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Indiana Law Journal

Volume 64 | Issue 3

Article 3

Summer 1989

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Bryant C. Danner

Latham & Watkins

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Recommended Citation

Danner, Bryant C. (1989) "Looking at Large Law Firms: Any Role Left for the Law Schools?," *Indiana Law Journal*: Vol. 64: Iss. 3, Article 3.

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Looking at Large Law Firms—Any Role Left for the Law Schools?

BRYANT C. DANNER*

Chief Justice William Rehnquist's dedicatory address at the Indiana University School of Law on September 12, 1986,¹ presents a number of inviting targets for a commentator from a large law firm. The Chief Justice says that institutional loyalty appears to be declining in the nation's large firms.² He observes that lawyers in large firms seem to be working harder now and that the pressure to record a high number of hours may be causing lawyers to spend excessive time researching issues and to have a narrow view of life and the law.³ Acknowledging that his information is largely anecdotal, Chief Justice Rehnquist suspects that the work of associates in large firms is becoming less satisfying.⁴

Chief Justice Rehnquist also says that large firms present major ethical issues. These include the risk that the pressure to log hours will cause lawyers to record time that was not actually spent.⁵ Furthermore, Chief Justice Rehnquist is concerned that the pressure to maximize income could cause a firm to cut ethical corners and that the sheer size and communication problems in a large firm could inadvertently create conflict of interest situations.⁶

It is tempting to focus on these specific issues. They are important and difficult ones which, as Chief Justice Rehnquist states, are not well explored in the literature.⁷ Concentration on these specific issues could, however, leave unexamined the Chief Justice's underlying theme—that law schools should do a better job of examining what is happening in the large law firms.⁸

From the perspective of one member of one large law firm,⁹ this paper asks whether the law schools really can, or should, play a significant role in studying the large law firms. The conclusion of this observer is that law

* Mr. Danner is a partner in the law firm of Latham & Watkins, Los Angeles. A.B. Harvard 1960; LL.B. Harvard 1963.

1. Rehnquist, *The Legal Profession Today*, 62 *IND. L.J.* 151 (1987).

2. *Id.* at 152.

3. *Id.* at 151-53.

4. *Id.* at 154.

5. *Id.* at 155.

6. *Id.*

7. *Id.* at 152-53 (quoting Gordon, *Introduction to Symposium on the Corporate Law Firm*, 37 *STAN. L. REV.* 271, 272 (1985)).

8. *Id.* at 152, 157.

9. The usual caveat: The views expressed herein are those of the author and not necessarily those of his law firm.

schools do have an important role to play in this arena, but the nature and extent of this role have been changed by the recent emergence of an active, inquisitive legal press and by the full flowering of summer clerking programs at large law firms. These two developments have alleviated pressures that might otherwise be building for more extensive changes in the way law schools examine, and prepare their students for, the nation's large firms.

A LOOK BACKWARDS

This paper would have had a substantially different character if it had been written ten years ago. Secrecy then shrouded the management, recruiting, training, compensation and planning activities in large law firms. Reliable information and thoughtful analysis appeared only rarely.¹⁰

This lack of information was a driving force behind the entrepreneurial efforts of one national accounting firm, Price Waterhouse, to gather financial and other information from a group of large law firms. The information was then reported to the participating firms, with data on other firms described in general terms so the participating firm could determine only its relative ranking in various categories. In the late 1970's, these Price Waterhouse surveys were one of the few useful sources of "outside-world" information available to managers of the participating firms. The Price Waterhouse surveys, however, compiled a limited amount of information and did not cover all of the major firms. Also, the survey results were intended to be kept confidential within the participating firms.¹¹

Ten years ago, a search of law school catalogs would have located few, if any, courses which promised a substantial discussion of large law firms.¹² Communication links between law schools and law firms were generally limited to the law schools' sponsorship (or tolerance) of the annual recruiting rituals, the presence of a handful of law firm partners on governing or visiting committees and a few courses which touched lightly on the law firm environment as part of a general survey of the legal profession.

The absence of public information about large firms and the lack of law school interest in the subject were unfortunate. Some might even have

10. One example was the study by E. SMIGEL, *THE WALL STREET LAWYER, PROFESSIONAL ORGANIZATION MAN?* (1969). This was a remarkable work, particularly given the secrecy that then surrounded large firms. Unfortunately, Smigel's pioneering effort did not stimulate much follow-up academic writing.

11. This confidentiality did not last long in the era of the legal press. See, e.g., Brill, *Gloom from Price Waterhouse*, *AM. LAW.*, Nov. 1983, at 1.

