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Chapter 12 :Organizational Priorities

The organizations that employ lawyers make crucial decisions shaping the legal profession. Organizations hire. Organizations assign work. Organizations form, regulate, and terminate relationships between lawyers and clients. Organizations decide which lawyers will become supervisors or partners and how much they will be paid. The preferences of the organizations, therefore, determine whether the bar will be stratified and, if so, what the bases of that stratification will be. Organizations decide whether the work will be done by teams, who the members of the teams will be, and who will lead them. They may also determine the degree to which particular wishes of the clients will be accommodated. Organizations set the relative value of several types of lawyers' work that are only loosely governed by markets, including pro bono work, organizational management, and the task of serving as a mentor for younger lawyers. The autonomy of individual lawyers is, therefore, highly dependent upon decisions of the institutions in which they work. Organizations, in sum, structure careers, direct the work of lawyers, and influence their prospects for success - - financially, professionally, and perhaps even in their personal lives.

In the preceding chapters, we analyzed data from the 1975 and 1995 Chicago surveys in some detail in an effort to assess patterns of change and stability in the bar. In this concluding chapter, we seek to put those findings in a larger context. To do so, we will draw upon a broad range of sources, including the work of other scholars, Census data, articles in newspapers that serve the legal profession, and the advertising or promotional materials through which law firms present themselves to potential clients. We will also speculate a bit about the directions in which the profession may move in the future.

Scale

The "large" New York law firms of the late 1950s that were examined in Smigel's classic study, The Wall Street Lawyer (1969), had an average of 22 partners each. In 1957, only 20 New York firms employed as many as 50 lawyers, counting both partners and associates

(Smigel 1969, 358). In 1969, however, Smigel observed that "[l]aw firms have, in fact, grown to such proportions that when reference is made in Wall Street to 'large firms' it is beginning to mean offices of 100 or more attorneys" (1969, 359). By 1995, there were 124 law firms in New York State with more than 100 lawyers.[1] The largest firms now have 1000 or more lawyers. In both Chicago surveys, respondents were asked the number of lawyers in their firms - - in 1975, the average was 27; in 1995, it was 141. [2] The largest firm represented in the 1995 sample then employed 1800 partners and associates.

Until the last decades of the 20th century, almost all law firms were locally based. In the late 1950s, there was considerable controversy within the bar over the prospect that Adlai Stevenson's newly-merged firm would have offices in three cities - - Chicago, Washington, and New York. Referring to that firm, a 1961 book noted that "[t]he bar was startled recently by the announcement of the formation of a nation-wide firm . . . The setup was so unusual that it had to be approved in advance by the Bar Association; and it occasioned considerable comment among local lawyers" (Levy 1961, 20; Galanter & Palay 1991, 23). By the 1980s and 1990s, however, it had become commonplace for firms to have offices in several major cities in the United States and abroad (Silver 2000). Lincoln Caplan quotes a senior partner of the Skadden Arps firm, summarizing the firm's reasons for opening offices in other countries:

[1] This information was complied by Clara Carson of the American Bar Foundation, using data from the Martindale Hubbell Lawyers Directory.

[2] Note that, because the surveys used random samples of lawyers, not firms, the probability that any given firm would be represented in the samples was directly proportional to the number of lawyers in the firm. Thus, the average number of lawyers per firm in a random sample of <u>firms</u> would be smaller than the numbers given here, which are instead a measure of the nature of the contexts in which the lawyers practiced.

> **. . . that corporations are multinational, that our U.S. corporate clients have significant opportunities overseas, that our competition has set up offices there, and that we have to do the same thing to meet the competition . . . that there is going to be an increasing amount of cross-border work, in M&A [mergers and acquisitions] and related areas, and that we ought to be in position to get our fair share of it. (Caplan 1993, 295).**

Before 1970, only two U.S. law firms had offices in London; during the 1970s, fifteen New York firms and eight other U.S. firms opened offices there. By the end of 1999, 57 of the 72 American firms studied by Silver had London branches, including firms headquartered in Chicago, Los Angeles, Boston, Houston, Dallas, Philadelphia, D.C., Minneapolis, St. Louis, Cleveland, San Francisco, Seattle and Richmond (Silver, 2000, 1111-1113).

The increase in the scale of law practice organizations was not confined to private firms. Between 1975 and 1995, the size of corporate inside counsel offices represented in the Chicago samples increased from an average of 17 lawyers to 55 lawyers, and government law offices (national, state and local) grew from 64 lawyers each to 399. The office of the Cook County State's Attorney (called the district attorney in many places) employed 850 lawyers in 1995. When increases of this order of magnitude occur, significant consequences are likely to follow -- and they did. But we should attend not only to the consequences, but to what drove the increases and to whether the growth was uniform across the full range of the profession. In chapter 2, we estimated that the percentage of lawyers' effort devoted to the corporate sector increased from 53% in 1975 to 64% in 1995, while effort devoted to individual clients and small businesses declined from 40% to 29% (see Table 2.1). But both sectors of the market for legal services grew in absolute terms as the total number of lawyers in Chicago roughly doubled (see chapter 1). Therefore, our estimate is that the amount of lawyers' time devoted to individuals and small businesses increased, but not nearly as substantially as the time devoted to corporations and government. These findings are generally consistent with data reported by the Census of Service Industries for many (but not all) major U.S. cities (see chapter 2).

The relatively modest increase in demand for legal services to individuals and small businesses is probably largely a function of simple growth in the size of the population. In spite of considerable public discussion of a "litigation explosion" and the correlative demand for "tort reform" -- some of it stimulated by an advertising and public relations campaign by the insurance companies (Daniels & Martin 1995; Glaberson 1999) -- there is little evidence of a major change in community norms concerning disputing behavior or resort to litigation (Galanter 1993). With the exception of mass tort suits (such as the asbestos cases), often brought as class actions on behalf of large categories of individuals, much of the increase in litigation is attributable to suits brought by businesses against other businesses (Dunworth & Rogers 1996). The Chicago surveys found that the percentage of effort devoted to personal injury work for plaintiffs, 6%, was unchanged from 1975 to 1995 (see Table 2.1). Changes in law that affect individuals (e.g., increasing use of the condominium form of ownership) have not generally increased the rate at which people use lawyers. Indeed, lawyers now appear to be involved in sales of residences less often. In the two Chicago surveys, the estimated percentage of effort devoted to personal real estate transactions declined from 6% in 1975 to 3% in 1995 (Table 2.1). Some new laws have created novel rights and remedies (regarding employment discrimination, for example), but most of the regulatory legislation of recent decades (<u>e.g.,</u> that concerning occupational safety and health) has primarily given rise to government enforcement proceedings rather than private law suits.

The relative stability in the nature of the legal work done on behalf of individuals and in the rate at which claims are brought on their behalf meant that there was less impetus to alter the form and character of the organizations providing such services. Thus, legal work for individuals and small businesses is still ordinarily done by small firms and solo practitioners (see Table 3.2). Seron (1996, 87, 168) found evidence that some small firms have adopted an entrepreneurial approach to this market segment, but that traditionalists still far outnumber innovators. Although a few firms operating nationally or regionally attempted to use advertising to acquire a "brand name" identity in the market for routine wills, divorces, and residential real estate sales, and then to exploit that asset by selling franchises to use the name or by contracting with lawyers to provide services in the name of the firm (Van Hoy 1997), these companies did not succeed in capturing a large share of the

market. Some "group legal service plans" provide services to members of unions or other organizations, often using lawyers employed on a contractual basis, but again these plans have not acquired much of the market for personal legal services.

A part of the increase in law firm size in the corporate sector is the result of mergers of pre-existing firms, but most is accounted for by overall growth in the number of lawyers doing corporate legal work, in response to a great increase in demand for such services. Some of this demand is cyclical. When the economy slowed in the early 1990s, after the rapid growth of the 1980s, corporate law firms reduced their hiring of new lawyers and many of them discharged excess lawyers, both associates and partners. Kirkland & Ellis, a Chicago-based firm, reportedly dismissed 55 associates and nonequity partners (Hall 2000). When the economy accelerated again in the mid and late 1990s, those firms resumed their expansion. Thus, much of the demand for corporate legal services is attributable simply to the rate of business activity -- if more business transactions take place, more lawyers' time will be needed. But changes in law or in government enforcement strategy may also affect demand. In the 1980s, the Reagan administration took a newly permissive view of the antitrust laws. As a result, corporations had greater freedom to pursue mergers and the acquisition of other companies, and large law firms then created "M&A" departments. New employment discrimination laws, occupational safety regulations, and tax reporting requirements also created new legal problems for corporations, much more than they did for individuals.

Changes in the character of American business enterprise, however, had even more impact on the demand for corporate legal services. When the largest sectors of the American economy were agriculture and heavy industry, those enterprises probably generated fewer demands for legal services, per dollar of product, than does the present economy (Nelson 1994). In a survey of companies headquartered in the Chicago area, Bell (1999, 22-24) found that "companies dealing with financial services and insurance and those in the transportation industry are the most intensive consumers of legal services" and that "manufacturers in heavily science-dependent fields are considerably more likely than others to make extensive use of lawyers."

Service businesses typically create a larger number of transactions, with personal contact among a larger number of players, than do manufacturing or agribusiness. Businesses that create a relatively small number of transactions, and where there is greater concentration in a smaller number of companies, generate fewer points of contact that may give rise to disputes. Moreover, where the number of suppliers of a product is small, the consumers of that product will be more highly dependent upon continuing relations with their suppliers and therefore less disposed to initiate legal action against them than will purchasers who may choose from many potential suppliers. Thus, where ease of entry into a business is greater, litigation will be more likely -- purchasers of computer services may be more willing than automobile dealers to sue their suppliers (Macaulay 1963). Changes in the mix of types of businesses represented in the economy, then, may alter (a) the volume of transactions, (b) the likelihood that those transactions will be conducted with the participation of lawyers, and (c) the likelihood that the transactions will result in formal disputes.

Reasons for Growth

But why does the larger demand for corporate legal services result in larger law firms? The workgroups within the firms, handling each of the particular cases or issues, may be no larger than they were when demand was lower and law firms were smaller. Where are the economies of scale? Although access to electronic communication technology is now probably essential to an efficient and effective law practice, that technology is not so expensive that large numbers of lawyers must share it in order to make it a sensible investment. Computers, fax machines, and copying machines, once costly items, are now in the offices of even the smallest law firms. The 1995 Chicago survey found that 89% of solo practitioners and 98% of respondents in firms with two to four lawyers had access to computers, while 97% of the solos and 100% of the lawyers in very small firms had access to fax machines. But computerized legal research tools such as Lexis and Westlaw were available to only about half of those lawyers -- 52% of the solos and 48% of those in small firms lacked these tools. A firm will not need to be very large, however, before it will be

able to afford to purchase Lexis or Westlaw and thus eliminate that competitive disadvantage. But personnel costs for receptionists, secretaries, paralegals, messengers, and an around-the-clock word processing staff (not to mention accounting, information technology, and marketing departments) are substantial, and such staff costs are probably more efficiently borne by larger operations. In 1997, the six Chicago firms that had 300 or more lawyers within Illinois employed from 435 to 613 non-lawyers each. The average for these big firms was about 1.5 support staff persons per lawyer (*Illinois Legal Times* 1997:20). Smaller firms may need greater staff-to-lawyer ratios in order to provide comparable levels of service. Similar economies of scale in personnel costs occur in government law offices and in the internal legal departments of corporations.

