomorrow's pleadings provider or case law analyzer. Such software, if made available for public use, would engender greater potential for public harm and judicial chaos; greater scrutiny, then, would be required. A better use of energy by the states would be to evaluate legal software under the NonLawyers Committee three-pronged balancing test, and declare that the sale of legal software be permitted, with only minimal regulations employed. By ensuring that proper safeguards are in place to protect the public, while access to legal software is not significantly restricted or impeded, the policies of public protection and maximum access to legal information and assistance would be honored. In short, the technological revolution is transforming businesses of all types, and the legal profession is not immune to its effects either. As the public at large has embraced computer software that aids in the production of legal documents, so must the entire legal profession. Opportunity knocks as never before.

(1.) See generally 7 AM. JUR. 2D Attorneys at Law [sections] 118 (1997). For a comprehensive overview of the definitions employed by various states, as well as information on state regulation of the practice of law, see, AM. BAR ASS'N CTR. FOR PROF'L RESPONSIBILITY, 1994 SURVEY AND RELATED MATERIALS ON THE UNAUTHORIZED PRACTICE OF LAW/NONLAWYER PRACTICE (1996).

- (2.) See generally 7 AM. JUR. 2D Sale of Books or Forms [sections] 119 (1997).
- (3.) See generally Unauthorized Practice of Law Comm. v. Parsons Tech., Inc., No. 3:97CV-2859-H, 1999 WL 47235 (N.D. Tex., Jan. 22, 1999).
- (4.) Id. at \*6.
- (5.) Id. at \*3, \*11.
- (6.) TEX. GOV'T CODE ANN. [sections] 81.101(c) (Vernon Supp. 2000).
- (7.) Throughout this note, the phrase "legal software" will be used. It is understood to mean software which facilitates the preparation of legal documents, such as wills and leases.
- (8.) AM. BAR ASS'N COMM'N ON NONLAWYER PRACTICE, NONLAWYER ACTIVITY IN LAW-RELATED SITUATIONS: A REPORT WITH RECOMMENDATIONS, at 9 (Aug. 1995) [hereinafter NONLAWYER ACTIVITY IN LAW-RELATED SITUATIONS].
- (9.) Id.
- (10.) See generally 7 AM. JUR. 2D Attorneys at Law [sections] 2 (1997); JUSTINE FISHER & DOROTHY H. LACHMANN, UNAUTHORIZED PRACTICE HANDBOOK (American Bar Foundation 1972). Defining and regulating the practice of law is a state function that in most states is a "power vested in the state's highest court." MODEL RULES ANN., infra note 13. (citing Zielinski v. Schmalbeck, 646 N.E.2d 655 (Ill. App. Ct. 1995); Pub. Serv. Comm'n v. Hahn Transp., Inc., 253 A.2d 845 (Md. 1969); Cape May Bar Ass'n v. Ludlam, 211 A.2d 780 (N.J. 1965)).
- (11.) Eichelberger v. Eichelberger, 582 S.W.2d 395, 398-99 (Tex. 1999) (discussing the inherent and implied powers granted to the courts in addition to those granted under the Constitution); State Bar of Tex. v. Gomez, 891 S.W.2d 243,245 (Tex. 1994) ("[T]he court must have the power to regulate [the admission and practice of attorneys] in order to fulfill its constitutional role.").
- (12.) 7 AM. JUR. 2D Attorneys at Law [sections] 2 (1997).
- (13.) MODEL RULES OF PROFESSIONAL CONDUCT ANN. R. 5.5 cmt. at 453 (1996) [hereinafter "MODEL RULES ANN."].
- (14.) 7 AM. JUR. 2D Attorneys at Law [sections] 118 (1997).
- (15.) MODEL RULES ANN., supra note 13 at 455.
- (16.) See id.
- (17.) Id (citing e.g., Pope County Bar Ass'n v. Suggs, 624 S.W.2d 828 (Ark. 1981)).
- (18.) NONLAWYER ACTIVITY IN LAW-RELATED SITUATIONS, supra note 8, at 12.
- (19.) Id. at 9. Interestingly enough, the New Jersey Supreme Court recently employed a similar balancing test when inquiring into the activities of real estate brokers conducting real estate transactions without attorneys. See In re Opinion No. 26 of the Comm. on the Unauthorized Practice of Law, 654 A.2d 1344, 1346 (N.J. 1995) ("We determine the ultimate touchstone -- the public interest -- through the balancing of the factors in the case, namely, the risks and benefits to the public of allowing ... such activities.").
- (20.) MODEL RULES ANN., supra note 13 at 453. "Other interests include protecting the integrity of the judicial system and providing a means for regulation of the profession." Id.