12. The author made such a search in 1979. Approximately 100 law school catalogs were reviewed. None of the course descriptions promised a detailed discussion of the institutional aspects of large firms. A fair number of courses on "Law Office Economics/Management" were offered, but these appeared to have a primary focus on operational and administrative matters. Descriptions of "Legal Profession" courses usually indicated a broad scope and rarely mentioned large firms as a specific subject.

described the situation as incomprehensible, in light of the importance of large law firms among the nation's legal institutions and the investigative and analytical resources available in the law schools. Confidentiality and secrecy certainly have their place, but more public information and studies about large law firms should, at least in theory, produce better decisions by law firm managers in operating their firms, by law students in selecting career paths, and by society in evaluating whether, and to what extent, the large firms are performing useful social functions.

Writing in 1969, Ralph Nader noted that "law firms were not even considered appropriate subjects of discussion and study in the [law schools'] curriculum."¹³ He also had some other pointed comments about the relationship between law firms and law schools:

As the one institution most suited for a critical evaluation of the profession, the law school never assumed this unique role. Rather, it serviced and supplied the firms with fresh manpower selected through an archaic hierarchy of narrow worthiness topped by the editors of the school's law review. In essence it was a trade school.¹⁴

Nader's 1969 observation that law schools can and should be doing more to study large firms was still on the mark in the late 1970's. Has the situation improved since then?

Some things have not changed. A review of law school catalogs for 1988 would probably reveal, at most, only a few courses which promise an intensive study of large law firms. As Professor Robert Gordon noted in 1985:

[T]he legal academy from its inception has on the whole made a determined decision to remain aloof from the institutions where most of its students will spend their careers. . . . As far as I know, we have never produced, for teaching purposes, *any* good descriptions, much less scholarly analyses, of what it is that corporate lawyers spend most of their time doing.¹⁵

On the other hand, some aspects of the situation have changed dramatically in the last ten years.

EMERGENCE OF THE LEGAL PRESS

Publications such as *American Lawyer* and the *National Law Journal* have shredded the secrecy shroud. By creative investigative techniques and aggressive marketing strategies, these and other papers have become major sources of information about the large law firms.

13. Nader, *Law Schools and Law Firms*, 54 MINN. L. REV. 493, 496 (1970), reprinted from Nader, *Law Schools and Law Firms*, THE NEW REPUB., Oct. 11, 1969, at 20.

14. *Id.*

15. Gordon, *supra* note 7, at 272.

A sampling of headlines from recent issues of these publications indicates that virtually all of the formerly taboo subjects have been explored:

(1) *Financial Information*. As a supplement to its July/August 1987 issue, *American Lawyer* published *The Am Law 100*, a compilation of financial data on 100 large law firms. This information included statistics on revenue per lawyer,¹⁶ partner income,¹⁷ profit margins¹⁸ and other financial items.

(2) *Billing Rates*. In November 1987, the *National Law Journal* published a special survey on billing practices, which listed hourly billing rates for a substantial number of large firms and prominent lawyers.¹⁹ In December 1987, perhaps as a follow-up, the *National Law Journal* published an article entitled *Billing a Client is Simple; Now, Try to Collect the Money*.²⁰

(3) *Management and Planning*. As a supplement to its September 1987 issue, *American Lawyer* published *The '80s Shakeout: An Update*. This article included discussions by law firm managers and consultants on current trends and the future of large firms.²¹ This was the most recent in a series of detailed discussions of management issues by the editors of *American Lawyer*.²² Articles on management practices at specific firms also appear frequently.²³

(4) *Evaluations by Summer Clerks and Associates*. Each year, *American Lawyer* publishes evaluations and rankings of large firms by their summer clerks or associates. The most recent of these articles was *Summer Associates '87*.²⁴ In 1986, the *American Lawyer* published *Life in the Trenches: Mid-level Associates Rank Their Firms*.²⁵

(5) *Firms in Trouble*. As the following titles indicate, the legal press does not shy from stories about trouble at large firms: *Bye, Bye, Finley, Kumble*,²⁶ *Finley, Kumble: The Firm's Final Days*.²⁷

(6) *Chances of Making Partner*. The *National Law Journal* recently published an article with the tantalizing title of *Pssst! Wanna Make Part-*

16. *The Am Law 100*, AM. LAW. July-Aug. 1987, Supp. at 31, 48-49.

17. *Id.* at 54-55.

18. *Id.* at 58, 60, 62.

