

The Changing Legal Profession

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Several years ago, I marked both the fiftieth anniversary of my admission to the bar and my fiftieth year as a member of my law firm.² Those milestones inspired me to reflect on the changes that have occurred in the legal profession during the past half century. There have been profound changes, some obvious, others subtle, that have radically transformed the manner in which law is practiced and experienced by lawyers. The social and economic structure and the culture of the profession are very different from what they were fifty years ago. L.P. Hartley, the English author, once wrote memorably that “The past is a foreign country; they do things differently there.”³

A young lawyer of today in a large firm, if transported in a time machine back to the 1950s, would not find a law firm of that era an alien place, but he or she would quickly perceive that, in a number of respects, they did “things differently there.” Our present day young attorney, viewing practice in 1950, would be struck, among other things, by the much smaller size of law firms, the almost complete absence of women and minority group lawyers, and the lack of electronic information retrieval and transmission technology, such as computers and fax machines that are now commonplace. Further

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² I was admitted to the bar in the District of Columbia in November 1950, and I joined Arnold, Fortas & Porter as an associate in March 1953. I was an associate of Raoul Berger, a solo practitioner in Washington, before joining Arnold, Fortas & Porter, now Arnold & Porter LLP.

³ Hartley, The Go Between 1 (1953).

exploration would unearth deeper differences. The same thing would be true of other professions. A young doctor of today, viewing medicine as practiced in 1950, would have an analogous experience; there have been dramatic changes in the past half century in the sociology, economics, and technology of the medical profession.⁴

My purpose in this essay in contrasting legal practice a half century ago with the present is not to indulge in reminiscences, or to glorify the past as a “golden age” – for a variety of reasons, I do not think that it was⁵ -- but rather because I believe such a comparison illuminates important issues affecting lawyers and the nature and quality of the professional life they experience. The nature of these changes is relevant to legal education. There have been some noteworthy changes in legal education since I was a student in the law schools at the University of Chicago and Yale in the late 1940’s, including the development of clinical programs, the law and economics movement, the acceptance of women and minorities as faculty members, the major increase in the

⁴ Similarly, a major league baseball player of today certainly would not find the game as played in 1950 unintelligible, but he would soon discern that there were important distinctions, *e.g.*, the far higher compensation received by more racially and ethnically diverse players, the expansion from 16 teams in two leagues to 30 teams organized in six divisions, free agency, the designated hitter rule, and so on.

⁵ It certainly was not a “golden age” in the legal profession for women, Jews, African Americans, and other minorities, who were the subjects of pervasive discrimination and bigotry. Catholics were also victims of substantial prejudice in hiring and advancement to partnership. See Joseph A. Califano, Jr., Inside – A Public and Private Life 414 (2004): “In the first half of the twentieth century, only White Anglo-Saxon Protestants could hope to become partners at Dewey [Ballantine, Bushby, Palmer & Wood] or similar firms. Catholics, Italians, Jews, and Irish could work there for a few years and then split off to found their own firms”; Milton S. Gould, The Witness Who Spoke with God and Other Tales from the Courthouse, X-XII (1979): “[Prior to World War II] the really great gulf that divided the New York bar was the prevailing ethnic and religious bigotry and prejudice. * * * The lawyers in these [major Wall Street] firms were almost all white and Anglo-Saxon. * * * The ugly fact is that until the coming of the New Deal and World War II, the doors of prestigious law firms in New York were virtually closed to Jews and other minorities.” The discriminatory practices described by Califano and Gould continued throughout the 1950’s.

number of students who are women or members of a minority group, and a far more extensive curriculum.⁶ But I think it fair to say that, comparatively speaking, the changes that have occurred in the profession are substantially more dramatic and momentous than those in legal education. One of the principle objectives of law schools is to prepare students for the profession. Graduates will pursue many different career options, but an appreciable number will become associates for some period in large law firms. My discussion focuses on the changes that have occurred in such institutions during the past fifty years. I hope that this will stimulate discussion as to whether any additional changes should be made in legal education to take account of the extraordinary developments that have occurred in the profession.