One explanation for the growth of private law firms is provided by "portfolio theory" (Gilson and Mnookin 1985). That is, a larger number of clients, bringing work in a larger number of fields of law, helps to spread economic risk. It makes the firm less dependent upon any one client or any one area of practice. If a big client goes out of business or takes its legal work elsewhere, the larger, diversified firm will have work from other clients to fill the void. If there is a downturn in the economy, so that the amount of corporate transaction work declines, it will be advantageous for the firm to have a bankruptcy department to handle work arising from business failures. Thus, firms add clients and specialty areas in order to diversify.

Another reason for law firm growth is that the firms perceive client demand for "one-stop shopping." That is, many firms believe that corporate clients find it advantageous to be able to have all of their legal problems -- taxes, securities issues, labor and employment matters, or litigation -- dealt with by the same law firm. This spares the client the expense of educating additional lawyers about the nature of its business and the trouble of shopping around to find several firms to handle the various types of work, and permits the client and the firm to develop a continuing relationship of trust and confidence. It also, not incidentally, maximizes the amount of the client's business that the firm is able to obtain and retain. If a firm sends a client to other lawyers - - for litigation services, for example - - the client will be thrust into the arms of the firm's competitors and may decide to stay there. The client may find the lawyers in the second firm preferable, perhaps not only for

litigation but for transactional work as well. When a law firm finds it necessary to refer a matter that it lacks the expertise to handle - - a patent law issue, for example - - the firm will often seek to send it to a "boutique" specialty firm that will not be a competitor for other work. Thus, a firm may well prefer to create a broad range of competencies under its own roof, having its own lawyers do as much of the client's work as possible.

Galanter and Palay (1991) argue that law firms must grow in order to satisfy the imperatives of their own internal labor markets. They suggest that, whenever a new partner is admitted to the firm, associates will be hired to support and feed the work of the partner (in order to exploit the assets or "human capital" of the partner fully), and eventually some of these associates must be made partners so that the firm will be able to recruit and motivate new associates. This process creates a growth pyramid -- indeed, Galanter and Palay argue that it typically results in a geometric rate of growth in the number of lawyers per firm (1991, 87-91). But we are skeptical about this thesis. Large law firms appear to grow at widely varying rates -- some grow rapidly, some slowly, and some persist while growing not at all (Nelson 1988, 49). Galanter and Palay hypothesize that, because it is difficult or costly for firms to monitor the work of their associates and then adjust salaries to reflect individual productivity, firms offer the prospect of a future prize in order to motivate associates to use their best efforts - - at the end of a period of years (now, usually, 7 to 10 years), a percentage of the associates (the percentage being within an understood, relatively stable range) will be rewarded with partnership in the firm. Galanter and Palay refer to this as the "promotion-to-partner tournament." But Kordana argues that associates are not, in fact, difficult to monitor, and that the firms do so routinely (1995, 1914-17). Kordana observes that promotion-to-partner rates at large law firms vary widely from year to year, which is inconsistent with the existence of an implicit contract to promote a stable percentage of each cohort of associates (1995, 1921-22). Moreover, there appears to have been an abrupt increase in the growth rate of the firms in 1970 (Galanter & Palay 1991, 78), which is not explained by the tournament theory. [3] The rate change is not fatal to the theory, but it is not accounted for by the logic of

[3] As Sander & Williams (1992, 406) point out, however, the growth rates of several of the firms examined by Galanter and Palay did not increase in 1970; in fact, some decreased.

the tournament. This is important because about half of all the growth after 1970 is attributable not to the hypothesized geometric rate of increase but to the sudden change in that rate (Galanter & Palay 1991, 88; Heinz 1992, 9). Indeed, the amount of growth attributable to the unexplained 1970 change is so great that the fit to the observed data of a geometric growth rate (i.e., growth by X percent per year) is not significantly better than the fit of a simple linear rate (i.e., growth by X lawyers per year) if each takes into account the 1970 increase (Nelson 1992, 742). Since geometric growth is a necessary consequence of the hypothesized tournament, this is of considerable importance.

If there was a sudden change in the trend of the growth rates in 1970, there must have been either (a) a change in the level of demand for corporate legal services, or (b) mimetic tendencies in the management of large law firms, causing several firms to follow the growth strategy of some industry leader (DiMaggio & Powell 1983). For the latter to persist, the increase in firm size would at the least need to be supported by a sufficient augmentation of demand (and, thus, of firm revenues) to permit the firms to cover the costs of the additional lawyers and support staff. Thus, we believe that the primary explanation for the increasing size of law firms is that the volume of corporate financial transactions, and of the litigation that sometimes is occasioned by those transactions, increased substantially [4] and that firms already present in the market for corporate legal services had a substantial competitive advantage in capturing the resulting demand. The advantage might flow from the established relationships existing firms possessed with corporate clients (a considerable marketing advantage) and, perhaps more important, from the investment the clients had already made in their lawyers' acquisition of detailed knowledge about their business. Thus, unless a new firm included lawyers who had previously done work for the client, either the client would need to pay start-up costs once again or the law firm would have to absorb those costs. This creates a disincentive to switching. Nonetheless, corporations do in fact seek new suppliers of legal services, not infrequently, in order to stimulate competition for their work.

[4] The pace of certain types of corporate transactions (notably, mergers, acquisitions, and securities work generally) also increased markedly, thus requiring additional staff to process the matters quickly. One Chicago lawyer told us that "A deal that might have taken a month or two in 1975 may take a week or less today."

<u>Changes in Firm Structure & Management</u>

When the demand for corporate legal services was growing most rapidly, some law firms found it difficult to recruit enough lawyers to supply the demand. Large firms were then hiring seventy or more new lawyers per year (Stracher 1998, 29), [5] and the need for bodies led the firms to hire from a broader range of law schools than had previously been the case. As reported in chapter 3, the 1975 Chicago survey found that although 45% of all respondents had attended one of four "local" law schools (DePaul, Kent, Loyola, and Marshall), only 15% of the respondents in firms with 31 to 99 lawyers and only 7% of those in firms of 100 or more came from the four schools (Table 3.1). In the 1995 survey, about the same percentage of the Chicago bar had been produced by those schools (44%), but their share of the lawyers in large firms had increased substantially -- 26% of respondents in firms with 100 to 299 lawyers and 17% of those in firms with 300 or more had attended the local schools. Thus, while graduates of local schools were still underrepresented in the largest firms in 1995, their presence in such firms had increased substantially.

One of the consequences of this broader recruitment was that the firms opened their doors to categories of lawyers not previously represented in large numbers, notably women. Abel (1989, 91) observed that "because the absolute number of male law students had not increased since 1973, *all* subsequent growth of law school enrollments is attributable to the entry of women" (emphasis in original). Although women are overrepresented in the legal departments of corporations and government agencies (see chapter 6; see also Hagan & Kay 1995), a considerable number of the new women lawyers were hired by law firms. Another area of change was the ethnic composition of the large firms. The 1975 Chicago survey found evidence of pronounced ethnoreligious stratification within the bar. Protestants were more likely to be found in the large firms and Catholics and Jews were more likely to be in solo practice and local government (see chapter 3), as

[5] In 1999, the Skadden Arps firm reportedly hired 143 entering associates (Parsa 1999, 31). This does not take into account growth through mergers with other firms.

had been found in previous studies (Carlin 1962; Ladinsky 1963; *Yale Law Journal* 1964), but there were also large differences among particular fields of practice. Catholic respondents were three times more likely to be prosecutors than were Protestants or Jews. Catholics were also overrepresented in personal injury work, on both the plaintiff and defense sides, and were underrepresented in banking, securities, and labor union work. Jews were significantly overrepresented in divorce and commercial law, and underrepresented in antitrust defense, patents, probate, and business litigation. The more socially-elite Protestant denominations (Episcopalians, Presbyterians, Congregationalists) were very heavily overrepresented in securities work, substantially overrepresented in patents, banking, and tax work, and underrepresented in divorce and personal injury work (Heinz & Laumann 1982, 446-49, Table B. 5). Earlier in the century, leaders of the organized bar had strongly opposed the entry into the bar of immigrants from southern and eastern Europe, or their children (Auerbach 1976; Abel 1989, 85).

In the mid-1970s, the social structure of the profession still displayed the effects of these exclusionary attitudes and practices. But the great demand for corporate lawyers in the 1980s did much to break down the barriers. In addition to hiring women and recruiting the high-ranking graduates of less prestigious law schools, large law firms began to hire substantial numbers of Catholics and Jews. In the 1995 Chicago findings, ethnoreligious differentiation across fields and practice settings is greatly diminished. The overrepresentation of high-status Protestant denominations among securities lawyers, for example, had disappeared by 1995. While, in 1975, 36% of the securities lawyers were high status Protestants (compared with only 13% of the bar overall) by 1995 only 11% of securities practitioners were from those denominations (as compared to 12% of the full random sample of Chicago lawyers) (see Figure 3.1). Multivariate analyses presented in chapter 3, however, indicate that in 1995 Jewish respondents were still significantly less likely to have become partners in large law firms, and women, African Americans, and Hispanics were underrepresented among partners in law firms of any size and among respondents with an income in the top quartile.

When outside lawyers were in direct and frequent contact with the top levels of corporate management, law firms often asserted that corporate officers preferred to deal

with lawyers who resembled themselves -- i.e., white males, usually Anglo-Saxon Protestants (Baltzell 1964, 1966, 1976). This was alleged to make the clients feel more comfortable and thus facilitate a close relationship. Whether these assertions ever had a sound empirical foundation, or were merely a convenient excuse, is beside the point. In either case, when inside counsel began to select the outside firms, move business from one firm to another, and mediate the relationships between outside lawyers and corporate executives, and when corporate legal departments themselves became more diverse, the argument for social homogeneity lost much of its force. Besides, the law firms needed bodies -- there were not enough WASPs to go around.

Law firms, of course, seek to employ lawyers who are especially widely-acquainted or notably influential in the hope that they may be useful in recruiting and retaining clients. (These lawyers are called "rainmakers.") For this reason and others, there is now more movement of senior lawyers among the firms than there was a few decades ago (see chapter 6). Until the 1970s, a partnership in a major law firm was generally assumed to be a lifetime job -- once one became a partner, the lawyer had secure employment. It was difficult for lawyers to get reliable information about the earnings of partners in other firms (and, generally, whether the grass was greener). Firms did not discuss such matters with outsiders, and even within the firms compensation information was closely held. This changed. The senior partner of one of the major Chicago law firms told us that, in his firm, each partner gets a written report of exactly how much every other partner will be paid that year. With the advent of newspapers specializing in coverage of the legal profession, information about salaries has become more generally available. The *National Law Journal* now publishes an annual survey of lawyers' compensation (*National Law Journal* 1999). Some income data are also available on the internet at a web site maintained by the Altman & Weil consulting firm (<www.altmanweil.com>). Lawyers who want to maximize their earnings will have information about the possibilities. Law firms actively recruit both partners and associates from other firms, especially if they are likely to bring along with them the business of a client or group of clients (referred to in the trade as "a book of business"). If enough business is to be gained, firms will even recruit whole "practice groups" -- i.e., a group of lawyers serving a particular client, or a

group with special expertise in an area of law in which the acquiring firm perceives an opportunity for new business. For example, the Greenberg Traurig firm, based in Florida, grew from 120 lawyers in 1990 to 401 in 1998 by acquiring practice groups in New York, Washington, and other major cities (Goldhaber 1999). The *National Law Journal* (1999, A8) reports the following:

> **In Washington, DC, the firm started with international partner Howard Vine and one associate. Soon, the firm started an info-tech cluster in Tysons Corner, Va. In recent weeks, it has added a telecom team from Fleischman and Walsh and the big-league litigation group of Joe Reeder, from Patton Boggs L.L.P. Its presence in greater Washington has grown from the two attorneys in 1993 to 46 lawyers and consultants today. The hallmarks of Greenberg's expansions are patience and opportunism. It looked on and off in Atlanta, Tampa, Fla., and London for years but refused to overpay or settle for a bad fit. Ultimately, it acquired an entertainment boutique in Atlanta; in Tampa and London, it's still looking. Philadelphia is an unpopular place for branches, but when Michael Lehr came along, Greenberg snapped him up along with his eight-lawyer group at Ballard, Spahr, Andrews & Ingersoll L.L.P. (Id.,A8)**

In his study of Wall Street lawyers, based on research done in the late 1950s, Smigel (1969, 57-58) observed: "Competition for lawyers among the large firms in New York City is limited in two major ways: the firms will not pirate an employee from another law office, and they maintain a gentleman's agreement to pay the same beginning salary, commonly called the going rate." No longer.