19. *Billing*, Nat'l L.J., Nov. 23, 1987, at S-1, col. 1.

20. Jensen, *Billing a Client is Simple; Now, Try to Collect the Money*, Nat'l L.J., Dec. 7, 1987, at 1, col. 1.

21. *The '80s Shakeout: An Update*, AM. LAW., Sept. 1987, Supp. at 1.

22. See, e.g., Brill, *Toward a New Excellence—Strategies and Values for Tomorrow's Successful Firms*, AM. LAW., Nov. 1983, Supp. at 1.

23. E.g., Abramson, *Akin, Gump's Delicate Balance*, AM. LAW., June 1986, at 27; Billard, *The Jones, Day Guide to Law Firm Autocracy*, AM. LAW., Apr. 1986, at 109.

24. *Summer Associates '87*, AM. LAW., Oct. 1987, Supp. at 1.

25. *Life in the Trenches: Mid-level Associates Rank Their Firms*, AM. LAW., Oct. 1986, Supp. at 1.

26. Brill, *Bye, Bye, Finley, Kumble*, AM. LAW., Sept. 1987, at 3.

27. Jensen & Wise, *Finley, Kumble: The Firm's Final Days*, Nat'l L.J., Dec. 21, 1987, at 3, col. 1.

ner?²⁸ This article contained information on the percentages of recent classes which have made partner in major firms across the country.²⁹

(7) *Lateral Movement*. The movement of partners from one firm to another also attracts attention. Illustrative recent titles are *Dewey Raids Lillick*,³⁰ *Buchalter Loses Name Partner*,³¹ and *Paul, Weiss Partner Breaks Rank*.³²

(8) *Mergers*. Rumors and facts relating to law firm mergers are also fair game: *Barrett Smith—Chadbourne Deal Goes Bust*,³³ *Merger Shock*,³⁴ and *Why I Married Isham, Lincoln*.³⁵

(9) *Clients*. On a monthly basis, *American Lawyer* lists the law firms and individual lawyers who have been retained for major deals and litigations.³⁶ Other articles chronicle the movement of clients to and from the large firms.³⁷

(10) *Firm Profiles*. From time to time, the legal press will prepare comprehensive profiles of particular firms. Examples are *Vinson & Elkins, Texas Bellwether*,³⁸ *Smokin' Joe Fires Up Dewey, Ballantine*,³⁹ and *Paul, Weiss: Profits and Principle*.⁴⁰ The firm in which I am a partner has not been spared: *Singing the Latham Song*.⁴¹

Articles on law firms are appearing more frequently in the regular press. For example, the *Los Angeles Times* recently published *The Real L.A. Law*, a series on large firms.⁴² Several recent books also compile firm profiles, "war stories" and other impressions about large firms.⁴³

The legal press has received a fair amount of comment and criticism.⁴⁴ Not all firms appreciate the loss of secrecy or the particular treatment they

28. Wise, *Pssst! Wanna Make Partner?*, Nat'l. L.J., Oct. 26, 1987, at 1, col. 2.

29. *Id.* at 32.

30. Safian, *Dewey Raids Lillick*, AM. LAW., Oct. 1986, at 6.

31. Singer, *Buchalter Loses Name Partner*, AM. LAW., June 1987, at 8.

32. Roberts, *Paul, Weiss Partner Breaks Rank*, AM. LAW., Sept. 1987, at 14.

33. Gold & Smith, *Barrett Smith—Chadbourne Deal Goes Bust*, MANHATTAN LAW., Nov. 24-30, 1987, at 1, col. 2.

34. Middleton, *Merger Shock*, Nat'l L.J., Oct. 26, 1987, at 1, col. 1.

35. Reuben, *Why I Married Isham, Lincoln*, AM. LAW., Mar. 1987, Supp. at 6.

36. E.g., *Big Deals*, AM. LAW., Nov. 1988, at 19; *Big Suits*, AM. LAW., Nov. 1988, at 16.

37. E.g., Hayes, *Sidley Nabs 7-Figure Client from Isham*, AM. LAW., Jan./Feb. 1988, at 12; Singer, *Brobeck Back with Fickle Client*, AM. LAW., Jan./Feb. 1988, at 14; Singer, *Client Switch: Daily News Drops Patterson, Belknap*, AM. LAW., Sept. 1987, at 14.