I concentrate on three matters: (i) the tremendous growth in the size of law firms, the emergence of mega-firms, the globalization of practice, the greatly enhanced competition in the profession for legal business, and the specialization that now characterizes legal practice; (ii) the changing demographics of the profession, specifically increased participation of women and minorities; and (iii) the impact of the new technology on the way in which law is practiced.⁷ It is no longer accurate to speak of the legal profession; the law is practiced in many different ways in a large variety of institutions. Although my discussion focuses on large firms, *i.e.*, those with several hundred lawyers or more, changes in the profession that I describe affect firms of every

⁶ Same would add Critical Legal Studies, the feminist movement, legal process theory, and race theory to the developments mentioned in the text.

⁷ A number of other developments in the past fifty years are outside the scope of the present paper, *e.g.*, the expansion of in-house corporate legal departments; the emergence of legal departments in accounting firms; the growth of public defender offices; and the extensive use of paralegals who perform routine tasks formerly assigned to associates. I also do not discuss the role of the trade press which I believe has contributed to the commercialization of the profession.

size. The demographic changes, the intensified competition for legal work, the pressure to increase profitability, issues relating to specialization, and the new technology have an impact on all lawyers.

Several points merit emphasis at the outset: First, as will appear, I regard some of the changes in the profession in the past half century as salutary, *e.g.*, the lowering of entry barriers to women and minorities, but I have reservations about various aspects of large firm practice. Second, I believe there are opportunities to do challenging, rewarding, and professionally satisfying things in all types of institutions. Finally, there are numerous career paths open to young lawyers apart from working in large firms.⁸ A number of my contemporaries had professionally fulfilling careers in smaller firms. There are opportunities to do significant things in such firms, in the government, in prosecution and public defender offices, in public interest organizations, and in other entities.

I. The Growth in the Profession; the Emergence of Mega-Firms and Globalization

One of the most striking changes in the legal profession in the past half century is the enormous increase in the total number of lawyers, together with the major expansion in the size of many law firms, the emergence of mega-firms, the branch office phenomenon, and the globalization of the profession. This expansion in the lawyer population has been accompanied by greatly intensified competition among law firms for legal business. As I shall discuss, many aspects of practice have been altered by these developments.

⁸ Law school graduates will go to work in many different institutions, *e.g.*, small firms, corporate legal departments, prosecution and public defender offices, federal and state government agencies, the legal departments of accounting firms, teaching, public interest organizations, and business. However, a considerable number will spend some time in a large law firm, especially at the outset of their careers.

In 1951, there were approximately 220,000 lawyers in the U.S.; by 2000, the lawyer population substantially exceeded one million. The American Bar Foundation's Lawyer Statistical Report shows the following:⁹

U.S. Lawyer Population Size
(Selected Years)

1951	221,605
1971	355,242
1980	542,205
1991	805,872
2000	1,066,328

In the late 1950's, less than forty law firms in the U.S. had fifty lawyers or more, and as of 1960 there were only about a dozen firms with 100 or more lawyers.¹⁰ When I was a graduate student at the Yale Law School in 1950, students spoke of avoiding employment in the "legal factories" in New York; they were referring to firms of about 75 to 100 lawyers. In March 1953, when I joined Arnold, Fortas & Porter as an associate, the firm had eleven lawyers. The two largest firms in Washington were Covington & Burling, then a firm of about 70 lawyers, and Hogan & Hartson, then a firm of about 25 lawyers.

All of this has greatly changed. Over 550 attorneys now work at Arnold & Porter LLP, Covington & Burling has about 500 lawyers, and Hogan & Hartson is currently a firm of nearly 1,000 lawyers. As shown by the 2006 American Lawyer survey, there are now at least thirteen firms in the U.S. with 1,000 or more lawyers.¹¹

⁹ See American Bar Foundation, Researching Law, Vol. 16, No. 1 (Winter 2005).

¹⁰ See John H. Langbein, Yale Law School Commencement Address, May 24, 2004.