As the demand for corporate legal services grew and law firms perceived the opportunity for rapid growth, competition among the firms both for new clients and for new lawyers became intense. "Grow or die" and "bigger is better" were articles of faith. Although it was in fact the case that some firms managed to survive while growing slowly or very little, and others failed because they had expanded too rapidly (Nelson 1988, 49), these facts appeared to give most law firms only a little pause. Clients had legal problems to be solved, and the firms feared, perhaps quite reasonably, that if they did not provide

the solutions the clients would take their business elsewhere. Many clients were, at the same time, spreading their legal work around among several firms. This might well have led firms (and did lead some) to attempt to retain only a portion of the business - - the firms with slow rates of growth were often highly prestigious ones that were especially concerned to maintain the quality of their personnel and especially confident of their ability to retain clients; Nelson (1988, 49) cites Sullivan & Cromwell, Dewey Ballantine, White & Case, Covington & Burling, and Hogan & Hartson as examples. But most law firms perceived these prominent examples to be exceptional cases.

The competition for personnel drove the firms to pay higher salaries, and the higher compensation then created a need for ever greater levels of earnings. In the Chicago surveys, the median income of associates in large firms, in constant (1995) dollars, increased from $70,828 in 1975 to $85,000 in 1995 (see chapter 7). The median real income of partners in such firms increased from $198,318 to $225,000 over the same interval. In the largest firms, those with 300 or more lawyers, the median partner income in 1995 was $350,000. In small firms and solo practice, however, the pattern was quite different. For partners in small firms, median income decreased from $127,490 in 1975 to $112,500 in 1995, and for solo practitioners it decreased from $99,159 to $55,000, in constant dollars (chapter 7, Table 7.__). Thus, the income gap between lawyers in large firms and those in small firms and solo practice widened considerably.

At the end of the 1990s, the salaries of lawyers in the largest firms increased even more dramatically. The stock market was booming, and American companies - - especially, internet-based businesses (the dot-com companies) - - were expanding rapidly and needed skilled personnel. Earnings in such companies, with opportunities to acquire stock options, became more attractive than law firm salaries, and law firms came to be regarded as talent depositories that could be raided (Skertic 2000, 1). The *New York Times* reported that at Brobeck, Phleger & Harrison, a San Francisco-based firm, “turnover among associates rose to 25 percent last year [1999], from 12 percent in 1998, as lawyers jumped ship for both legal and executive jobs at eBay, E*trade and an array of Web start-ups” (Leonhardt 2000a, C14). Law firms in Silicon Valley and the San Francisco Bay area responded to these pressures first, but firms in New York and other major cities quickly

followed. At the most prestigious firms, salaries of first-year associates (i.e., entering lawyers) jumped from the $95,000 / $105,000 range to the $125,000 / $140,000 range, plus bonuses (Leonhardt 2000a;b; Skertic 2000). Fourth-year associates at these firms were given a raise to $200,000 or more (Leonhardt 2000a, C14). Some of the firms also began to take a portion of their fees in stock or stock options in client companies, and the firms then created "equity pools" in which associates were permitted to invest, in order to provide their lawyers with opportunities for capital appreciation. The value of the shares held in 1999 by the largest Silicon Valley firm, Wilson Sonsini, "on a per-partner basis was more than the average profits per partner, which reached about $700,000" (Orenstein 2000,154). The founder of a firm called the Venture Law Group described his organization as "a hybrid of a startup law firm, a venture capital firm, a consulting firm and an investment bank" (Orenstein 2000, 154).

The increasingly vigorous competition among large law firms, as clients became more likely to shop around and to move from firm to firm, pushed the firms to cut costs so that they could price their services attractively and thus maintain or increase market share. If they were to be able to recruit and retain the lawyers they needed to handle the work, however, they could not reduce costs by reducing compensation. The firms, therefore, sought to achieve economies through "rationalization" of their production systems. The goal, of course, was to achieve greater output per employee or other unit of cost. One way to do this is to devote fewer resources to training new personnel. In an earlier day, firms had rotated associates among the various departments or practice groups so that the newly recruited lawyers could try out various kinds of work and decide what they liked best, and so that the firm could evaluate the associates' particular abilities. But most types of lawyers become more productive when they specialize, and pressure for productivity thus became pressure for the associate to specialize early. In most large law firms today, therefore, lawyers are hired for a specific department or area of practice within the firm. When Smigel did his research on Wall Street lawyers, firms were committed to training their recruits -- the firm's role in socializing and "molding" their lawyers was an accepted part of the professional ideology (Smigel 1960, 63). Now, the firms

demand that law schools produce graduates who are able to "hit the ground running."[6] (This is a popular phrase used by the firms.)

There were also management changes designed to promote efficiency. In the older, smaller firm model, a relatively small set of powerful senior partners presided over separate hierarchies within the firm (Nelson 1988). These workgroups, consisting of associates and junior partners working under the supervision of one or more seniors, typically served the needs of a particular, limited group of clients. The law firm's relationships with these clients were tended and nurtured by the seniors, and the workgroup often dealt with the full range of the clients' problems. In the newer, larger firm model, specialized departments replace these personal hierarchies. Instead of being built around dominant seniors, the departments are defined by substantive expertise or skill types -- e.g., tax, litigation, real estate, mergers and acquisitions. Typically, the allocation of work within each department is managed by a chairman, assisted by a second level of supervisors.

[6] The 1998 "strategic plan" of the Northwestern University School of Law notes: "Legal employers demand graduates who are able to enter practice with the judgment and the maturity to assume responsibility quickly. Even in large law firms, a new lawyer has little time to develop these traits on the job."

When most law firms were simple partnerships of 10 or 20 lawyers, they were governed informally. The partners saw each other often or daily, and important decisions could be made over lunch or in the hallways. But now that many lawyers practice in complex organizations with hundreds of lawyers and even larger numbers of support staff, management of the firms has become a major concern. As the size of the organization increases, formal votes tend to replace informal consensus as the typical governing mode, and the freedom of action of individual lawyers becomes limited by rules and procedures. Many of the firms employ professional managers,[7] and most are governed by a committee of partners operating within detailed rules set forth in the partnership agreement (see chapter 5). In the 1950s, many of the most prestigious firms did not even have written partnership agreements. Smigel (1969, 199) quotes a New York lawyer: "We do not have a partnership agreement. Mr. De Gersdorff of Cravath used to say, 'We don't want people for partners with whom we need written agreements.'"

Traditional hierarchies tend to be relatively inefficient because the importance of personal relationships in the maintenance of such hierarchies makes the decision- makers more tolerant of waste. Thus, a partner in a major Chicago law firm observed that firms were formerly willing to accommodate lawyers who had "retired in place." Now, even if they are partners, such lawyers will be sent away.

The increase in scale of law firms and other law practice organizations also led to other changes in personnel management practices. In the older model, lawyers in private firms were divided simply into partners and associates. Although, in rare cases, lawyers were employed as "permanent associates," for longer terms, associates were almost always junior lawyers who hoped to become partners in due course. To be a "partner," in this older model, meant that the lawyer was one of the owners of the firm -- a partner shared in the profits. Now, however, many large law firms have two classes of partners. Some lawyers called "partners" are not owners of the firm. Thus, although they enjoy the title, they are not really partners in the traditional sense. Those who do have an ownership

[7] The 1995 Chicago survey found that 65% of the respondents in firms with 30 or more lawyers reported that their firms had an executive "responsible primarily for administrative policy, rather than doing legal work" (see chapter 5).

interest are referred to as "equity partners." The 1995 Chicago survey found that 68% of the respondents in firms of 30 or more lawyers reported that their firms had adopted this three-tiered system -- associates, nominal or income partners, and equity partners.

A variety of other terms, such as "of counsel" and "senior attorney," are sometimes used to refer to lawyers who have non-standard roles in the firm. These terms can mean whatever the firms and the lawyers choose to have them mean. In 1975, the largest Chicago firms typically had three to five lawyers with the title "of counsel." These lawyers were often retired or semi-retired partners or prominent political figures, often former officeholders, and these categories are still found among the counsel, but many more lawyers now occupy this ambiguous status. In 2001, the largest Chicago firms reported from 30 to 40 lawyers listed as "of counsel" (Chicago Lawyer). The category includes a variety of types - - lawyers (especially women) who prefer to work part-time, former partners who were pushed out at a relatively early age, law professors, specialist experts who serve as consultants, and so on. Much of the growth in the number of lawyers with this status is attributable to the firms' encouragement of (or insistence upon) early retirement. Some law firms now also use the services of temporary or "contract" lawyers, permitting the firm to add or subtract personnel as demand may dictate (Cherovsky 1991; Scheffey 1995; Frederick 1995; Hackney 1996). If the firm gets a big case, it buys the services of additional lawyers for the duration of that case, with no intention of retaining them for the long term. We were told that, in some firms, these independent contractors amount to as much as 10 or 15 percent of the total number of lawyers at times of peak workload. Some firms now also contract out particular pieces of work, especially legal research; a few send work to India. [8] Thus, law firms are behaving more like corporations and less like traditional, collegial partnerships.

[8] According to the *Chicago Tribune*, an agency "farms out legal work to a subsidiary with 15 full-time workers in Mumbai, formerly Bombay. Much of the work the staff handles, such as drafting research memos and surveying the law of various jurisdictions, are duties that

younger
lawyers or paralegals may otherwise have performed at much higher costs” (Sachdev 2004).