(21.) Robert R. Ries, The Unauthorized Practice of Law in Texas, 60 TEX. B.J. 37, 38 (Jan. 1997).

(22.) *Id.* at 37.

(23.) *Id.*

(24.) NONLAWYER ACTIVITY IN LAW-RELATED SITUATIONS, *supra* note 8, at 15.

(25.) *Id.* at 16.

(26.) *Id.*

(27.) *Id.* It was not until 1940, however, that all states required "some professional study preparatory to admission." *Id.* (quoting Barlow F. Christensen, The Unauthorized Practice of Law: Do Good Fences Really Make Good Neighbors or Even Good Sense? AM. B. FOUND. RES. J. 159, 176 (1980)).

(28.) NONLAWYER ACTIVITY IN LAW-RELATED SITUATIONS, *supra* note 8, at 17.

(29.) *Id.*

(30.) Deborah L. Rhode, Policing the Professional Monopoly: A Constitutional and Empirical Analysis of Unauthorized Practice Prohibitions, 34 STAN. L. REV. 1 (1981).

(31.) *Id.* at 9. For the most part, these agreements have been rescinded, ostensibly the result of pressure and inquiry from the Justice Department's Antitrust Division. See *id.* at 9-10.

(32.) The New Jersey and Texas statutes regarding unauthorized practice of law committees are good examples of the broad powers granted by state legislatures. See N.J.R. 1:22-2 (West 1999); TEX. GOV'T CODE ANN. [sections] 81.104 (Vernon Supp. 2000). For an overview of the various state systems of investigation and enforcement of unauthorized practice of law violations, see AM. BAR ASS'N CTR. FOR PROF'L RESPONSIBILITY, 1994 SURVEY AND RELATED MATERIALS ON THE UNAUTHORIZED PRACTICE OF LAW/NONLAWYER PRACTICE (1996).

(33.) For example, the Texas Supreme Court is required under the State Bar Act to appoint a twelve-member unauthorized practice of law committee, three members of which must be non-lawyers. 7 TEX. JUR. 3D Attorneys at Law [sections] 117 (1980).

(34.) E.g., 4 FLA. Jug. 2D Attorneys at Law [sections] 47 (1994) ("As an official arm of the Florida Supreme Court, the Florida Bar considers, investigates, and seeks the prohibition of matters relating to the unlicensed practice of law."); 6 OHIO JUR. 3D Attorneys at Law [sections] 89 (1996) ("The unauthorized practice of law committee of an organized bar association or Disciplinary Counsel must investigate any matter referred to it or that comes to its attention and may file a complaint alleging the unauthorized practice of law according to the Supreme Court Rules for the Government of the Bar of Ohio."); Elizabeth S. Holmes, What is the Unauthorized Practice of Law and How is It Regulated?, 76 MICH. B.J. 580 (June 1997) ([Court] "Rule 16 provides: 'The State Bar of Michigan is hereby authorized and empowered to investigate matters pertaining to the unauthorized practice of law and ... to file and prosecute actions and proceedings.'").

(35.) 7 TEX. JUR. 3D Attorneys at Law [sections] 117 (1980); Mark Ticer, The Unauthorized Practice of Law Committee, THE DALLAS BAR ASS'N, at <http://www.dallasbar.org/members/headnotes.asp?item=27> (last visited Nov. 16, 2000).

(36.) Ries, *supra* note 21, at 40.

(37.) In a recent survey of state unauthorized practice of law remedies, most states indicated that an entity engaged in the unauthorized practice of law is subject to criminal penalties. See AM. BAR ASS'N CTR. FOR PROF'L RESPONSIBILITY, 1994 SURVEY AND RELATED MATERIALS ON THE UNAUTHORIZED PRACTICE OF LAW/NONLAWYER PRACTICE, 23-31 (1996).