¹¹ The American Lawyer (May 2007), Insert: Baker & McKenzie, 3,082 lawyers; Jones Day, 2,140; White & Case, 1,780; Latham & Watkins, 1,766; Sidley Austin, 1,541; Greenberg Taurig, 1,536; Mayer, Brown, Roe & Mau, 1,362; DLA Piper, 1,348; Morgan,

What accounts for this explosive growth in the profession? In a perceptive essay written a decade ago, Judge Richard Posner advanced an explanation that I find convincing.¹² Posner argued that the legal profession in the 1950's was essentially a cartel, in his words, "an intricately and ingeniously reticulated though imperfect cartel." There was no overt collusion between law firms with respect to such matters as fees charged clients or salaries paid to associates, but the profession was anti-competitive in a great many ways. It was like a club with highly restrictive membership practices. Posner analogized the profession at that time to a fictitious linen weavers guild in twelfth century France that was granted a monopoly charter in a particular Duchy over the manufacture and sale of linen fabrics. The practices of the guild were anti-competitive – it enforced limits on hours of working and on the number of employees, and it fixed minimum standards of quality. The guild encouraged and prized excellent craftsmanship. There were high barriers to entry to membership into the guild; strict rules were established on who could become an apprentice, and the guild "excluded from membership Jews and other aliens believed not to share a common core of basic tastes and values with the members."¹³

Like the guild, entry into the legal profession in the 1950's was (and it continues to be) restricted; it is limited to individuals who have college and law school degrees, who receive a passing grade in a bar examination, and who satisfy a bar committee that they are of sound moral character. A half century ago, legal barriers to entry into the

Lewis & Bockius, 1,198; Weil, Gotshal & Manges, 1,071; O'Melveny & Myers, 1,044; Holland & Knight, 1,018; and Wilmer Hale, 1,008.

¹² Richard A. Posner, "The Material Basis of Jurisprudence," in Overcoming Law 33-80 (1995).

¹³ Id. at 43.

profession were substantially reinforced by law firms through gender, racial, religious, and ethnic discrimination. The cartel was protected by the government – by statutes and court rules. There were strict statutory prohibitions against the unauthorized practice of law by non-lawyers. Competition within the profession was limited in a variety of ways, *e.g.*, by bar association and court rules prohibiting solicitation and advertising, encouraging lawyers to price their services according to fee schedules set by bar associations, and by bar admission rules that restricted the movement of lawyers from state to state. There was ample legal business for the number of lawyers who were then engaged in practice, and there was almost no pressure, as there is today, to reduce fees to clients. There was little, if any, price competition. The current practice by potential clients of interviewing a number of law firms before retaining one firm to handle a major matter (so called “show-and-tell” sessions), which has generated fierce competition among law firms, was then virtually unknown. Many corporations retained one law firm (or a few firms) for nearly all of their legal work; they did not, as a general rule, seek out lawyers in Firm A for corporate transactions, lawyers in Firm B for an antitrust suit, or lawyers in Firm C for product liability litigation. Many of the ties between law firms and corporate clients arose out of a social and personal friendship between a corporate chief executive and a senior partner in a law firm.

As Judge Posner pointed out, the situation began to change around 1960. The cartel was shattered, and the profession became intensely competitive.¹⁴ There is now

¹⁴ A number of the restrictions, characteristic of the cartel in the 1950’s, still remain, *e.g.*, the rules governing admission to the bar. However, various other restraints on competition among lawyers that were common in the 1950’s and the 1960’s have since disappeared or been declared invalid. See *e.g.*, Bates v. State Bar of Arizona, 433 U.S. 350 (1977) and Zauderer v. Office of Disciplinary Counsel, 471 U.S. 626 (1985) [invalidating on First Amendment grounds disciplinary rules restricting truthful advertising]; Shapiro v. Kentucky Bar Ass’n, 486 U.S. 466 (1988) [invalidating a rule