In recent years, many large firms have adopted an organizational form known as "limited liability partnership" (L.L.P.). In a traditional, old-style partnership (a "general" partnership), all of the partners are personally liable for the debts of the firm. If a large malpractice suit were to bankrupt the firm, therefore, the assets of the individual partners would be at risk and would be available to satisfy the debt. In an L.L.P., however, each partner is responsible only for his or her own misdeeds. It had been thought that the general partnership provided a form of assurance to clients - - it meant that every partner stood behind the work of every other, and that this was a guarantee of quality. Given the growth in the size of these firms, however, many of the partners **now have very little contact with colleagues in other departments or work groups, especially those in other cities and countries, and thus they may be increasingly uncomfortable about guaranteeing the competence (or even character) of these unknown quantities. The type of partnership adopted by the firm, then, both reflects and shapes relationships among the lawyers. In an L.L.P., partners may be less willing to assist in the work of another lawyer - - if they do so, they may then become personally responsible for that work product (and for any bad outcome). Cooperation and consultation within the firm, then, come only at a potential price. Instead of being responsible for one another, the partners have incentives to mind their own business, exclusively (Glater 2003). Perhaps surprisingly, corporate clients are reported to be insensitive to these changes (Ibid).**

Lawyer/Client Relationships

As the demand for corporate legal services increased and law firms grew in response to that demand, the nature of the relationships between corporate clients and the leading partners of the firms began to change. Three factors contributed to a weakening of the ties. First, long-term personal relationships became less common as players on both sides moved. Increasing turnover of personnel, both in the law firms and in corporate management, made it more difficult for the officers of the corporations to maintain close personal relationships with their lawyers. Second, the growth stimulated a further division of labor -- as the volume of legal work grew, law firms found it efficient to disaggregate the client's business and to assign particular pieces of the work to specialized groups within the firms. Third, the sheer number of lawyers and the resulting complexity of firm

management made it more difficult for clients to penetrate the layers. When a law firm expands from 30 lawyers to 50, to 100, and then to 300 or 800, the corporation executive can no longer count on access to the personal advice of the firm's senior partner on all legal issues. Tax matters will be sent to the tax department and litigation to the litigation department, while the senior partner may be tied up with staffing decisions for the firm's new office in Prague. The firm will, of course, continue to cultivate personal relationships with corporate officers who are in a position to bring substantial business. But as the size of the law firm increases and the number of clients grows, it becomes more and more difficult for the firm's leaders to give personal attention to every CEO or General Counsel. Some will get their telephone calls answered much more quickly than others.

The great increases in firm size and volume of business led to increasing rationalization of the organization of work within firms, especially through specialization of function. The particular form of departmentalization of the law firm often reflects the character and organization of its dominant clients. Thus, if the firm represents a large bank, it may well have a banking law department. But corporations **realize that, if law firms are able to divide the tasks, clients can do it as well. This, in turn, means that large businesses can parcel their tasks out to separate law firms if they think that doing so will be more effective, efficient, or inexpensive than bundling all those tasks at one firm. Thus, although big law firms try to encourage one-stop shopping, corporate clients may have incentives to shop around. Long-term personal relationships with particular lawyers once helped to tie the clients to particular firms, but when such relationships dwindled, the ties were loosened.**

We should note, however, that durable relations between law firms and corporate clients remain important. In the 1975 Chicago survey, there was no clear relationship between size of firm and the percentage of stable clients--i.e, larger firms did not consistently have a greater or lesser percentage of clients represented for 3 years or more. Lawyers in firms with 30 or more lawyers then reported that 56% of their clients had been with them at least three years. In 1995, however, the percentage of stable clients (as defined) increased steadily from 41% for solo practitioners to a high of 60% in firms of 100-299 lawyers, but then dropped to 45% in firms with 300 or more lawyers. This may indicate that firms in the 100-299 category were still relatively likely to be locally-based-- i.e., they were likely to represent companies headquartered in Chicago.

Client mobility appears to be greater in the largest law firms, which operate in several cities and which represent national or multinational corporations. **But, because an individual case, government investigation, or legal transaction may well require three or more years to come to fruition (especially in major corporate matters), these statistics do not provide an ideal measure of the stability of client relationships. Nonetheless, the available data are consistent with the proposition that many large corporations follow a hybrid strategy in retaining firms: They maintain long-term relationships for some of their work and distribute another portion adventitiously. Baker (1990) found that corporations followed a similar strategy with investment banks -- they maintained a relationship with a lead bank to conserve on information costs and gain volume discounts, while they placed some business at many other banks to gain additional information on innovations in the field and to keep the lead bank competitive.**

A key factor in the weakening of the ties between law firms and their clients was the changing role of corporate inside counsel. To manage their growing inventory of legal issues, corporations hired more lawyers for their internal legal staffs (although those staffs did not grow as rapidly as did large law firms) and they also sought to enhance the level of sophistication and experience of those lawyers -- some top partners in prominent law firms agreed to take leaves of absence from their firms, or to spend part of their time working within corporations, in order to reorganize and strengthen the corporations' legal departments.[9] From the point of view of the law firms, of course, these arrangements might also serve to solidify the relationships between the firms and their corporate clients. Inside counsel make decisions about how to divide and allocate the corporation's legal work: about which work should be done inside and which should be sent to outside law firms, and then about which outside firms should receive the business. If the inside lawyers (the chief one is often called the vice-president for law) know, respect, and like the lawyers in an outside firm, that firm will clearly have an advantage in securing some of the corporation's legal work. If those conditions are not present, the firm will have a difficult time in making its attributes

[9] **Chicago law firm examples include Elmer Johnson from Kirkland & Ellis at General Motors, Howard Trienens from Sidley & Austin at AT&T, and Ted Tetzlaff from Jenner & Block at Tenneco.**

known to corporate management. The networks of relationships among inside and outside counsel are thus a principal determinant of the distribution of legal work (Nelson 1988, 68).

Inside counsel now mediate the relationships between outside lawyers and corporate management. The inside lawyers monitor and evaluate the performance of outside lawyers, review billings from law firms, and exercise judgment about whether the charges are excessive (Ruder 1986). They establish rules or standards for outside counsel concerning the number and kinds of personnel used by the firms for certain purposes, such as discovery or depositions (Nelson 1998, 782). In many cases, inside counsel also consult with the outside lawyers about strategies to be used in handling cases. In the 1970s and earlier, corporate house counsel were regarded as second-class citizens of the legal profession -- they were sometimes lawyers who had failed to make partner in a major law firm, and were then sent by the firm to the corporation in order to cement the ties between the two (Slovak 1980; Ruder 1986). (But see the discussion in chapter 6 regarding the frequency of "Golden Age" careers.) As the power of inside counsel increased, their status within the profession increased as well.

To assess the changing status of inside counsel, we can compare their income and law school credentials to those of other lawyers in both 1975 and 1995. Focusing on inside counsel who worked for businesses [10] (<u>i.e.,</u> excluding those at unions and non-profit organizations), we find that in 1975 their median income was only $25,000, <u>versus</u> $35,000 for the full random sample. In 1995, however, this reverses - - the median for the full sample was $75,000, while business inside counsel had a median of $112, 500. [11] This improvement in the relative income of inside counsel occurred despite an increase in the percentage of women (who tend to receive lower pay; see chapters 3 and 7) among inside counsel.[12] The

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[10] N=94 in 1975 and 67 in 1995.

[11] There was a smaller income range among inside counsel in both years. Thus, they had a lower standard deviation.

[12] In 1995, 39% of the inside counsel were women, compared to only 26% of other practicing lawyers. In 1975 there were only three women among the 94 inside counsel (3.2% of inside counsel were women <u>vs</u>. 4.0% of other lawyers). The income difference is also not explained by change in the relative age of inside counsel. In both years, the median age of inside counsel was 3 years older than other lawyers.

difference in law school credentials is consistent with the income difference. In 1975, the percentage of graduates of elite and prestige schools among business inside counsel was slightly lower than that of other lawyers (36% v. 38%), but in 1995 their elite and prestige school percentage was slightly higher than that of others (31% v. 27%). Thus, the representation of high-status graduates among inside counsel improved by 6 percentage points relative to other members of the bar. This improvement also occurred despite the increased percentage of female inside counsel - - in 1995, only 9% of women had attended elite schools (vs. 15% of men) and women were somewhat overrepresented in both the regional and local school categories.

In selecting outside lawyers, clients seek competition on both price and quality of service. In a marked departure from the earlier model of firm/client relations, many corporations now require law firms to bid on their work. Earlier, firms usually devoted as many hours to the work as they thought it required, and they billed for those hours at more-or-less standard rates. Discounts were possible, but relatively uncommon. In the 1995 Chicago survey, however, 61% of the respondents in firms with 100 or more lawyers reported that their firms bid for work.[13] (In 1975, this was so infrequent that the survey did not inquire about it.) Some potential clients invite competing firms to make presentations regarding the character and quality of their services. The presentations are referred to as "dog and pony shows" or "beauty contests." For most types of work, corporate clients do not confine this competition to firms in one locale, and large firm practice has thus become more national in character. In the Chicago surveys, we found that in firms of 30 or more lawyers the percentage of clients located outside the Chicago metropolitan area doubled from 1975 to 1995 -- from 20% to 40%.

There is a relationship between the growth of the power of corporate inside counsel and the emergence of the trend toward multi-city law firms. Until about the 1970s, if a Wall Street firm decided that it would be helpful to have a Chicago firm handle a problem

[13] There is a clear relationship between size of firm and the likelihood of bidding for work. The percentage of respondents who reported in 1995 that they had not obtained clients by competitive bidding within the past 3 years was: for solo practitioners, 97%; in firms with 2 to 9 lawyers, 74%; in firms of 10 to 30 lawyers, 64%; firms of 31 to 99 lawyers, 53%; firms with 100 to 299, 48%; and in firms with 300 or more lawyers, only 31% (x^2 = 106.7; $p < .001$).

involving a Midwest transaction, the New York lawyers would send the matter to Chicago counsel in whom they had confidence (and with whom, quite probably, they had a personal relationship). So long as that was the practice, the Chicago firm had reason to stay out of New York - - if it had opened a New York office, it would have become a direct competitor of the New York firm and thus a less likely referral partner. Once control of the allocation of legal work shifts from the outside firm to corporate inside counsel, however, the client makes its own decision about the choice of Chicago lawyers. Since Chicago firms are then no longer dependent upon the goodwill of New York firms for referral (and vice versa), there is less reason to refrain from direct competition.

Organizational Boundaries

In 1975, the legal profession was relatively stable. Although it was then on the brink of rapid change (the entry of women, explosive growth), most of that change was yet to come. The social hierarchies within the profession that had evolved since the middle of the 19th century were still in place (but not firmly, as we have seen). One could then survey a cross-section of the bar and get a reasonably clear picture of the structure. In 1995, however, the profession was unsettled by the disruption of established mores and organizational forms. The 1995 data were drawn from a system in a state of flux.

The ultimate outcome of these processes is not yet clear. Will the organizations that deliver legal services to large businesses continue to be devoted exclusively to the practice of law, as traditionally conceived, or will they encompass a broader range of expert services? Will law firms simply continue to grow -- from 300 lawyers to 500 to 1000 or 2000 (as some already have), and then to 5000? If so, will this growth occur primarily through mergers or through continuing expansion in the size of the overall market? In 1992, the eight largest accounting firms earned 28% of the total national receipts for accounting services, while the eight largest law firms received only 2.4% of the spending for legal services; the 50 largest law firms had only a 9% market share (Bureau of the Census 1996, page cite). Concentration in the markets for architecture and advertising services has also been much greater than that in law (Bureau of the Census 1996a).

There is probably nothing inherent in the nature of legal work that would prevent a substantially greater concentration of it in larger organizations. At present, however, rules concerning conflicts of interest are a significant impediment to the acquisition of new clients by major firms. A firm may not take on a client if it represents another whose interests are or may be materially adverse to those of the potential client. (Hazard & Schneyer 2002, 602-06). This is based in the lawyer's ethical obligation of loyalty to the client and the duty of confidentiality in communication with the client. There is a difference between law firms and accounting firms in this respect - - the rules of the accounting profession permit the firms to erect "screens" or "walls" within the firm, separating the knowledge, roles, and decisions of accountants working for one client from those working for others, while the ethical rules of the legal profession impute the knowledge and loyalties of each lawyer to every other lawyer in the firm, even in its offices in other cities. A law firm with several hundred lawyers, much less thousands, therefore has great difficulty managing and avoiding conflicts (Shaprio 2001). But the legal profession's ethical rules are subject to change, and they probably respond to market forces to one degree or another.