(38.) E.g., Rhode, *supra* note 30, at 7-8; Debra Baker, *Is This Woman a Threat to Lawyers?*, A.B.A.J., at 54 (June 1999) (quoting David Vladeck, a public interest lawyer representing an organization charged with engaging in the unauthorized practice of law for counseling and representing parents of "special needs" students: "The legal profession has always jealously guarded its monopoly. This is just another example.").

(39.) E.g., Baker, *supra* note 38, at 54. The public policy of facilitating public access to legal assistance is discussed in greater detail *infra* Part V.

(40.) *Unauthorized Practice of Law Comm. v. Parsons Tech., Inc.*, No. 3:97CV-2859-H, 1999 WL 47235 (N.D. Tex., Jan. 22, 1999). In *Parsons*, the defendant raised this argument in connection with the Texas statute, but the court ruled that "[w]hile the statute is not a model of clarity ... [it] and the surrounding case law set forth a core of prohibited conduct with sufficient definiteness to guide those who must interpret it." *Id.* at \*11. At least one scholar has also registered an objection to unauthorized practice definitions and statutes on the basis of due process concerns. Rhode, *supra* note 30 at 20 ("The most striking common feature of these [unauthorized practice of law statutory] prohibitions is their broad and largely undefined scope... On their face, these statutes raise obvious constitutional questions. Their vagueness poses issues of fair notice.").

(41.) See generally Patricia Jean Lamkin, J.D., Annotation, *Sale of Books or Forms Designed to Enable Laymen to Achieve Legal Results Without Assistance of Attorney as Unauthorized Practice of Law*, 71 A.L.R.3d 1000, [sections] 2 (1999).

(42.) *Id.* [sections] 4.

(43.) *Parsons*, 1999 WL 47235, at \*3.

(44.) See MODEL RULES ANN., *supra* note 13 at 454. ("Courts have demonstrated a reluctance to adopt a comprehensive, discrete definition of the practice of law.").

(45.) See generally 7 AM. JUR. 2D *Attorneys at Law* [sections] 118 (1997).

(46.) *Id.*

(47.) A flurry of cases involving such material were decided by various state courts during this period. E.g., *Cape May County Bar Ass'n v. Ludlam*, 211 A.2d 780 (N.J. 1965); *Palmer v. Unauthorized Practice of Law Comm.*, 438 S.W.2d 374 (Tex. App. 1969); *N.Y. County Lawyers' Ass'n v. Dacey*, 283 N.Y.S.2d 984 (App. Div. 1967); *Fla. Bar v. Stupica*, 300 So. 2d 683 (Fla. 1974).

(48.) Scott Goldstein, *When Does Software Cross the Line into Law Practice?*, 8 N.J. LAW. WKLY. NEWSPAPER, Feb. 8, 1999, at 271.

(49.) *Id.*

(50.) *Cape May County Bar Ass'n v. Ludlam*, 211 A.2d 780, 782 (N.J. 1965).

(51.) E.g., *N.Y. County Lawyers' Ass'n v. Dacey*, 283 N.Y.S.2d 984, 999, (App. Div. 1967) (Stevens, J., dissenting), *rev'd and dissenting opinion adopted*, 287 N.Y.S.2d 422, 234 N.E.2d 459 (N.Y. 1967) ("Every individual has a right to represent himself if he chooses to do so, and to

assume the risks attendant upon what could prove a precarious undertaking.").

(52.) See, e.g., *State Bar v. Cramer*, 249 N.W.2d 1, 14 (Mich. 1976); *Oregon State Bar v. Gilchrist*, 538 P.2d 913,916 (Or. 1975); *N.Y. County Lawyers' Ass'n v. Dacey*, 283 N.Y.S.2d 984, 999 (App. Div. 1967) (Stevens, J., dissenting), rev'd and dissenting opinion adopted, 287 N.Y.S.2d 422, 234 N.E.2d 459 (N.Y. 1967).