significant competition in nearly all areas of practice: for legal business, in fees that are charged, for attractive lateral entrants, and in the hiring of associates. Posner points out that the disappearance of the cartel in the legal profession was “a consequence of a surge in demand for legal services.” As he notes, the causes for this surge are not altogether clear. Posner states that it was associated, among other factors, with “the creation of new rights, much higher crime rates, greatly relaxed rules of standing [to sue], more generous legal remedies (including relaxed standards for class actions) as part of a general tilt in favor of civil plaintiffs and against civil defendants, and the increased subsidization of lawyers for indigent criminal defendants and indigent civil plaintiffs.”¹⁵ There was an explosion in the volume of litigation. The “big case” became a common occurrence. To the developments mentioned by Posner, I would add that the increase in the scope of government regulation (both federal and state) was a key factor. In addition, new areas of practice emerged. When I was a student in law school, there were no courses in environmental law; by the late 1970’s, it had become a flourishing area of practice. Similarly, health care, housing, and energy law were not a part of the curriculum in the late 1940’s, but many lawyers are now occupied in representing clients in those areas. The law relating to patents, trademarks, and copyrights was viewed as a relatively unimportant subject; at present, intellectual property matters are a significant area of practice in many firms. Pension and employee benefit law, now a major field of

that prohibited soliciting legal business by sending truthful letters to potential clients known to face certain legal problems]. More importantly, barriers to entry into the profession on the basis of gender, race, religion, and ethnicity have largely crumbled. The point is that the profession today is far more competitive than it was in the 1950’s.

¹⁵ Posner, op. cit. supra note 12, at 64.

regulatory law, effectively did not exist until Congress enacted ERISA in 1974.¹⁶ All of these developments generated a demand for more lawyers and a large scale increase in the number of lawyers in the profession; law firms expanded in response to the demands of their clients. This development has many implications for practice and the professional experience of the lawyers in such firms. I describe some of these in the discussion that follows.

1. From a partnership mode to a corporate mode

The enormous growth in the size of firms and the increase in competition have led to a fundamental change in the legal profession that I would describe as a shift from a partnership mode (or culture) to a corporate mode (or culture). By partnership mode, I mean an institution in which inter-personal relations are influenced, to a significant extent, by friendship, collegiality, and loyalty to one's partners and the firm; by a corporate mode, I mean an institution in which inter-personal relations are dominated by considerations of profitability. In saying this, I do not mean that law firms have become corporations, although many are now professional corporations or limited liability partnerships, nor do I mean to suggest that business considerations are not an important factor in a partnership. They certainly are. My point is that there has been a major change among law firms in the personal relations among partners and between partners and associates; the relations that now prevail are characteristic of large business organizations. Many lawyers who were practicing in the 1950's and 1960's speak with nostalgia of collegiality and camaraderie among the firm's members at that time.¹⁷ The partners in a firm knew one another and socialized together. In many firms,

¹⁶ See Langbein, op cit supra note 10.

compensation was a lock-step system based primarily on seniority and not on the volume of legal business generated by the individual partner. It was virtually unthinkable to suggest that a partner should be forced to retire prematurely, or that his compensation be substantially reduced, because he was no longer as productive as he had been earlier in his career. The process -- now quite common -- euphemistically described as “de-equitization,” that is, reducing the compensation of an equity share partner by shifting him from a right to a percentage of the firm’s profits to a fixed salary, occurred rarely fifty years ago. There was very little mobility; partners rarely switched from one firm to another. Mergers among law firms were almost unknown.

All of this has changed. Large size makes collegiality extremely difficult. How can one possibly know 400 or 500 colleagues, especially when they are scattered in different cities throughout the world?¹⁸ Firms are much less personal. Decisions such as those relating to compensation that were once influenced in significant part by tradition, loyalty, and regard for past contributions to the firm, are now determined by bottom line, objective factors. The lock-step system of compensation has been replaced by an “eat what you kill” system *i.e.*, a system geared to business generation. The relations among partners, and between partners and associates, are shaped to a great extent by considerations of profitability.

An institution consisting of a thousand or so lawyers and a support staff of hundreds (professional managers, secretaries, paralegals, accountants, personnel

¹⁷ The atmosphere at Arnold, Fortas, & Porter in the 1950’s and 1960’s is vividly described by Norman Diamond, A Practice Almost Perfect (1997).