Perhaps some clients flex their muscles when dealing with law firms on conflicts issues because they know they can get away with it. The big corporate clients are many times larger and more powerful than their law firms, and those clients know that their lawyers will be attentive to their wishes. In dealing with accounting firms, however, corporations have less room for choice--the degree of concentration in that market means that fewer options are available. In the early 1990s, the "Big Six" accounting firms (now further consolidated as the Big Four) audited 98% of the Fortune 500 industrial corporations (Cook et al. 1992).

In the 1990s, accounting firms increasingly competed with law firms - - for tax work, the structuring of financial transactions, and even the preparation of business litigation. [14] What

[14] As they did so, the accounting firms encountered conflicts. Auditors of public companies have a duty to disclose problems of which they become aware, so that investors and potential investors can assess the risks, but clients who go to expert consultants for business, tax, and financial advice have an expectation of confidentiality. The Securities and Exchange Commission (SEC) criticized the accounting firms for compromising the independence of their auditing function through the provision of consulting services to the same clients (Gibeaut 2000). Responding in part to pressure from the SEC, several of the largest accounting firms then separated their auditing divisions from the consulting services. In most cases, the consulting

would happen if consulting firms or financial services companies moved into the market for legal services to an extent that threatened the livelihood of law firms? The judges who ultimately set the ethical rules for the legal profession are, of course, lawyers -- they came from the practicing bar, and some of them will return to it. If the survival of law firms was seriously threatened, would judges then modify the rules to permit law firms to compete more effectively?

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practice became a separate corporation (Michaels & Peel 2000; Tagliabue 2000). In making these moves, the firms were also motivated by the need to raise capital to finance the expansion of the consulting practice (MacDonald 2000; Michaels & Peel 2000:18). By separating the consulting entity from the auditors, it became possible for the consulting company to raise capital through a public offering or from a private investor. The Sarbanes-Oxley Act later prohibited auditing firms from selling consulting services, including legal services.

Law firms are vulnerable to better financed competitors. Major financial services firms, for example, are more wealthy than any law firm; they have deep pockets. Law firms are under-capitalized, live on annual earnings, and cannot sustain many years with net losses. Before the Enron/Andersen scandal damaged the accounting firms, they made substantial inroads into the practice of corporate law (Van Duch 1997). Some commentators believe that the complicity of the Arthur Andersen accounting firm in the Enron fraud and the firm's consequent dismantling effectively extinguished the competitive threat to the law firms (Schauerte & Hernandez 2002). The subsequent Sarbanes-Oxley Act **and new SEC regulations effectively put auditing firms out of the legal services business except with respect to tax matters (but see Garth 2004). The year before its collapse,** however, **Andersen employed 2,734 lawyers in 35 countries (Campo-Flores 2000). In 1997, Deloitte & Touche reported that it employed 1104 tax lawyers and another 384 non-tax lawyers worldwide (Van Duch 1997). In the late 1990s, Phillip L. Mann, former chair of the American Bar Association's tax section, said: "[It] isn't so much the issue of who has the smarter or the harder-working lawyers on their staffs . . . The real footsteps we're hearing is the scale of competition . . . the vast amount of money and capital that the Big Six [accounting firms] can spend on marketing. . . . They apparently have become convinced that the existing parochial jurisdiction-by-jurisdiction approach to the licensing of the legal profession will be considered just another barrier to international trade and, like tariffs, will one day come down" (Van Duch 1997, A13). As Mann's comment indicates, the globalization of law practice [15] is one of the factors making it more difficult to maintain traditional lines of distinction among the professions. While ethical rules in all U.S. jurisdictions except the District of Columbia prohibit non-lawyers from having an ownership interest in law firms, the rules in many other nations do not. Consulting and financial services firms are affiliated with law firms abroad. Most American lawyers would prefer to retain their separate professional identity and to work within contexts that are controlled by their own profession (NY State Bar Assoc. 2000). But some are quite ready to defect: one, commenting on his**

[15] Silver (2000) analyzes the move of U.S. law firms into foreign markets. She reports that, of the firms on the *American Lawyer* list of the 100 largest U.S. law firms, 71 had offices abroad. (Silver 2000, 37). See also, *The Economist* (2000).

decision to leave his law firm and join an accounting firm, was quoted as saying " I didn't want to be the last one off the boat" (Van Duch 1997, A13).

The most sophisticated work done in the top Wall Street firms and in their counterparts in other major cities requires a level of experience and expertise that is difficult to duplicate, and it therefore seems unlikely that consulting firms or financial services firms will threaten the livelihood of the elite of the bar in the foreseeable future. Corporations are likely to continue to take their most complex and consequential work to such law firms. But this is a relatively small part of the legal profession, important though it may be. The corporate work done by mid-range and lesser law firms - - and, perhaps, the more routine work done by large firms - - is likely to be squeezed by competition from consulting firms, banks, and other financial services firms (*The Economist* 2000, 81; Gibeaut 2000, 18) . The clients will make their choices; the market is more likely to determine the outcome than are the regulators of the bar.

As law firms become international in scope, American firms will find that their options are limited if they are prohibited from sharing fees with entities in which management consultants, investment bankers, or other non-lawyers have an ownership interest. Mergers of law firms with such entities (creating so-called multidisciplinary practices or "MDPs") have taken place abroad for several years (Dezalay 1992). If lawyers practice across national boundaries (as is increasingly the case), then it will be difficult for local licensing authorities to enforce restrictions on multinational firms (Garth and Silver 2002).

Large law firms now devote great care and substantial resources to the effort to avoid conflicts of interest. They do so not only because of ethical rules but because of the expressed preferences of some of their clients (Shapiro 2001). The firms are understandably wary of giving offense to important clients by taking on the representation of the clients' adversaries (Heinz & Laumann 1982, 371-73). But it is not at all clear that corporations value exclusivity of representation as much or as often as the official ideology of the legal profession may suggest - - clients, in fact, commonly waive their right to object to conflicts of interest, and the alternative approach to conflicts that is used in accounting firms does not appear to have stemmed the flow of legal work to multidisciplinary practices in Europe (Campo-Flores 2000). The *Wall Street Journal* reported that "European corporate clients

who have used the Big Five's [referring to accounting firms] legal services praise the efficiency and cost savings" (Jacobs 2000). It is not apparent why the preferences of American businesses should be markedly different. Indeed, some of the work sent to MDPs in Europe came from U.S. based companies.

It is possible, however, that some substantial segment of the market for legal services deals with matters in which the client has a preference for stringent conflict-of-interest rules. Some work may be of especially great sensitivity, so that a stronger assurance of confidentiality is desired, or may be especially vulnerable to adversarial interests, as in the planned acquisition of a real estate tract or the assemblage of a block of stock. In such matters, the client might prefer to consult an American law firm rather than an MDP that could also advise an adversary. Indeed, a rational choice model might suggest that the greater attention given by law firms in recent years to the monitoring and avoidance of conflicts helped the law firms differentiate their services from those offered by accounting firms. Thus, by adopting rules and practices that distinguish them from consultants in situations where conflicts of interest may be especially worrisome, law firms have created a market niche that is relatively secure from incursion. But the question is, how large is that niche? Is it big enough to employ most of the corporate bar?

Some lawyers doubt that the present conflicts rules of their profession truly serve the interests of clients (Fischel 2000). The system designed to prevent conflicts is expensive; it causes delay; and it may sharpen conflict by requiring lawyers to serve as champions rather than as mediators (Shapiro 2001). Sophisticated clients, therefore, might choose to place their work within that system only when they believe that the work is especially sensitive or when the necessary skills are not available elsewhere. The examples abroad are available for all to see--lawyers and clients alike. As the globalization of business transactions and corporate law practice proceeds, it is unlikely that multidisciplinary practice could be a success in Europe, South America, and Asia, and a failure in the United States. The large American law firm has been a distinctive form, which has had considerable success and has been copied abroad, notably by the British solicitors firms. It remains to be seen whether the form will endure.

The Decline of Professional Dominance

In 1970, in a book titled Professional Dominance, Eliot Freidson asserted that the medical profession possessed a "special position of dominance" in the health care system, and that "structural characteristics of the profession have far more influence on the nature of medical care in the United States than either the good intentions and skills of individual members of the profession or the economic and administrative arrangements that are usually the focus of attempts at reform" (at 77).[16] In the legal profession, we will argue, the "economic and administrative arrangements" have a very important role.

The bar of the early 1970s and before might be characterized as a system of professional dominance. Lawyers practicing in the personal client sector were then protected from the rigors of competition by a ban on professional advertising, minimum fee schedules promulgated by local bar associations, and limits on the entry of new lawyers into the profession (imposed through the bar admission process [Abel 1989, 269, Table 17] and through restriction of law school enrollments). In the corporate sector of practice, because the markets for legal services were local and the options available to clients were few, competition was limited de facto. Lawyers could not practice corporate law successfully without obtaining employment in one of the relatively small number of firms doing such work in any given locality. Relationships between law firms and their corporate clients tended to be long-term, in large part because both the firms and the clients wanted to avoid duplication of the costs of acquisition of knowledge specific to the relationships.

[16] Two decades later, in Professionalism Reborn (1994), Freidson argued that the power of third-party payers, hospital administrators, and managed care organizations had created a need for a revitalization of professional ideals.

By 1995, the circumstances had changed substantially. Minimum fee schedules were struck down by the U.S. Supreme Court in 1975, [17] **and in 1977 the Court relaxed the restrictions on advertising.** [18] **Limits on entry into the profession, never entirely effective (Abel 1989, chapter 3, passim), loosened, the floodgates opened, and the bar grew rapidly. As a result, competitive pressure on lawyers in personal client practice increased markedly and their incomes suffered (see chapter 7; see also Sander & Williams 1989). Competition also increased in the corporate sector of practice as the markets for such services broadened, eventually becoming national and international. To compete effectively in these new markets, law firms expanded the range of their services, added personnel, opened new offices, merged, and adopted new, aggressive marketing strategies.**

[17] Goldfarb v. Virginia State Bar, 421 U.S. 773 (1975).

[18] Bates and O'Steen v. Arizona, 433 U.S. 330 (1977).

The growth of corporate law firms reflected, in many ways, the evolution of their clientele. Businesses now operated in many locales, from multiple offices, and sought markets abroad; companies consolidated through acquisition and merger, often creating conglomerates engaged in disparate enterprises - - e.g., broadcasting and the manufacture of electrical equipment. Although the start-up costs incurred when a client engaged a new law firm remained substantial and continued to inhibit firm-switching, such costs loomed less large as the clients diversified. Prior relationships among lawyers and corporate executives are of little value when the corporation acquires a new business, with new management. Different lawyers might handle those separate lines of work in any event - - expertise in the law of broadcasting does not have much utility in the electrical equipment business.[19] If the corporation has offices in twenty major cities around the world, it may want to have convenient, regular access to local counsel in each of those cities. From the client's point of view, the duplication of cost attributable to using several suppliers of legal services may be more than offset by the advantage of competition among law firms for its business. The development of broader (national and international) markets for legal services meant that corporations could choose from many more firms.