(53.) *Dacey*, 283 N.Y.S.2d at 998 (Stevens, J., dissenting).

(54.) *Id.*

(55.) *Fla. Bar v. Stupica*, 300 So. 2d 683,687 (Fla. 1974) ("We consider [the sale of a "divorce kit" providing forms coupled with direct legal instructions and advice] to be legal counseling... [The kit] assumes an in lieu role in place and instead of an attorney at law"); *Palmer v. Unauthorized Practice of Law Comm.*, 438 S.W.2d 374 (Tex. Ct. App. 1969) (holding that the sale of a will kit constituted the unauthorized practice of law).

(56.) *Stupica*, 300 So. 2d at 685-86; *Dacey*, 283 N.Y.S.2d. at 991.

(57.) 283 N.Y.S.2d 984 (App. Div. 1967), rev'd and dissenting opinion adopted, 287 N.Y.S.2d 422, 234 N.E.2d 459 (N.Y. 1967).

(58.) *Id.* at 988.

(59.) *Id.* at 990.

(60.) *Id.* at 996-1001 (Stevens, J., dissenting).

(61.) *N.Y. County Lawyers' Ass'n v. Dacey*, 287 N.Y.S.2d 422, 234 N.E.2d 459 (N.Y. 1967).

(62.) E.g., *State Bar v. Cramer*, 249 N.W.2d 1 (Mich. 1976); *Or. State Bar v. Gilchrist*, 538 P.2d 913 (Or. 1975).

(63.) *N.Y. County Lawyers' Ass'n v. Dacey*, 283 N.Y.S.2d 984, 998 (App. Div. 1967) (Stevens, J., dissenting), rev'd and dissenting opinion adopted, 287 N.Y.S.2d 422, 234 N.E.2d 459 (N.Y. 1967).

(64.) *Id.* at 998.

(65.) *Id.*

(66.) *Id.* at 999.

(67.) *Id.* at 997.

(68.) *Dacey*, 283 N.Y.S.2d at 997 (Stevens, J., dissenting).

(69.) *Id.* Curiously, the court did not find noteworthy the difference between forms developed by, and for the use of, bar members, and those developed and published by a layman for use by the general public.

(70.) *Id.* at 997-98.

(71.) *Id.* at 998.

(72.) *Id.*

(73.) Id.

(74.) Id. at 999.

(75.) Id. at 998-99.

(76.) See, e.g., Fla. Bar v. Stupica, 300 So. 2d 683,686, 687 (Fla. 1974); Palmer v. Unauthorized Practice of Law Comm., 438 S.W.2d 374 (Tex. App. 1969).

(77.) Dacey, 283 N.Y.S.2d at 990.

(78.) Id. at 992.

(79.) Id. at 991.

(80.) Id.

(81.) Id.

(82.) Id. at 993.

(83.) Id. at 992.

(84.) Fla. Bar v. Stupica, 300 So. 2d 683, 686 (Fla. 1974). However, the Florida Bar has since "prepared ... standardized ... self-help instructional materials in a wide variety of subject areas for use by self-represented persons [which] are sold in stationery stores at a modest cost." NONLAWYER ACTIVITY IN LAW-RELATED SITUATIONS, supra note 8, at 99.

(85.) Id. at 686.

(86.) Id.

(87.) 438 S.W.2d 374, 376-77 (Tex. App. 1969).

(88.) Id. at 377.

(89.) Unauthorized Practice of Law Comm. v. Parsons Tech., Inc., No. 3:97-CV2859-H, 1999 WL 47235 (N.D. Tex., Jan. 22, 1999).

(90.) Id. at \*3. For the statute defining the practice of law in Texas at the time the suit was brought, see TEX. GOV'T CODE ANN. [sections] 81.101 (a), (b) (Vernon Supp. 2000).

(91.) Parsons, 1999 WL 47235, at \*3.

(92.) Parsons Def.'s Br. at 7-8 (placing great emphasis on the phrase "on behalf of a client" which was contained in the statute; Parsons contended that the phrase contemplates "some relationship beyond publisher and consumer.").

(93.) Parsons, 1999 WL 47235, at \*3.

(94.) Id.