¹⁸ There are efforts to promote collegiality within practice groups, *e.g.*, among members of the tax department, or litigators, or the lawyers in the intellectual property area. But many of these groups are themselves very large.

specialists, experts in information technology, librarians, messengers, and so on) must be carefully managed. Failure to do so can be disastrous. There are now lawyers who devote all, or a goodly part, of their working day to firm administration. Moreover, every large firm requires rules and procedures. In short, the large law firm has become bureaucratized.

Until fairly recently, election to partnership meant essentially three things: tenure, *i.e.*, security of status; a right to a share of the firm's profits; and some participation in the firm's decision-making process. The situation now is radically different. In many firms, partners can be demoted, deprived of their equity share, or even forced to leave the firm in the discretion of a management committee. As law firms have grown larger in size, and as they have diversified geographically with numerous branch offices, partners in the firm have come to have a lesser voice in firm policies, and they have tended to become more like corporate employees.¹⁹ A small number of the major "rainmakers" of a law firm – those partners who generate large volumes of business or who are responsible for the supervision of the work of the firm's largest clients – may have a significant voice in determining the direction that the firm will take, *e.g.*, whether to open a new branch office, whether to hire a particular lateral candidate, whether to

¹⁹ In January 2005, the Equal Employment Opportunity Commission (EEOC) brought suit against Sidley Austin Brown & Wood LLP claiming that the firm had violated the Age Discrimination in Employment Act by enforcing a mandatory retirement age and by demoting thirty-two partners based on their age. A critical issue is whether the individuals adversely affected are "real" partners or "employees" within the meaning of the Act, as asserted by Sidley, or in truth and substance "employees," as alleged by the EEOC. In a press release, an EEOC official stated: "A small self-perpetuating group of managers at the top [of the firm] ran everything. Whatever [name] Sidley had decided to give these [32] lawyers – partner, counsel, or otherwise – our investigation indicated that they had no voice or control in governance of the firm, and they could be and were fired just like any other employees." *The Washington Post*, Jan. 14, 2005, pp. E-1 and E-5. The status of the 32 partners is discussed by Judges Posner and Easterbrook (concurring in part) in an earlier phase of this proceeding. Equal Employment Opportunity Commission v. Sidley Austin Brown & Wood, 315 F.3rd 696 (7th Cir. 2002).

acquire or merge with another law firm, and so on. But the great majority of partners are largely uninformed about many firm matters, and they do not participate, except in a pro forma way, in shaping most of the firm's policies. These changes have important implications with respect to our notions of professionalism. Heretofore, a professional has been defined, in significant part, as an individual who exercises a large measure of control over the manner in which he renders his services. In a large firm, partners still function without substantial oversight or interference in advising clients, writing briefs, trying cases, handling transactions, and so on. They still enjoy a high degree of autonomy in these areas. But many of the day-to-day aspects of their work are subject to firm rules and procedures. The records they must maintain, their billing practices, the financial results they must produce, and the hours they are expected to work are all guided by firm policies.

In addition to changes in inter-personal relationships within the firm, there have been significant changes in client relations of large firms. In my experience, many clients in the 1950's and 1960's viewed their lawyers as trusted advisors and counselors. Questions concerning fees were rarely raised by corporate clients. Today, lawyers are frequently regarded by clients as technicians, and they are viewed in the same fashion as an auditor or engineering consultant. Clients insist on detailed information in statements for fees about work that has been performed, and firms are pressured to lower fees and to grant discounts. Many lawyers who practiced thirty or forty years ago have remarked to me about the absence of "client loyalty." They mean that an excellent performance on a particular matter does not guarantee being retained in future matters. I do not mean to suggest by the foregoing observations that there are not close ties in some instances between client and lawyers; a difficult litigation or a complex transaction, for example,

may lead to strong bonds. But I think it fair to say that, as a general rule, objective business considerations are now the controlling factor in lawyer-client relations.