38. Taylor, *Vinson & Elkins, Texas Bellwether*, Nat'l L.J., Dec. 14, 1987, at 1, col. 1.

39. Billard, *Smokin' Joe Fires Up Dewey, Ballantine*, AM. LAW., Apr. 1987, at 123.

40. Orey, *Paul, Weiss: Profits and Principle*, AM. LAW., June 1987, at 70.

41. Pollock, *Singing the Latham Song*, AM. LAW., Oct. 1986, at 125.

42. *Law Firms Wage Wide Turf Battle*, L.A. Times, Sept. 29, 1987, § 1, at 2, col. 6; *The 100-Year Odyssey of L.A.'s Oldest Law Firms*, L.A. Times, Sept. 28, 1987, § 1, at 6, col. 1; Overend, *Legal Boom Ends Calm at L.A. Firms*, L.A. Times, Sept. 27, 1987, § 1, at 1, col. 1.

43. E.g., P. HOFFMAN, *LIONS OF THE EIGHTIES* (1982); M. STEVENS, *POWER OF ATTORNEY: THE RISE OF THE GIANT LAW FIRMS* (1987); J. STEWART, *THE PARTNERS* (1983).

44. See, e.g., Overend, *Trade Publications Turn Spotlight on Business Side of Law*, L.A.

receive in the press. Nevertheless, the legal press has performed a valuable function. Information about financial results and management techniques in large firms is now readily available to law students, law firm partners and associates, clients and any other interested persons. Whether one agrees or disagrees with the way the information is organized or evaluated by the editors, the information itself is a treasure trove for all persons who are in, or deal with, the nation's large firms.

SUMMER CLERKING

The last ten years have also seen the maturing of summer clerking programs. Most major law firms now depend on summer clerking to provide a large portion of their overall hiring targets. *American Lawyer's* 1987 report covered 287 firms and indicated that these firms had approximately 7,000 summer clerks.⁴⁵

Summer clerking is not new. Some firms had summer clerking programs early in the 1960's.⁴⁶ However, the number of summer clerks has escalated over the last ten years. This has had a substantial impact on the flow of information about large firms. As I believe any recent law school graduate can attest, summer clerks share widely their information and subjective impressions when they return from their clerkships.

In *American Lawyer's* summer clerk surveys, firms are evaluated on a number of criteria and are then ranked, based on questionnaire responses from the clerks. The questionnaires focus on such factors as supervision, hours worked, amount of time spent in the library, client contact, and the clerk's overall impressions of the firm.⁴⁷ One can legitimately ask whether summer clerking has become such a recruiting device that it creates misleading impressions of "real life" at the large law firms. The recent *American Lawyer* survey noted that the 1987 summer clerks seemed to be asking this question more frequently than in prior years.⁴⁸ Despite this, I do not believe there can be any doubt that the summer clerking programs

Times, Sept. 27, 1987, § 1, at 34, col. 1; Oliver, *Steven Brill, 1-Man Jolt for Legal Journalism*, L.A. Times, June 20, 1987, § 1, at 1, col. 1; Trueheart, *Staking His Claim on Law's Horizons, Publisher Steven Brill and the Empire He Built on Legal News*, Washington Post, Jan. 12, 1987, at D1, col. 6; Gray, *Exposing Big Firms' Secrets*, Wall St. J., Mar. 26, 1986, at 1, col. 1 (eastern ed.); Kiernan, *Legal Publications Invading Law Firms' Inner Sanctums*, Washington Post, Nov. 26, 1979, at C1, col. 6; Auerbach, *Two New Weeklies to Focus on Law*, Washington Post, Mar. 27, 1978, at A8, col. 1.

45. *Summer Associates '87*, *supra* note 24. The total (6,976) probably included a number of clerks who worked at more than one firm. The surveyed firms based in New York City had a total of 1,840 clerks. *Id.* at 60, 62. Skadden, Arps reportedly had 148 clerks, 88 in its New York City office. *Id.* at 70.

46. See E. SMIGEL, *supra* note 10, at 62.

47. See, e.g., *Summer Associates '87*, *supra* note 24 (4,200 respondents).

48. Adler, *Introduction: Easy Living, Hard Choices*, AM. LAW., Oct. 1987, Supp. at 7.

have made available a great deal of information about the inner workings of the large firms. This is another major step forward in the last ten years.

ROLE OF LAW SCHOOLS—1988

We turn now to a definition of the role which law schools can and should play in respect to large law firms—in light of these recent developments. Ten years ago, the strong recommendation would have been that law school faculties should take the initiative and become pioneers in the effort to develop information about what was happening in the nation's large firms. The law schools would also have been urged to expand their curriculum to include courses giving students an exposure to subjects related to the institutional aspects of large law firms.