(95.) Id.

(96.) Id. at \*1, 6, 11.

- (97.) TEX. GOV'T CODE ANN. [sections] 81.101 (a) (Vernon Supp. 2000).
- (98.) TEX. Gov't COOE ANN. [sections] 81.101 (b) (Vernon Supp. 2000).
- (99.) Parsons, 1999 WL 47235, at \*6-7.
- (100.) Palmer v. Unauthorized Practice of Law Comm., 438 S.W.2d 374 (Tex. App. 1969).
- (101.) 830 S.W.2d 162, 163 (Tex. App. 1992).
- (102.) Id.
- (103.) Fadia, 830 S.W.2d 162 at 163, 166.
- (104.) Id. at 164 (citing Palmer, 438 S.W.2d 374).
- (105.) Id. at 163 (Tex. App. 1992).
- (106.) Unauthorized Practice of Law Comm. v. Parsons Tech., Inc., No. 3:97-CV2859-H, 1999 WL 47235, at '13 (N.D. Tex., Jan. 22, 1999).
- (107.) Pl's. Reply to Def's Resp. to Pl.'s Mot. for Summ. J., at 3, Parsons, 1999 WL 47235.
- (108.) Parsons, 1999 WL 47235, at \*19.
- (109.) Id. (citing TEX. GOV'T COOE ANN. [sections] 81.101 (b) (Vernon Supp. 2000)).
- (110.) Parsons, 1999 WL 47235, at \*6.
- (111.) Id.
- (112.) Id.
- (113.) Id. at \*7. Parsons contended that the Texas Supreme Court did not review the Fadia decision and "never expressed approval for its results." Def.'s Resp. to the Pl.'s Mot. for Summ. J. at 5-6 n. 2, Parsons, 1999 WL 47235. Relevant to the assertion that the Texas Supreme Court would reject Fadia was that Fadia was but "one intermediate appellate decision involving a pro se litigant who waived his constitutional challenges, eliminating any application of the vagueness canon or the canon requiring construction to avoid First Amendment concerns." Def.'s Resp. to the Comm.'s Mot. for Summ. J. at 5, Parsons, 1999 WL 47235. Parsons also argued that Palmer was not controlling because it was easily distinguished (in that case, Palmer had "personally drafted and supervised the execution of wills"). Def.'s Resp. to the Comm.'s Mot. for Suture. J. at 6, Parsons, 1999 WL 47235.
- (114.) Parsons, 1999 WL 47235, at \*7.
- (115.) Id. at \*6-7.
- (116.) Id. at \*1-2.
- (117.) Id. at \*2.
- (118.) Id. Such language would appear upon installation, but would not appear any time after (unless the user pulled down the "help" menu). Id. The current version of the product, QFL 2000, does contain a disclosure (in fact, the same disclosure contained in QFL 99) on the packaging itself. The disclosure reads as follows:

The program provides forms and information about the law. The Software cannot and does not provide specific information for your exact situation and cannot decide whether the program's forms are appropriate for you. You must therefore use your own judgment, and to the extent you believe appropriate, the assistance of a lawyer. QFL 2000, Product Packaging, published by Parsons Technology.

(119.) Id. This marketing language is similar to the language which so troubled the Dacey majority to the effect that "the forms contained in the book were prepared and designed by 'one of the country's leading professional estate planners.'" N.Y. County Lawyers' Ass'n v. Dacey, 283 N.Y.S.2d 984, 991 App. Div. 1967), rev 'd and dissenting opinion adopted, 287 N.Y.S.2d 422, 234 N.E.2d 459 (N.Y. 1967).

(120.) Id. at \*6.

(121.) Id. at \*7.

(122.) Id.

(123.) United States v. O'Brien, 391 U.S. 367 (1968).

(124.) Parsons, 1999 WL 47235, at '8-10.

(125.) Id. at \*10.

(126.) Id. at \*9.

(127.) Id.

(128.) Id. at \*10.

(129.) Id.

(130.) Id.

(131.) Id. at \*10-11.

(132.) Id. at \*11.