* * *

Judge Posner's thesis – that competition replaced an oligopoly – accounts for a number of the present characteristics of the legal profession, *e.g.*, the maneuvering among firms with respect to billing rates and fees that they will charge, the relative equality in the compensation paid to associates, the lateral movement of partners from one firm to another, mergers between firms, and the aggressive pursuit of legal business. But Posner's insight does not explain why firms so large have developed. The reasons for that are not all together clear. I believe that the pre-existing relations between corporate clients and law firms when they were smaller was a significant factor. There was an established connection. A client with a product liability suit that required only a few lawyers would understandably turn to the firm that was representing it in such matters when confronted with a mass tort case, or a securities class action, or an antitrust suit that required a cadre of lawyers. The expansion of government regulation and globalization of business operations had an impact. The large law firms have developed in response to the demands of the marketplace. They thrive because they effectively satisfy the requirements of their clients, principally the world's large business organizations. Their strength lies in the broad range of their capabilities, in the depth of their expertise, and in their ability to mobilize quickly large teams of lawyers who can competently address complex legal issues. They are attractive to young lawyers, many of them heavily burdened by debt incurred for their education, because they offer substantial financial rewards, and they are counsel in many of the cutting-edge transactions and important cases.

It is not clear whether there is a maximum optimum size for a law firm or whether at some point growth in size will result in inefficiencies and be counter-productive. One limit to growth is conflicts of interest, both of the type prohibited by the Rules of Professional Conduct (*e.g.*, a firm may not sue an existing client) as well as so-called “business conflicts,” that is the unwillingness of an important client to allow the firm to represent a competitor or supplier or customer even though there is no conflict forbidden by the Rules. Firms that represent large international conglomerate organizations have frequent conflict issues, and these may limit expansion.

* * *

The extensive movement of partners from one firm to another is among the dramatic changes that have occurred in the profession since the 1950’s. It was almost unthinkable in that era for a partner to contemplate joining a rival firm, and it rarely occurred. Today, it is a common event. This phenomenon reflects, in part, a breakdown in the spirit of collegiality and loyalty to one’s partners that characterized many law firms a half century ago. In part, it evidences the dominance for individual lawyers of financial considerations as well as the intensely competitive character of present day practice that prompts a firm to pursue a partner from another firm in order to strengthen its competitive position and its profitability. In addition to the disruption to the practice of the abandoned firm that may be caused by such departures, as well as the feelings of betrayal and bitterness that are generated, significant problems, including ethical concerns, are often presented to the firm that the lateral joins. The successful integration of laterals is a major challenge. In the case of firm mergers, the integration problems are, of course, magnified enormously; many partners and associates may be forced out, and others will leave independently. Differences in billing rates and in compensation

practices between the previous firm and the new firm can create tension. Moreover, the introduction of a large number of lateral partners can affect the morale of associates who feel their advancement may be impeded. It is for such reasons that a few firms still strictly limit the hiring of lateral partners and adhere to the policy of creating partners primarily from among associates who have absorbed the firm's culture during an eight or nine-year apprenticeship. It is true that a firm can grow quickly by recruiting laterals. However, it should also be noted that, in a significant number of instances, laterals leave within a few years after their arrival. As reported recently, "over the last five years, among the Am Law 200, 10 of the 25 firms with the most lateral hires are also among the 25 firms with the most partner departures."²⁰

2. Money

The practice of law has always had aspects of a business; it was, and it is, a way of making a living. It is a gainful activity. But in the 1950's, many lawyers thought of themselves as "professionals," and not as business persons. Numerous commentators have remarked that in recent years legal practice has become commercialized.²¹ By that, they mean that financial considerations are now of overriding importance, and the notion that lawyers have responsibilities to serve the interests of justice and the public interest, or that they are somehow different from business persons, is generally no longer the case.

²⁰ The Legal Times, March 7, 2005, p. 20. For example, at the Schnader, Harrison firm, 68% of the partners the firm hired between 1999 and 2003 left, and Akin Gump lost 41% of the partners it hired between 1999 and 2003. On the other hand, Hogan & Hartson added 139 lateral partners in this four-year period, and only 22 have departed. *Id.* at p. 23.