This would have been a difficult order for the law schools to fill. Factual investigations require considerable resources. Chief Justice Rehnquist quotes an unnamed law school dean as saying that "legal academics were just not very good at dealing with empirical studies."⁴⁹ Also, fitting a course on large law firms into the standard academic pigeonholes would have been difficult. Nevertheless, the situation in the late 1970's called for someone to step forward and lead the exploration of the law firms—and law schools were a prime candidate for this job.

Defining the appropriate role for law schools in the late 1980's has a different thrust. No longer can we urge law schools to become the pioneers in developing information about law firms. The legal press has already seized the initiative in exploring this territory. Summer clerking has also contributed to the flood of public information about large firms. I believe, however, that there still is a substantial opportunity, and a real need, for law schools to become more involved.

Although the legal press has taken the pioneering role, the academic community can still bring its formidable talents to bear on the process of information gathering and analysis. The editors of the legal press have made some valiant efforts to organize and reflect on the information they are accumulating.⁵⁰ Despite this, most articles in the legal press consist of anecdotal studies and raw data. This is interesting material, but we need some skilled volunteers to assemble and review the information in an organized fashion, subject it to critical analysis and place it in context.⁵¹ I

49. Rehnquist, *supra* note 1, at 156.

50. Steven Brill, Editor-in-Chief of *American Lawyer*, is the most notable. See, e.g., Brill, *supra* note 22.

51. Professor Gordon made essentially the same point in 1985 when he complimented the legal press, but also noted that the Stanford symposium, *Symposium on the Law Firm as a Social Institution*, 37 STAN. L. REV. 271 (1985), was an attempt to give recent trends "an examination both more sustained and more critical than the new legal journalism has been able and willing to do." Gordon, *supra* note 15, at 273-74.

believe that some of these volunteers should come from law school faculties.

I am not suggesting that the academic researcher's job should be limited to an analysis of the information which has already been assembled. On the contrary, the faculty members who accept the challenge will need to develop independent data on the subjects which the legal press has already explored and on many topics which are still untouched.

But what of Chief Justice Rehnquist's unnamed dean who suggests that law schools are ill-equipped for such fact gathering? Hogwash. My impression is that law school professors pride themselves on their ability to determine what facts should be gathered, to develop creative ways of pulling the information together and to shape, analyze and present data in a thoughtful and persuasive fashion.

The unnamed dean's concern would have more weight if the real worry were not the law faculty's ability to gather facts, but whether adequate resources are available for the job. Clearly, law schools have many responsibilities other than studying large law firms or other institutions in the legal profession. Moreover, the schools continually face difficult questions on how to allocate their staff and financial resources.

My suggestion is only that the allocation of law school resources should be shifted by a relatively small fraction so that more time and attention can be given to the study of large law firms. I am not suggesting that every law school should have a major project in this area. A good starting point would be for a handful of law schools around the country to undertake such projects—either separately or as part of a joint program. These studies would be even more efficient and valuable if other disciplines were added to the study group. Sociologists and economists should be welcomed.

One final bow to the legal press: Ten years ago, academic researchers would have had a difficult time obtaining inside information from law firms. Because of the impact of the legal press, the job should be considerably easier now. Most types of important and sensitive information about the firms are (or could be) exposed to public scrutiny in the legal press. In this context, law firms may be more willing to share important information with an academic study group. The hope might be that the information would receive a more balanced and thoughtful treatment from the academics than from the editors of the legal press.

PERFORMANCE

Is there any evidence that law schools have recognized that they should be more inquisitive about the large law firms? The evidence is limited, but there are some encouraging signs.

The materials prepared in connection with Stanford Law School's February 1984 *Symposium on The Law Firm as a Social Institution* merit particular recognition. Papers from this symposium were published in the

January 1985 issue of the *Stanford Law Review*, and deal with several fundamental issues, including the impact of "in-house" corporate counsel,⁵² the social significance of large firm practice,⁵³ practice patterns in Washington, D.C.,⁵⁴ social values and client relations,⁵⁵ and ethical perspectives.⁵⁶

One of the symposium articles focuses on the difficult question of how a law firm should allocate its profits.⁵⁷ The authors, Professors Gilson and Mnookin, draw on various economic theories, including the portfolio and agency theories, and compare a seniority-based, "sharing" method of dividing profits with an alternative approach keyed to the partners' individual contributions. Using these analytical tools, Gilson and Mnookin conclude that the sharing model is generally superior and describe how firms might avoid some of the dangers inherent in the sharing concept.