(133.) In Palmer v. Unauthorized Practice of Law Comm., the court distinguished the defendant's will kit from the lawful sale of lease and deed forms in Texas, stating, "[A] deed form can be said to be standardized somewhat... A will 'form' as distributed by the defendants is almost a will itself." 438 S.W.2d 374, 376 (Tex. App. 1969).

(134.) Dennis Berman, A Matter of Law: Texas vs. Nolo Press, Bus. WK. ONLINE (Mar. 26, 1998), at <http://www.businessweek.com/bwdaily/dnflash/dnfarch.htm>. See also In re: Nolo Press/Folk Law, Inc., 991 S.W.2d 768, 773 (Tex. 1999).

(135.) Parsons, 1999 WL 47235, at \*6.

(136.) TEX. GOV'T CODE ANN. [sections] 81.101(c) (Vernon Supp. 2000).

(137.) See generally 7 AM. JUR. 2D Attorneys at Law [sections] 118 (1997).

(138.) See discussion supra Part II.

(139.) N.Y. County Lawyers' Ass'n v. Dacey, 283 N.Y.S.2d 984, 999 (App. Div. 1967) (Stevens, J., dissenting), rev'd and dissenting opinion adopted, 287 N.Y.S.2d 422, 234 N.E.2d 459 (N.Y. 1967).

(140.) See discussion supra Part II.

(141.) QFL 2000, for instance, contains a link to a "consumer legal web-site," Free Advice, and also offers downloadable updates of the software via the Internet.

(142.) Pl.'s Reply to Def.'s Resp. to Pl.'s Mot. for Summ. J. at 3. Unauthorized Practice of Law Comm. v. Parsons Tech., Inc., No. 3:97-CV-2859-H, 1999 WL 47235, at \*6 (N.D. Tex., Jan. 22, 1999).

(143.) Oregon State Bar Ass'n Bd. of Governors, Formal Op. 1994-137 (1994), 1994 WL 455098 (Or. St. Bar Ass'n).

(144.) Id. at \*1.

(145.) Id.

(146.) Id. at \*2.

(147.) Id.

(148.) Id.

(149.) Christopher James, Interactive Legal Software Should Be Considered Before Independent Paralegals Are Licensed, OR. ST. B. BULL. July 1992 at 17, available at WL 52-Jul Or. St. Bar Bull. 15.

(150.) Id.

(151.) Id.

(152.) Id. at 18.

(153.) Note: All information to follow regarding QFL 2000 is derived from either the product packaging or the author's use of the product.

(154.) QFL 2000, Product Packaging, published by Parsons Technology (emphasis added).

(155.) With the creation of a will, for instance, the QFL 2000 advises under the section, When to Consult a Lawyer:

If the Willmaker is unable to sign due to physical disability, another person may be able to sign on behalf of the Willmaker, in the Willmaker's presence, and at the express direction of the Willmaker. However, this document does not provide the necessary language for another person to sign

for the Willmaker. For assistance with this procedure, a lawyer should be contacted.

(156.) See MODEL RULES ANN., supra note 13 at 453. Attorneys, of course, must complete a course of study at an approved law school, must pass a bar examination and meet character and fitness requirements. Further, practicing attorneys are bound by a strict code of ethics and are often subjected to continuing legal education requirements. Finally, many state bars have disciplinary committees to police the activities of their members, and provide a forum for dissatisfied clients to raise complaints and even recover damages from client protection funds. Thus, the attorney-client relationship is unique in its demands regarding an attorney's duty to clients and its protections offered to clients.

(157.) Fla. Bar v. Furman, 376 So. 2d 378, 382 (Fla. 1979).

(158.) N. J. State Bar Ass'n v. Divorce Ctr. of Atlantic County, 477 A.2d 415, 417 (N.J. Super. Ct. Ch. Div. 1984).

(159.) NONLAWYER ACTIVITY IN LAW-RELATED SITUATIONS, supra note 8, at 39-40. For a comprehensive survey of programs designed to assist people of "modest means" to obtain legal help, see ABA Division of Legal Services, Innovative Programs to Help People of Modest Means Obtain Legal Help, at <http://www.abanet.org/legalservices/modesthelp.html> (last visited Nov. 16, 2000).