When businesses increasingly divided their legal work by subject, locale, or transaction and spread that work among multiple law firms, this decreased the dependence of the client upon a single law firm, but it also decreased the dependence of the firm upon the client. Thus, as law firms opened branches and began to deliver services in broader markets, the pressure to indulge every client preference was alleviated. Moreover, if a firm's clients became more varied, it became more probable that the particular social background characteristics preferred by one client would not suit another. In relationships that are ad hoc, homophyly is less likely (Laumann 1973). When demand for corporate legal services peaked in the 1980s and again in the latter 1990s, the need for lawyers who could do the

[19] In the older model, when a particular law firm served as outside counsel for a bank, for example, the client valued the lawyers' understanding of "the business of the bank" and "how we do business here." This rationale for staying with the same lawyers is archaic, however, if the client becomes a multinational corporation, with several lines of enterprise and multiple locations.

work was so strong that ethnicity was seldom seen as a relevant consideration. In seeking lawyers to process the transactions, businesses became more businesslike.

In 1975 and earlier, ethnoreligious exclusivity was a part of the system of the profession -- the social organization of the bar was built upon it. As we have noted, types of clients and particular legal specialties were then identified with lawyers of distinct ethnicities -- e.g., **WASPs dominated corporate practice, most prosecutors were Catholics, and divorce lawyers were predominately Jewish (Heinz & Laumann 1982, Table B.5, 446-49). By 1995, although some of the effects of that system remained (as we saw in chapter 3), ethnoreligious distinctions had in large measure been replaced by gender and racial stratification. Women and African Americans tended to occupy the lower rungs of the ladder; they were overrepresented in organizations with lower prestige (see chapter 6). When relationships between lawyers and clients were long-term and one set of lawyers dealt with the full range of the client's business, the preference for lawyers who shared the clients' social characteristics had greater force - - whether, in fact, those preferences came from clients or from firm management. The exclusivity may simply have reflected patterns of discrimination prevalent in society more generally. In any event, homophyly was the rule in those relationships. But the market changed.**

The relationships between lawyers and their clients have been increasingly influenced by organizational norms and procedures. If, for example, a client is dissatisfied with the service provided by a lawyer in a large firm, or if the client finds a particular partner unresponsive, the client may go to the management of the firm and request that the lawyer be replaced. The firm then has a choice whether to grant or decline the client's request. If the client is profitable to the firm and the firm is eager to retain its business, the firm may well replace the lawyer. If the client is marginal, it may get less satisfaction. Lawyers who repeatedly generate client complaints will find that their prospects in the firm are bleak (or nonexistent). But firms sometimes dismiss clients as well as lawyers.

As law firms became larger and more capital-intensive, and as the mobility of clients increased (and, thus, relationships between lawyers and clients became less stable), lawyers became ever more dependent upon the organizations in which they worked. Individual lawyers, or even small groups of them, cannot easily reach the clients when markets are national or international in scope. The lawyers need a brand name (a reputation for quality)

that is widely recognized, an extensive staff to support the work of senior lawyers, and capital that is sufficient to fund multiple offices and to underwrite the risk of opening a new office or undertaking a new venture that may not be immediately profitable. Lawyers can and do draw upon established relationships with clients to strengthen their own positions within their organizations or, occasionally, to move to a new organization, taking clients with them. For the latter to occur, however, the client must be persuaded that the lawyer's new venue will provide support services of sufficient range and quality to permit the lawyer to deliver quality work. Individual fate is shaped by organizational constraints.

<u>Business Methods</u>

The expansion of corporate law firms and the lengthening of their client lists changed not only the relationships between lawyers and clients but those among the lawyers themselves. Although lawyers had long worked on complex matters in teams that combined specialties, the nature of those teams changed. In 1970, a big firm might have had 40 or so lawyers and perhaps three or four dominant partners, and each of those senior partners would have headed a "practice group" that included lesser partners and associates. Mr. Cabot's group would serve the clients for whom Cabot was the principal outside counsel. The group therefore included lawyers with sufficient expertise in various specialties to meet the regular needs of its particular clientele. If that clientele was narrowly defined, the lawyers dealt with a relatively delimited set of problems and they probably acquired a large amount of expertise or "capital" that was specific to the clients. Because the group was relatively small, some degree of movement across specialties was highly desirable - - the lawyers needed to learn enough about each others' fields to be able to step in if necessary. In the larger firms of the 1990s, by contrast, dominant partners were more numerous (and often less clearly defined, more transitory), and the departments within the firms were more likely to be defined by function or expertise than by client group. Thus, a partner in the tax department would be asked to consult on a Walmart real estate deal one week and on the United Airlines bankruptcy two weeks later, and she and her associates in the tax department might work with a different cast of characters from other departments (a different "team") on each of these matters. There was therefore less continuity in the sets of lawyers working with one

another, and the tasks addressed by each lawyer were increasingly restricted to his or her speciality (see chapter 2). In such a system, the organization controls the work - - the organization assembles the teams, and it determines how much support (from associates, paralegals, and other staff) the senior lawyers receive.

When workgroups are relatively stable, they may become "communities" (Regan 2003). That is, they tend to develop their own ways of working, distinct sets of interpersonal relationships, and norms that are specific to the group (Ibid.) But if **the** lawyers **are assembled into** teams that differ from transaction **to** transaction**, then distinct procedures,** relationships, and norms are much less likely to form. A continuing team has at least the potential to become an independent power base. On particular issues, such as a decision on which of two candidates to hire for a position within its area of concern, the group may be able to overcome the preferences of the firm leadership. When the membership of workgroups is changeable, **however, the central management of the organization is strengthened.**

Lawyers could, of course, choose to serve their own interests at the expense of **the firm** - - e.g., **by leaving the firm and taking clients, or by failing to use their best efforts on the firm's work (Gilson & Mnookin 1985, 330-39; Galanter & Palay 1991,94)** - - **and firms therefore try to prevent such opportunistic behavior. If the firm or workgroup is small, informal norms may inhibit conduct that would harm the collectivity. Norms are more likely to develop and to be communicated in contexts where there is close and continuing interaction among the parties, and the parties will be less likely to transgress the norms if they know that they will be working in the future with the same colleagues. Informal sanctions are most effective when reputation, affect, and civility matter. If the workgroups do not provide effective informal sanctions, however, the management of the** organization will need to create mechanisms of control - - such as, perhaps, the "promotion-to-partner tournament" hypothesized by Galanter and Palay (1991). **Controls generated centrally are likely to be more formal and to rely on administrative enforcement. They are often codified in a manual of guidelines and procedures. Informal norms, by contrast, are more variable, and the loci of both the norms and the sanctions are more likely to be dispersed. The change from informal norms to formal**

rules, then, implies a transfer of power from particular **constituencies** to the organizational management.

During the 1980s and 1990s, when law firms were growing very rapidly, the firms had **to assimilate large numbers of new** lawyers **who differed in** significant **respects from those who worked there previously. Many of these new** lawyers **were women, an increasing (but still small)** percentage were minorities, a large share had been trained at law schools from which the large firms had not recruited in the past, and a substantial number were drawn from ethnoreligious groups that had been markedly underrepresented in such firms. **These new** lawyers **had reason to feel that they were different from the seniors, and their** difference**s bred anxiety about their status and their future. Could they expect to become** partners in due course? If not, then they owed no great duty of loyalty to the firm.

The socialization of new recruits was, indeed, a more general problem for the organizations in which lawyers worked. Marc Galanter has analyzed changes in the age distribution of the profession during the latter part of the 20^{th} century (Galanter 1999). As he points out, the rapid increase in the number of lawyers in the 1970s and 1980s meant that the distribution changed from one in which senior lawyers were only modestly outnumbered by juniors to one in which the great majority of lawyers were relatively young. A preponderance of younger lawyers, with less experience, less thorough assimilation, and narrower networks of relationships, meant that a smaller percentage of the bar was committed to the established ways of recruiting clients, hiring lawyers, making partners, dividing profits, and (generally) managing their firms. Thus, the change in the age distribution was, in itself, an additional source of instability in the profession.

In the late 1990s, a firm of perhaps 400 lawyers, which probably had only half that number a decade before, would find itself trying to instruct scores of new recruits each year in the ways of the firm. Very soon, the recruits outnumbered the veterans, and the organizational culture changed. Old, informal norms were no longer understood and accepted by all. Mobility across firms increased. Turnover among associates became so great in the 1990s that firms paid for symposia and “studies” addressed to the problem of retention. One product was a volume called “Keeping the Keepers,” produced by the National Association for Law Placement, an organization funded by large law firms (NALP 1998). As the old norms broke down and bureaucratic structures replaced collegiality, partners as well as associates became less secure. Large law firms continued to have higher retention rates than any other practice setting (see chapter 6), but partnership no longer guaranteed permanence. Partners moved. Partners were terminated. Firms that had once refrained from "poaching" on the talent at other firms now did so freely. The new legal press, especially Steven Brill's American Lawyer, celebrated the "modernization" of law firms, the adoption of aggressive business methods, and the explicit disparagement of "gentlemanly" management, which was seen as stolid and inefficient (Powell 1985). **In the 1980s, several consulting firms began to specialize in advising law firms about how to conduct their business.** [20] **The consultants sped the transformation of the firms from traditional partnerships into small bureaucracies operated on the** corporate **model (see chapter 5). A common theme was the rationalization of the ways in which work was distributed and controlled. As we noted above, the old hierarchies, each headed by a prominent senior** partner **(i.e., "Mr. Cabot's group"), were replaced by departments organized around particular specialities. In the older model, each of the hierarchies was a power center within the firm, and they often competed for control. In the newer model, power was centralized in a chairman of the firm, a managing committee, department chairs, and a professional administrator, with a formal chain of command. That is, an** organization supplanted the competing hierarchies.

[20] Prominent early players in this market were Hildebrandt, Altman Weil, and Price Waterhouse.

In the old model, leadership came with seniority. Both control of the firm and income share were usually determined by the percentage of the partnership owned by each partner, often expressed as the number of "points" that each held. The partners would vote their shares (or points) in firm decisions, and income was distributed according to the same hierarchy. Share ordinarily increased with age.[21] At many firms, as younger lawyers increasingly outnumbered older ones, the age cohorts began to struggle for control. The younger lawyers felt that the elders were taking a bigger piece of the pie than they deserved. **Senior** lawyers **were** characterized as unproductive and/or dictatorial. Each cohort portrayed the **other as greedy.**

The change in the age distribution altered the balance of power in law firms, and may in the future change it once again. According to Galanter, in 1970 there were 127 lawyers in their 30s for every 100 in their 50s (Galanter 1999, 1085). The seniors were not then so outnumbered as to overcome the substantial advantages of seniority, and older lawyers could, therefore, set the rules of the game. But by 1985 there were 284 in their 30s for every 100 in their 50s (Ibid.). As the lawyers in the younger cohort became partners, seniors began to lose the struggles for power - - e.g., in selecting members of the managing committee and then in votes within the managing committee. Ambitious new partners in their late 30s and early 40s began to push the senior partners out of the way (Ripley 2000; Schmeltzer 1999). Before the age distribution had shifted, the juniors would not have dared to attempt this.

[21] In some firms, **notably in the highly successful Cravath firm in New York and in a few of the other old-line New York firms, income was (and is) distributed solely by seniority - -** the longer the service, the larger the share (Carter 2002, Elwin 2003).