Based on a comprehensive study of Chicago law firms, Robert Nelson has assembled and analyzed the data in several informative articles. One discusses the structure of large firms—in theoretical and practical terms.⁵⁸ Of particular interest is Nelson's discussion of the implications of a firm's choice between "general service growth" and a growth pattern based on "special representation."⁵⁹

Another of Nelson's articles focuses on recruiting and career development in large firms.⁶⁰ He analyzes attrition data and probes questions relating to whether career and attrition patterns may vary among the departments or specialty fields within a firm.⁶¹ Nelson concludes, for example, that firms are having a particularly difficult time attracting and retaining attorneys in litigation areas.⁶²

I mention these specific articles not because they are the only recent academic commentaries on large law firms.⁶³ Rather, I cite them because

52. Chayes & Chayes, *Corporate Counsel and the Elite Law Firm*, 37 STAN. L. REV. 277 (1985).

53. Kagan & Rosen, *On the Social Significance of Large Law Firm Practice*, 37 STAN. L. REV. 399 (1985).

54. Laumann & Heinz, *Washington Lawyers and Others: The Structure of Washington Representation*, 37 STAN. L. REV. 465 (1985).

55. Nelson, *Ideology, Practice, and Professional Autonomy: Social Values and Client Relationships in the Large Law Firm*, 37 STAN. L. REV. 503 (1985).

56. Rhode, *Ethical Perspectives on Legal Practice*, 37 STAN. L. REV. 589 (1985).

57. Gilson & Mnookin, *Sharing Among the Human Capitalists: An Economic Inquiry into the Corporate Law Firm and How Partners Split Profits*, 37 STAN. L. REV. 313 (1985).

58. Nelson, *Practice and Privilege: Social Change and the Structure of Large Law Firms*, 1981 AM. B. FOUND. RES. J. 97.

59. *Id.* at 110-18.

60. Nelson, *The Changing Structure of Opportunity: Recruitment and Careers in Large Law Firms*, 1983 AM. B. FOUND. RES. J. 109.

61. *Id.* at 123-26, 133-40.

62. *Id.* at 136-38, 142.

63. Others include Bok, *A Flawed System*, 85 HARV. MAG. 38 (1983); Gilson, *Value Creation by Business Lawyers: Legal Skills and Asset Pricing*, 94 YALE L.J. 239 (1984); Macaulay, *Law Schools and the World Outside their Doors II: Some Notes on Two Recent Studies of the Chicago Bar*, 32 J. OF LEGAL EDUC. 506 (1982); and Fried, *The Trouble With Lawyers*, N.Y. Times, Feb. 12, 1984, § 6 (Magazine) at 56, col. 1.

they illustrate the type of analytical approach which is needed in the further study of the firms. The goal is to assemble and organize data creatively, other than in anecdotal form, so that members of the audience (including law firm managers) who are grappling with difficult decisions can see how the issues might be analyzed in a broader context, with reference to analogies from other disciplines.

SUBJECTS FOR STUDY

Worthy subjects for study are not in short supply. The Stanford symposium was, in large part, an open invitation for other law school faculties to probe beneath the surfaces which the Stanford group had only scratched.⁶⁴ The specific issues raised in Chief Justice Rehnquist's speech also call for careful study. As my contributions to the list, I suggest the following four subjects:

(1) *What are the relevant measures of financial success for a large law firm?* The *American Lawyer's* 1987 financial survey ranks firms on a number of criteria.⁶⁵ Some of these are traditional (e.g., revenue per lawyer and profits per partner), but *American Lawyer* has also introduced a new concept called the "AM LAW Profitability Index" (API). The API is defined as the firm's profit per partner divided by the firm's revenue per lawyer.⁶⁶ The *American Lawyer* notes, with some pride, that 1987 seemed "to be the year that API came into its own as a true measure of success in operating a law firm."⁶⁷ According to *American Lawyer*, "[i]t makes sense that a successful firm will have an API over 1. . . . [U]nless the firm produces more for its partners than the average lawyer bills, it is not a business producing profit for its proprietors."⁶⁸

This is a valuable effort to impose a new analytical construct on financial data. Although the *American Lawyer's* claims about the API are subject to some challenge,⁶⁹ the API concept properly questions whether traditional criteria, such as profit per partner, are the best measures of financial success. For example, the API takes into account the fact that two firms

64. In his *Introduction to Symposium on the Corporate Law Firm*, Professor Gordon lists a number of issues for further examination. Gordon, *supra* note 15, at 274-75.