(160.) See NONLAWYER ACTIVITY IN LAW-RELATED SITUATIONS, supra note 8, at 8-9. Preferably, the evaluation would be in the form of a uniform rule because most software is marketed nationwide. Multiple and varying state restrictions would only serve to increase the cost of such products, and create uncertainty amongst consumers.

(161.) Id.

(162.) The Constitutional issues raised in Parsons (freedom of speech/press and due process), which might prevent regulation of legal software, are ignored in the following analysis. As demonstrated in the Parsons decision, the freedom of speech/press issues hinge upon whether the product involved is actually engaged in the unauthorized practice of law and, thus, presents a danger to the public. But as previously detailed, the determination of whether legal software constitutes the practice of law is a difficult one. For purposes of the following analysis, it is assumed that legal software could be construed as the practice of law and would, therefore, be subject to state scrutiny under the power to regulate the practice of law. Courts considering unauthorized practice of law prohibitions have upheld state authority to regulate or prohibit the activity or product at issue, since the practice of law is a privilege, not a right. E.g., Barnard v. Thorstenn, 489 U.S. 546 (1989); Sperry v. Florida, 373 U.S. 379, 383 (1963) (holding that a state has a substantial interest in regulating the practice of law within its boundaries); Monroe v. Hortwitch, 820 F. Supp. 682, 686-88 (D. Conn. 1993) (holding that a state has a compelling interest in regulating the practice of law); State v. Buyer's Serv. Co., 357 S.E.2d 15, 17 (S.C. 1987).

(163.) Only legal software which enables the user to produce legal documents, such as wills and leases, is contemplated in this analysis. As stated previously, more advanced and sophisticated software, such as software that provides litigation and pleadings assistance, would require independent evaluation and analysis.

(164.) Pat Denato, Iowa Company's Legal Software Faces Threat: A Texas Judge Says The Program Amounts to the Unauthorized Practice of Law, DES MOINES REGISTER, Feb. 6, 1999 at B1. The author wonders just how many of the "four million" copies sold were purchased by

attorneys.

(165.) Pl.'s Reply to Def.'s Resp. to Pl.'s Mot. for Summ. J. at 5, Unauthorized Practice of Law Comm. v. Parsons Tech., Inc., No. 3:97-CV-2859-H, 1999 WL 47235, at \*7 (N.D. Tex., Jan. 22, 1999). The Unauthorized Practice Committee cites as an example of the errors inherent in the QFL 99 software the fact that the "noncompete" agreement produced by the software is "misleading and incorrect." Id. Specifically, the noncompete agreement would not be enforceable in Texas unless it was "ancillary to an otherwise enforceable agreement and ... reasonable as to time, geographical area, and scope of activity." Id.

(166.) Such an aggrieved consumer could, for instance, bring a tort action. Of course, whether the consumer would prevail would depend upon a variety of factors, including proving that the product was used properly and that any disclosure language does not preclude a finding of liability. It is arguable, however, that the legal profession, with its strict code of ethics and the like, affords even greater protection than that available to the software consumer. See supra text accompanying note 156.

(167.) QFL 2000, Product Packaging, published by Parsons Technology (emphasis added).

(168.) See Unauthorized Practice of Law Comm. v. Parsons Tech., Inc., No. 3:97-CV-2859-H, 1999 WL 47235, at \*6 (N.D. Tex., Jan. 22, 1999).

(169.) Berman, supra note 134.

(170.) In addition to the language noted previously, the packaging language also pronounced that the software has been "updated by legal experts" and will "interview you in a logical order, tailoring documents to your situation." Parsons, 1999 WL 47235, at \*2.

(171.) Id.

(172.) See QFL 2000, Product Packaging, published by Parsons Technology.

(173.) Interestingly, this product, through its packaging language, makes no pretense as to who is preparing the document, stating, "Just type the answers to the questions asked on screen as the program walks you through the document. When it has all the necessary information, PC Attorney will assemble and print the final document for your signature." PC Attorney, Product Packaging, published by Swift Software.

(174.) Expert Software Do-It-Yourself Lawyer CD-ROM. Wow! From the impressive disclaimer language one can certainly assume that the software was indeed designed by an attorney!