In some firms, juniors succeeded in deposing seniors. In others, seniors managed to suppress dissent and maintain control, and in still others one group bought off the other (Rovella 1997). Some firms lowered the mandatory retirement age - - typically, from 68 or 70 to 65 or 63 (Singer 2000). [22] **A consequence of this was that the firms paid pensions for a greater number of years per retiree (**e.g., **from age 63 until death instead of from age 68 until death). Often, the pension plans were unfunded** - - i.e., the pensions were paid by the firm out of current income - - **and, when they were funded, they had been premised on shorter periods of retirement. If the firm was obligated to pay a fixed pension rate, therefore, earlier retirement imposed a heavy financial burden upon the remaining** lawyers**, which created yet another point of contention between juniors and seniors (Singer 2000). In some cases, retirement benefits were reduced (McDonald 2000).**

One of the oldest and most prestigious Chicago law firms, the Sidley firm, demoted 32 of its partners to "senior counsel" or "counsel status" in 1999. The chairman of its management committee said that the demotions of lawyers **"mostly in their mid-50s and early 60s" . . . "will expand opportunities for younger** partners **and associates" (Taylor 2002). The American Lawyer quoted the chairman of the firm's executive committee as saying: "When we laid this out to associates, they understood that the overall plan would create** significant **opportunities for them" (Ripley 2000).** The U.S. Equal Employment Opportunity Commission pursued an investigation of the firm, seeking to determine whether the former partners were "employees" within the meaning of federal law and whether the demotions amounted to age discrimination. [23] **At Cadwalader, Wickersham & Taft, an old-line firm based in New York, a**

[22] In England, solicitors have recently been pushed into retirement at much earlier ages. According to the *Times* of London: "In most City law firms today, it is unusual to find partners over 55. Few firms admit to a policy of compulsory retirement at 55, but retirement at 55 is seen by most managing partners as a blessing." (Digby-Bell 1999). A law firm consultant was quoted at saying " . . . there has been a shift in the firm's focus, with young partners in their late 30s, early 40s seizing control, either in a velvet revolution or a fairly bloody coup" (Langdon-Down 2001).

[23] Equal Employment Opportunity Commission v. Sidley Austin Brown & Wood, U.S. Ct. of Appeals, Seventh Cir. Oct. 24, 2002. At the time of the demotions, the firm was known as Sidley & Austin. About a year later, it merged with another firm and became known as Sidley Austin Brown & Wood.

1994 plan known as "Project Rightsize" sought to eliminate 17 partners **from the firm. This was referred to in Crain's New York Business as a "dramatic power struggle between old and young** partners**" (McDonald 2000). It also resulted in litigation (Rovella 1997). In a less confrontational style, another prominent Chicago firm initiated what it calls the "senior tour," in which each** lawyer who has reached age 58 is interviewed by the firm management and is asked to reflect upon his or her future plans, to consider whether the time has come to slow down a bit, to work part-time, or to indulge a taste for travel. It is presented not as a request to leave but as an invitation to consider the possibilities.

The age distribution of the profession is changing once again. The very large numbers of lawyers who entered the bar in the late 1970s and the 1980s are reaching middle age. Galanter projected that by 2005 there will be only 126 lawyers in their 30s for each 100 in their 50s, and by 2020 there will be 104 per 100. When that happens, will the assets of seniority begin to be reasserted? Senior lawyers do have advantages. Over the course of their careers, they acquire ties to important clients and important politicians. Seniority will also, ordinarily, enhance firm-specific knowledge and, unless the senior is incompetent, his or her due bills for favors done will outweigh debits for enemies made. If the law firms of the future face increasing competition from MDPs and other sorts of consulting firms, the business-getting connections of senior lawyers may, in that environment, become even more highly valued. And if the seniors exploit their capital, corporate law firms might then be governed by smaller hierarchies once again, or perhaps split apart. Or some of these firms may be absorbed by MDPs and thus become even more bureaucratic.

We do not suggest that changes in the market for legal services will, through some automatic or impersonal process, inevitably result in change in the structure or governance of the firms. Rather, the effects of market factors are mediated by the perceptions, interpretations, norms, and biases of the various actors. No doubt the firms seek to make rational choices, but the definition of what is rational may be contested. Interest groups within the firms compete for power, as illustrated by the struggles between age cohorts, and observations about the market are mobilized by the groups to support arguments in favor of one or another position. The players will seek to interpret market facts to their own advantage. Thus, Fligstein has demonstrated that control of top management positions in large U.S. corporations shifted among varying constituencies within the companies during the 20th century (1987, 1990). During the period 1919-1939, a time when "the dominant strategies of [business] firms were oriented toward the manufacture of a single product group," the businesses tended to be controlled by "entrepreneurs, lawyers, and manufacturing personnel" (Fligstein 1987, 48). After 1939, executives in sales and marketing gained power at the expense of manufacturing personnel because the latter "were not able to deliver on increases in sales or profitability" (1987, 57) and because the firms were then diversifying and entering new markets (1987, 49). After 1959, finance personnel became dominant as the success of the firms was increasingly determined by decisions regarding the allocation of capital among multiple product lines and as corporate mergers became more common (1987, 49, 55-56). Although the changes in leadership reflected changes in the companies' business strategies, the strategies were, themselves, outcomes of political processes within the firms. Fligstein concluded: "All large organizations contain an internal power struggle over claims from various actors over the goals and resources of the organization" (1987, 45).

The signals sent by the market are not unambiguous. It is entirely possible to misread the portents. **In the late 1990s, when new technology companies were flying high and their lawyers were busy with the financing of the emerging companies, some law firms notified long-term clients that they would no longer represent them - - the firms could make more money representing start-up companies and taking all or part of their fees in stock, which was seen as having great growth potential. The steady fees paid by established companies were unspectacular by comparison. Partners who had been responsible for the old, terminated clients were often injured and angered by the decrease in their billings. A few years later, when the stock market fell, the old clients were no longer there to cushion the blow. Several large law firms had invested heavily in increasing their capacity to do intellectual property work, with a particular focus on clients engaged in developing and** marketing computer technology. When the "dot com bubble" burst in 2001, most of those law firms found that they then employed many more intellectual property lawyers than they had any use for. Some of the firms incurred substantial losses. Because law firms do not accumulate capital, they lack the resources necessary to carry them through lean times of long duration. They must adjust to changed circumstances quickly.

One of the more conspicuous casualties was Brobeck, Phleger and Harrison, a large, prestigious firm headquartered in San Francisco. It dissolved in 2003 after having prospered for 77 years (Glater 2003). The Brobeck example is instructive. Its failure was precipitated by the sudden downturn was exacerbated by a power struggle within the firm. In 1998, the partners elected a new chairman, Tower Snow, who had come to Brobeck only three years before (Beck 2002). Snow, a securities litigator who has been described as "charismatic, handsome, articulate, and visionary," was highly ambitious and presided over major growth at the firm (Ibid). According to the San Francisco Chronicle, "Snow craved prominence among the nation's elite firms, and he sought it through breakneck expansion into high-tech, intellectual property and securities litigation . . . He launched a national advertising campaign that included $3 million-per-year television ads on CNN [and] ads in the Wall Street Journal" (Holding, Chiang and Berthelsen 2003). In three years, the firm more than doubled in size - - from 400 lawyers in 1998 to more than 900 in 2001 - - and, at its peak, its annual profits per partner were $1.17 million (Ibid). But the firm went down even faster than it went up. By the end of 2002, profits per partner dropped to $550,000 and the number of lawyers fell to 493 (Ibid). When the bubble burst, Snow's enemies and rivals in the firm, including the former chairman, John Larson, sought to displace him (Beck 2002). In consequence, Snow resigned as chairman before the end of his term (Holding, Chiang and Berthelsen 2003). A few months later, as Snow arrived at the San Francisco airport after a flight from London, he was handed a letter written by the new chairman of the firm, a litigator from the Los Angeles office. According to The American Lawyer, it read:

> Dear Tower: You have been expelled as a partner in Brobeck, Phleger and Harrison LLP pursuant to [Brobeck's] partnership agreement. You are not to go to the offices of Brobeck, Phleger and Harrison LLP unless accompanied by a person designated by me. Your access to the firm computer network has been shut off and your building and office access cards have been deactivated. (Beck 2002).

A law firm consultant concluded: "Ultimately, it came down to a battle between two big egos. One was Tower's, and the other was (former chairman) John Larson's" (Holding, Chiang and

Berthelsen 2003). But Tower Snow landed on his feet: ten days after he was expelled from Brobeck, he was named head of the new West Coast office of Clifford Chance, a London-based solicitors firm (Beck 2002). Brobeck fared less well. Having borrowed $90 million in an attempt to stay afloat, it sank, less than a year after Snow's departure and only two years after the decline began.

The leadership role played by litigators in the Brobeck battle and the personal styles of the major players exemplify broader changes in law firm leadership. In 1975 and earlier, litigators were seldom found in the top leadership positions. In traditional, old-style firms, trial lawyers were often regarded as flamboyant, too idiosyncratic to guide and represent the firm. Firms cultivated an image of gravitas, sagacity, and quiet dignity. Even if the lawyers were not all descended from old money, they could at least emulate the style. At a time when corporate management was dominated by families that controlled the companies, this matched the lawyers to the clients. But, as marketers and M.B.A.s came to prominence in the corporations, a new-style lawyer was called for. Like Tower Snow, leaders of large law firms are now more likely to be openly ambitious and aggressive. Many of them are litigators, and they are prepared to play hardball. At both times, then, lawyers have tended to emulate their clients. Snow, reportedly, "believed that a law firm could be run like a successful company" (Beck 2002). His firm's fate demonstrates, **of course,** that it is also possible for it to be run like a failing company.

In 1933, Karl Llewellyn said "the practice of corporation law not only works for business men toward business ends, but develops within itself a business point of view . . . toward the way in which to do the work" (Llewellyn 1933). When he wrote that, it was not quite true. Not yet. The mid-20th century histories of law firms (Swaine 1948; Dean 1957) describe enterprises that do not much resemble General Motors, even a primitive form of General Motors (Chandler 1969). In 1933, when Llewellyn's article was published, White & Case, Shearman & Sterling, and the Cravath firm, [24] all major New York law firms, had 14, 15, and 16 lawyers, respectively (Martindale-Hubbell 1933). That same year, the Sidley, Winston, and Kirkland firms, all big Chicago players, had 11, 12, and 19 (Ibid). Of the private practitioners enumerated in the 1952

[24] The firm, now known as Cravath, Swaine and Moore, was then Cravath, de Gersdorff, Swaine and Wood.

Lawyer Statistical Report, 68% were still working alone (Martindale-Hubbell 1952). Even in 1975, there were only three law firms in the U.S. that had as many as 200 lawyers (Abel 1989, 312, table 46). Smigel describes the culture of the Wall Street firm in the late 1950s:

> A number of lawyers who were born in the midwest but trained at eastern law schools found they still had something to learn about eastern, upper-class, social mores, and remarked that they quickly learned by imitation. One reported, for example: "When I first came into the firm, I noticed what older associates wore, one in particular. I thought he was typical of the successful Wall Street lawyer. I found out where he bought his clothing . . . "
> . . . A senior associate recalled, "There was a partner who was involved in a difficult, unpleasant divorce case. He left. I think he was requested to do so. In the law you have to become circumspect." (Smigel 1969, 318-19)

C. Wright Mills' use of the term "law factories" was fanciful, at the time that he used it (Mills 1956). In the last quarter of the 20th century, however, American law firms did, indeed, develop "a business point of view toward the way in which to do the work."