65. *The Am Law 100*, *supra* note 16.

66. Brill, *The Gaps Widen*, AM. LAW., July/Aug. 1987, Supp. at 6, 16. The API concept was introduced in 1985. See Brill, *The Am Law 50*, AM. LAW., July/Aug. 1985, Supp. at 1, 14.

67. Brill, *The Gaps Widen*, *supra* note 66, at 16.

68. *Id.* at 26.

69. For example, *American Lawyer's* suggestion that a firm cannot be operating profitably or successfully if its API is under one can be challenged—at least on a theoretical basis. Depending on assumptions about the gross revenues which individual partners or associates could produce as sole practitioners and how their overhead percentage in sole practice would differ from the firm's overhead percentage, a model can be constructed in which the partners and associates could be "better off" in the firm than in sole practice—even if the firm's API were under one.

could have the same profit per partner but differ greatly in their overall efficiency—as measured by the ratio of profits to expenses.

Another possible standard for measuring a firm's financial success could be the firm's average compensation per lawyer. To determine this number, the total dollars available for distribution among the attorneys (as associate compensation or partnership profits) would be divided by the total number of lawyers (partners and associates). How the firm decides to allocate the total compensation pool among its partners and associates is a policy decision, the resolution of which may or may not be related to the firm's financial success.

In any event, it seems to this observer that a conclusion on whether the API, or some other traditional or new criterion, is the best measure of financial success remains as a subject for the type of study which this paper urges members of law faculties to undertake.

(2) *What is happening to the market in which large law firms are selling their services?* Not even the legal press has been able to develop a useful method of measuring the market in which large firms compete. The growth in the size and power of in-house counsel and the emerging specialty markets have received much attention.⁷⁰ On the other hand, reliable quantitative data are virtually non-existent when a law firm must decide how to allocate its resources among cities and specialties. Relevant questions include: What size of firms should be considered within a particular market? How geographically oriented are the buyers of legal services? How valid is the common wisdom that sophisticated clients "hire lawyers—not law firms"?

On a more qualitative basis, how should a law firm determine whether it is offering the right mix of seniority, experience and fees to its clients? Some interesting work on this has been done outside the academic community. Once again, the legal press has shown remarkable initiative. In 1985, *American Lawyer* surveyed a group of legal officers at large corporations to learn how they selected law firms.⁷¹ Lists were published of *The Best All-Around Firms*, *Life or Death: Where Would You Turn?*, and *Regional Picks*.⁷²

Another group, known as Services Rating Organization (SRO), has surveyed clients in a number of major metropolitan areas to determine their opinions about the large law firms. SRO then sells the survey results to the law firms. Such surveys are generally useful, even if only to confirm (or dispute) a firm's intuition about how it is perceived in its market place. These *American Lawyer* and SRO surveys are only first cuts at the type of sophisticated, analytical approach which could be developed to obtain

70. See, e.g., Chayes & Chayes, *supra* note 52; Nelson, *supra* note 58.

71. States, Adams & Fischer, *What Clients Want*, AM. LAW., Nov. 1985, Supp. at 1, 5.

72. *Id.* at 14.

qualitative assessments of the law firms that are competing in a particular market.

(3) *What is happening to the market in which law firms are "buying" attorneys?* Second- and third-year law students are the most important market in which large firms are acting as buyers. The firms are increasing their demand for new associates, but the size of the law student market does not show any sign of substantial growth.⁷³ More study would be useful to determine whether the aggregate demand by all law firms is increasing or whether the only significant increase is in the number of students sought by the larger firms.

A recurring question for law firm managers is how deeply they can draw the line at a particular law school and still have confidence that they will obtain a graduate who meets the firm's traditional "standards." This subjective judgment is hotly debated within, and between, law firms and law schools. Another controversial subject is whether there are any clear correlations between "success" in a law firm and a lawyer's law school or class standing.

Paradoxically, the other major market from which large law firms draw attorneys is comprised of other large law firms. "Lateral" movement seems to be gaining momentum at both the partner and associate levels. A recent article in the *National Law Journal* contains data indicating that approximately 22% of the classes which were studied consisted of lawyers who were brought in laterally rather than directly from law school.⁷⁴

Chief Justice Rehnquist would probably attribute the increasing lateral movement to a decline of "institutional loyalty" in large firms. Before such a conclusion can be reached, some additional questions need to be asked and answered. Is institutional loyalty any less now than in earlier days or is the increasing lateral movement the product of greater activity by firms in seeking laterals and greater information (courtesy of the legal press) about the location of the "greener pastures"? Also, will lateral movement have a long-term impact on the ability of law firms to provide cost-effective, stable and high quality work?