(175.) Id. (emphasis added).

(176.) See supra note 118.

(177.) Currently, QFL 2000 advises in its disclosure that the user "must use [his or her] own judgment, and to the extent you believe appropriate, the assistance of a lawyer." QFL 2000, Product Packaging, published by Parsons Technology.

(178.) For example, a quick Internet search conducted by the author using the phrase "Quicken Family Lawyer product reviews," brought up web-sites for various reviewing entities, including MacWorld magazine. Legal self-help products, including computer software, are also reviewed in a book published by HALT ("An organization of Americans for Legal Reform"). See JAMES C. TURNER, THERESA MEEHAN RUDY AND EDWARD J. TANNOUSE, DO-IT-YOURSELF LAW: HALT'S GUIDE TO SELF-HELP BOOKS, KITS & SOFTWARE (1999). Internet users may also access a summary of the book and order it on-line via HALT's web-site at

<http://www.halt.org/Books/books.cfm?ID=diy>.

(179.) A similar regulation might be a requirement that software manufacturers have their products reviewed prior to distribution by a national bar association clearinghouse. This would serve to increase the accuracy of the product as of a particular date. However, such a regulation would be time consuming and costly to the publisher, as well as a responsibility that the bar might not wish to assume, even if it charged a substantial fee for such a service. To mandate such review and approval would increase the cost of the product, eliminating the inherent attractiveness and utility of legal software products. Certainly absent such review, a product could be put out that is inaccurate and harmful to its users, but with proper disclosure, this would simply be an informed risk taken by an informed consumer. Besides, as stated previously, documents drafted by attorneys are not free from error or challenge. Further, if a particular product were defective in that it provided inaccurate information, legal remedies might be available.

(180.) In fact, "[m]any studies identify a massive volume of unmet legal needs among low-income persons[, and] similar studies establish that more than sixty percent of the legal and law-related problems of [moderate-and-middle-income individuals] are not brought to lawyers or courts." NONLAWYER ACTIVITY IN LAW-RELATED SITUATIONS, supra note 8, at 4. See also Barbara Whitaker, Free-Speech Concerns Raised as Texas Aims to Ban Legal Software, THE SEATTLE TIMES, Feb. 7, 1999, at A3 (Southern Methodist University Professor Jane Winn, a specialist in electronic commerce, notes that "[m]ost of the people who buy this program [Quicken Family Lawyer] cannot afford ... a lawyer").

(181.) As noted in N.Y. County Lawyers' Ass'n v Dacey, 283 N.Y.S.2d 984, 999, (App. Div. 1967), rev'd and dissenting opinion adopted, 287 N.Y.S.2d 422, 234 N.E.2d 459 (N.Y. 1967). "Those of sufficient substance to require trusts or wills for the most part are persons of some common sense and, normally, would hardly be expected to completely and unquestioningly rely upon a mass-printed form, even with accompanying instructions." Id. But cf. James, supra note 149, at 18 ("Users of self-help legal software may be lulled into a false sense of security because the computer appears to be offering legal advice and making complex decisions... This credibility is magnified by the fact that the younger generations [who are more accustomed to computers] may tend to rely more heavily on the resulting ... documents.").

(182.) This partnering of the legal community and software developers would certainly not be a novel idea. The Arizona Supreme Court, in phase two of its development of interactive, document-producing, courthouse computer kiosks, has partnered with a private developer. NONLAWYER ACTIVITY IN LAW-RELATED SITUATIONS, supra note 8, at 99. Per use charges for the services available will be assessed and collected by the developer, who will also own the system, but pricing will be designed to minimize user expense. Id.

(183.) Certain state bars, and even courts, are now producing their own self-help materials. Besides Arizona, Florida has also produced self-help assistance material. See supra text accompanying note 84.

Steve French, J.D. Candidate, 2001, Rutgers School of Law-Newark. I would like to thank my colleagues at the Rutgers Computer & Technology Law Journal for their editorial assistance. Also, special thanks to my compatriots in the Rutgers "Law and Beverages Clinic;" our weekly meetings have made my law school experience enjoyable.