Bingham & Dana, founded in Boston in 1891, thrived for a hundred years as a conservative corporate firm that specialized in representing banks (Carter 2002). In the 1990s, however, as more and more banks merged into large holding companies, it became clear that there would be fewer such clients. Accordingly, the firm perceived a need to diversify (Ibid.). To do so, Bingham established three "ancillary businesses" - - i.e., businesses that provide services other than legal advice or representation (Zimmerman and Kelly 2004). [25] One is a consulting firm that advises companies dealing with state regulatory agencies, another advises small to medium-sized companies on mergers and access to venture capital, and the third is a joint venture with Legg Mason, a Baltimore financial services company, creating a money management firm (Hines 2001). The managing partner of Bingham said that they sought to emulate the strategy of the major accounting firms, which had taken advantage of "their two main assets - - reputation

[25] The ethical rules of the bar permit this so long as the law firm owns the other business. It is objectionable, however, if nonlawyers own the law firm. The ethics of the legal profession require that the lawyers be in control.

and client base - - and leveraged them by looking at the needs and effectively cross-selling, creating a whole line of businesses which became very lucrative" (Ibid.).

The Holland & Knight law firm, based in Florida, owned nine subsidiaries as of 2001, including a detective agency, a firm that provided environmental consulting, a money management firm, and a real estate firm (Ibid.). In Chicago, the Seyfarth Shaw firm, which specialized in the employer side of labor and employment law, owned Seyfarth Shaw At Work, a company that offered training classes for corporate managers, and Lucid Consulting, a personnel management consulting firm (Palmer 2001). These two businesses had 125 employees in 2001 (Ibid.). Other Chicago law firms also owned ancillary businesses - - Mayer Brown had an international trade consulting firm, Baker & McKenzie had a finance and trade company, Hinshaw & Culbertson (a PI defense firm) had a company offering technology risk analysis, and Katten Muchin owned a concern doing customs and international trade work. The vice-chairman of McDermott Will, another Chicago law firm that planned business ventures, said: "The line between traditional legal services and general business advisory services is getting blurrier by the minute" (Ibid.).

In 2002, Bingham & Dana merged with the McCutchen law firm of San Francisco, resulting in a firm known as Bingham McCutchen. In one of its first advertising pieces (printed in four colors on heavy stock and mailed widely) it characterized itself this way:

> **"<u>Dedicated to achieving your business objectives</u> - - Building on a proven track record in hundreds of high-stakes, precedent-setting cases, we focus on what makes sense for your business and develop our strategy accordingly. " . . .**
> **"For issues that can't be predicted, we can help you quickly devise an effective and cost-efficient strategy, driven by your objectives and the realities of your business."**

Note the emphasis on the lawyers' understanding of the client's business. The message is: These lawyers speak your language; they aren't theoreticians; they get the job done, efficiently. To deliver on this promise, **of course,** the lawyers will have to know how the business works.

Because of the increasing value to lawyers of prior work experience in the business world, some law schools, including Northwestern in Chicago, made it clear that they now preferred applicants for admission who had worked for a year or two after college. Northwestern's dean said that his goal was to admit only students with work experience (Strahler 2001). This emulated graduate schools of business, which had for some time required students to have prior experience in business or management. Law schools also changed their curricula, adding courses in business planning and corporate finance. Their students and prospective students, presumably reflecting perceptions of the job market, generated demand for these offerings (Gest 2001). The number of students applying to Northwestern's graduate business and law program - - which offers degrees in both fields, pursued simultaneously - - increased from 44 in 1995 to 182 in 2002 and 209 in 2003. As we saw in chapter 8, the views of the youngest lawyers were more sympathetic to business, more opposed to government regulation, than were the views of those who entered practice twenty and thirty years earlier.

Shearman & Sterling, based in New York and one of the largest law firms in the world, distributes compilations of "league tables," which are listings of law firms ranked by some criterion, usually by the number or value of a particular type of transaction handled by the firms. These are called league tables because they resemble the obsessive statistics tabulating the performance of baseball teams. The cover of Shearman & Sterling's brochure for 2000 said: "Shearman & Sterling is ranked among the top five law firms in more than 200 league tables published in 2000, more than any other law firm in the world." The booklet compiled tables originally published in a variety of trade journals: e.g., "Leading IPO Counsel to First-Time Issuers" (a table from The Daily Deal, May 9, 2000); "Telecom Project Finance Deals by Deal Value" (originally published in Privatisation International, September 1999); "Top Middle Market M & A Legal Advisors in 1999: Drugs, Medical Supplies & Equipment," (from Mergerstat, January 2000); "Hostile Acquisitions of Foreign Targets, Representing Target Side," ranked by value (from Thomson Financial Securities Data, February 2000). League tables have been used by investment banks for many years as a way of demonstrating their prominence and competence. Law firms adopted the practice more recently, as only one of several new advertising techniques. The Legal Marketing Association was formed in 1985; by 2002, it had 1,250 members (Carter 2002). In 2001, a law firm [26] hired the top administrative officer of the Leo Burnett Company, a major advertising agency, and Holland & Knight had 38 employees in its marketing department (Ibid.). Corporate firms no longer rely solely on word-of-mouth or on

[26] Piper Rudnick, a merger of a Baltimore and a Chicago firm.

contacts made on the golf course or at the University Club. The methods they use to sell their wares increasingly resemble those of their clients.

Autonomy and Influence

Lawyers are often said to be especially powerful, but just where does their power reside? Certainly, lawyers **hold a disproportionate share of public offices, but most lawyers are neither public officials nor lobbyists, and the bar surely possesses even greater potential for influence in its private work. As counselors to clients, lawyers commonly give advice that changes the distribution of many things that people value. A lawyer may persuade a client with marital problems to pursue a divorce or to make do with the status quo (to "lump it," as Galanter has put it; Galanter 1974, 124), or perhaps advise a real estate developer that there will be tax advantages if a shopping mall is built in location B rather than location A.**

The way in which lawyers (and other consultants) most commonly affect outcomes, however, is by refusing to take the client's case. Large numbers of potential plaintiffs in personal injury cases are told, in effect, that their cases are not worth the lawyers' time. The plaintiffs' lawyers interviewed by Parikh reported that, of all the potential cases brought to them, they accepted less than half - - those who were "low-end" practitioners accepted 49%, on average, and the elite of the personal injury bar accepted only 24% (Parikh 2001, 75-78, Table V). The chairman of a major law firm told us that, because of potential conflicts of interest, his firm rejects more than a third of all the business it is offered. [27] **The rejection of clients and cases is, of course, more likely to occur when they will be unprofitable - - e.g., when the amount at stake is small or the lawyer cannot be certain that the fee will be paid. In practice, this means that the frustration that occurs when a potential client has been deprived of counsel is less likely to affect major corporations than abused spouses, petty criminals, defrauded homeowners, or injured drivers. Large, powerful clients usually know what their options are, they are sophisticated consumers of legal services, and they know how to choose their lawyers so as to achieve the**

[27] This estimate is very similar to that made by the prominent Washington lawyer, Lloyd Cutler (Cutler 1978, 1549).

goals they desire. Weak clients have fewer options; they are therefore likely to be more malleable, more subject to persuasion. Lawyers can push them around. But much the same is true of the relationships between clients and their bankers, accountants, consultants, and contractors.

There is a tendency to think that <u>big</u> matters must be consequential, and thus that the lawyers who handle such matters must also be consequential. That is, if enough money is involved, the deal is assumed to be one that will change the world, and the lawyers are therefore people of consequence because they make it happen. But lots of people make it happen - - the investment bankers, the venture capitalists, the insurers, the boards of directors, the executives, the engineers, the government (non-) regulators, and the construction companies and/or shipping companies and/or manufacturers and/or scientists on whom the execution of the deal depends. Lawyers are more likely to have discrete roles - - and roles that are perhaps more consequential in the context of the particular decisions - - in child custody, or imprisonment, or political asylum cases than in corporate transactions.

In charting their courses, some lawyers have more autonomy than others. As we have seen, solo practitioners and those in the largest firms report the greatest latitude in client choice, while solos, lawyers in the smallest firms, and inside counsel are most likely to report a high degree of control over the nature of their work (see chapter 5, Figure 5.5). Some scholars have been eager to emphasize the power of lawyers, especially in business contexts, in order to make it clear that lawyers are morally responsible for the consequences of their actions (Rosen 19_ _). Exceptional powers are not a precondition to these moral judgments, however. Even if the ability of lawyers to influence clients and potential clients is not essentially different from that of some other occupational groups, lawyers nonetheless have important roles in the allocation of scarce resources (including authority and deference, as well as wealth). But the extent of lawyers' powers is enhanced or limited by particular social and organizational contexts.

<u>Conclusion</u>

- From 1975 to 1995, the Chicago bar doubled in size while law firms and other practice organizations grew even more dramatically;
- women entered the bar in large numbers and came to occupy, disproportionately, subordinate

positions;

- the gap between the earnings of the best-paid and the worst-paid lawyers widened;
- mobility across firms and other practice organizations increased, the identities of the firms became less stable, and lawyers' careers became less secure;
- work was more narrowly defined, so that lawyers and firms served a smaller range of clients;
- markets for corporate legal work broadened, becoming (at the top) national and international, but small and medium-sized law firms increasingly specialized in the representation of small, local businesses while large firms avoided such clients;
- corporate law practice was increasingly modeled on the business world, and the boundaries between that work and management consulting became less distinct;
- lawyers who did "personal plight"work, by contrast, seldom dealt with businesses.

Thus, the two sectors of law practice, corporate and personal, moved farther apart. Because corporate practice expanded much more rapidly than did personal client work, however, by 1995 the personal client sector no longer employed enough lawyers to be characterized, even roughly, as a "hemisphere" of the profession.

Three interrelated themes recur in this analysis: autonomy, integration, and stratification. Quite obviously, the three phenomena are in some tension. Both stratification and autonomy are inconsistent with integration. If lawyers are divided into systematic strata, they are unlikely to perceive themselves to be, or to act as, a community of common fate and common purpose, and lawyers who are entirely free to pursue their own interests and inclinations may just choose to do so. Moreover, autonomy is limited if lawyers are divided into strata - - the stratification system constrains individual choice and opportunity. But the manner in which and the extent to which each of the phenomena is manifested depends upon the contexts in which lawyers work. The great majority of urban lawyers work in organizations, are subject to the constraints that they impose, and benefit from the advantages that they confer. Of course, some lawyers (a decreasing but still substantial percentage) practice alone, but the mere fact that these lawyers do not work within organizations does not make them the masters of their own fate. Indeed, their professional opportunities are usually more narrowly circumscribed than those of lawyers employed by large enterprises. Regardless of their credentials, solo practitioners and lawyers in small firms are seldom able to secure major corporate clients or to work in the fields of law serving those clients (e.g., securities work, corporate tax, complex civil litigation). Big law firms and corporate legal departments dominate the markets for such work.

In the last quarter of the twentieth century, practice organizations became a primary engine of change in the social structure of the bar. Management, governance, and workgroup arrangements vary by organization - - thus, whether lawyers have an opportunity to participate in management decisions depends upon organizational structure and policies. The nature of lawyers' work (whether there is a hierarchical division of labor, the degree of specialization, the number of hours worked) is shaped by the organizations. The autonomy of lawyers, including the extent of their freedom to refuse work or reject clients, varies systematically by organization type. Lawyers' satisfaction with the conditions of practice and their plans to move or to stay in the same job are also influenced by organizational context. The income of lawyers correlates strongly with the types of organizations in which they work. And women and lawyers of color are disproportionately allocated to distinct practice settings. The needs and norms of the organizations that deliver legal services have profoundly altered the work and careers of lawyers. As large firms command an ever larger share of lawyers' revenues, redefine the division of labor in legal work, and inculcate a new professional ideology, the future of the legal profession will be determined by organizational priorities.