(4) *How are large firms coping with ethical issues?* Chief Justice Rehnquist makes some solid points here. Large firms may not agree with the Chief Justice that their size or their heavy work pace has produced pressures to cut ethical corners, but I believe they would agree on the importance and difficulty of insuring that the appropriate ethical standards are followed throughout a large, multi-city firm.

73. See Bernstein, *Does a Hiring Crisis Threaten the Profession?*, Nat'l L.J., Dec. 28, 1987, at 20, col. 2.

74. Wise, *supra* note 28, at 32-33. The data indicate that 500 of the 2,227 lawyers in the classes studied were lateral entrants. See also sources cited *supra* notes 30-32.

Chief Justice Rehnquist accurately observes that conflicts of interest can arise inadvertently in offices which are thousands of miles apart.⁷⁵ Most firms have established procedures to prevent such unfortunate events, but they can still occur. One such case that attracted considerable publicity involved a suit filed by Kirkland & Ellis' Chicago office against several uranium producers, including members of the American Petroleum Institute, an association represented on certain matters by Kirkland's Washington office.⁷⁶ The motion to disqualify the firm produced litigation reaching the Seventh Circuit and a reexamination by many firms of their policies on accepting representation of industry associations.

While agreeing with Chief Justice Rehnquist that the ethical problems confronted by large firms are worthy of more sophisticated study, it is not readily apparent that the overall ethical environment in law firms is substantially different than it was in the past. In a recent article, Professor Geoffrey Hazard acknowledges the merit of concerns expressed by the ABA Commission on Professionalism (and echoed by Chief Justice Rehnquist) that lawyers should "resist the temptation to make the acquisition of wealth a principal goal of law practice."⁷⁷ On the other hand, Hazard also reminds us to be wary of nostalgia for the "good old days" when law firms were smaller and the profession was more "cohesive." Conceding that the "solidarity" of the past is gone and that "professional aspirations are no longer what they used to be," Professor Hazard cautions that "whether the actual conduct of the profession ethically is worse than it used to be is another question."⁷⁸

This observation by Professor Hazard underscores a fundamental point to be recognized in any study of large law firms: Although the legal press has started us toward an improved data base on what is happening within the large firms at the present time, our historical information is extremely limited. The further development of such historical data is critically important for any evaluation of observations (such as Chief Justice Rehnquist's) that things are changing—and probably for the worse.⁷⁹

CONCLUSION

Ten years ago, I would have recommended that the standard law school curriculum should include a course (or two) on the institutional aspects of

75. Rehnquist, *supra* note 1, at 155.

76. See J. STEWART, *supra* note 43, at 186-97.

77. Hazard, "Good Old Days" Not Always So Good for All, Nat'l L.J., Dec. 14, 1987, at 13, col. 3 (quoting ". . . In the Spirit of Public Service:" A Blueprint for the Rekindling of Lawyer Professionalism, 1986 A.B.A. COMM. ON PROFESSIONALISM 15).

78. *Id.* at 18, col. 3.

79. The Chief Justice also recognized the danger inherent in an uncritical assumption that things were better in the "good old days." Rehnquist, *supra* note 1, at 152.

law firms and that law school faculties should take the initiative in exploring the secrecy-shrouded world of the large law firms. The basic premise was, and is, that more information will produce better decisions on all sides.

The situation is somewhat different in the late 1980's. The appropriate role of law schools *vis a vis* large firms can be described in more modest, but still urgent, terms. The emergence of the legal press and summer clerking programs has made vast quantities of information available to law students, clients and all others who are considering joining or using the large firms. Even so, law schools have an important role to play in the development of further information about the large law firms and in the reflective analysis of the data.

Chief Justice Rehnquist was fundamentally correct in concluding that many issues relating to large law firms deserve more attention by the academic community. Historically, law schools have not fulfilled, or even accepted, this role. There are only a few analytical studies of the type which should be undertaken by law school researchers.⁸⁰ More are needed.

I also continue to believe that the law school curriculum could benefit from the focal point which would be provided by a course on large law firms. Whether or not such courses are added to the curriculum, the basic need is to find a group of law school faculty members who will answer the call for more systematic, thoughtful study of large law firms. One would hope that an observer ten years hence will not be able to cite Chief Justice Rehnquist's 1986 address as an accurate description of the relationship between the law schools and law firms in the late 1990's.

80. See sources cited *supra* notes 52-63.