²¹ See *e.g.*, Anthony Kronman, The Lost Lawyer (1993) who refers to the "openly commercial culture" of the profession. These observations are not novel. The commercialization of lawyers has been deplored by various observers for several centuries, including Thomas More and Louis D. Brandeis.

Each of the mega-law firms is a large financial institution. The annual gross revenues of nearly a dozen firms exceed \$1 billion. The annual gross revenue of more than forty other firms exceeds \$500 million. The 2006 American Lawyer survey shows that the profits per partner at seven New York firms range from \$2.5 million to nearly \$4 million: Wachtell, Lipton, Rosen & Katz, \$3,975,000; Cravath, Swain & Moore, \$3,015,000; Cadwalader, Wickersham & Taft, \$2,900,000; Sullivan & Cromwell, \$2,820,000; Cahill, Gordon & Reindel, \$2,575,000; Paul, Weiss, Rifkind, Wharton & Garrison, \$2,495,000; and Simpson, Thacher & Bartlett, \$2,495,000. There is a lengthy list of additional firms in which the average annual compensation for partners exceeds \$1.5 million.

It is impossible to understand the dynamics of mega-law firms without taking into account this financial picture. Revenues and profitability of this magnitude have many implications. This data shows, for one thing, that a large law firm is a big business. There is enormous pressure on partners within such firms to generate legal practice sufficient to sustain such revenues and profits. As Judge Posner has observed: “The increasingly competitive character of the legal services market makes lawyers feel like hucksters rather than the proud professionals they once were, and brings forward to positions of leadership in the profession persons whose talents, for example, for marketing (“rainmaking”) are those of competitive business rather than of professionalism.”²² These figures also reflect the long work hours of partners and

²² Posner, op cit supra note 12, at 67.

associates, and the decreased commitment to pro bono activities by various partners.²³ It has greatly diminished the satisfaction that many lawyers once realized from practice.

Collegiality has been damaged by the replacement of partner compensation systems based on seniority with systems predicated to a large degree on business generation. Since it is frequently not clear who in a large firm is responsible for originating a particular matter, disputes arise between different partners concerning the allocation of billing credit for purposes of determining compensation. Thus, instead of promoting cooperation and camaraderie, the compensation system may engender rivalry and rancor among firm members. Such systems are justified on the grounds that, in order to be economically viable, a law firm needs a steady in flow of new matters and there needs to be an incentive to produce such matters; it is argued that partners who succeed in doing so should be rewarded. Given the economics of current law practice, that is a compelling argument.

There is another aspect of this emphasis on money and the high levels of compensation that should be noted. In my generation, the message to associates was

²³ Some large firms engage in significant pro bono activities. See The American Lawyer, Sept. 2004, p. 102. However, many firms of substantial size do little or nothing in the pro bono area. Nearly all of the pro bono work at many firms is carried out by associates and young partners. This contrasts with the 1950's when senior partners were directly involved in pro bono matters. That was certainly the case with Thurman Arnold, Abe Fortas, and Paul Porter in my firm. It should also be noted that there have been fundamental changes in the nature of pro bono work since the 1950's. Such work then consisted, in significant part, of court appointments to represent individuals who were criminal defendants, or serving as a counsel for persons who were targets of governmental action, such as aliens facing deportation proceedings. Currently, a great deal of pro bono work consists in representing groups or classes who are the plaintiffs challenging a particular government action. Conflicts of interest have made it more difficult for lawyers in private firms to undertake such representation. In addition, public interest organizations and public defender offices have supplanted lawyers in private firms in pro bono matters. However, there remain ample opportunities for significant pro bono activities by lawyers in private firms.

relatively simple and straightforward: If you work hard and if your work product is excellent, there is a likelihood you will be made a partner. No one ever suggested to me when I was an associate that it was important for my advancement to generate practice for the firm. That too has changed. Unlike the situation 40 or 50 years ago, only a small percentage of associates will be elevated to partnership. At present, the prospective capacity of an associate to expand the firm's practice, either with an existing client or by attracting new clients to the firm, is an important criterion for election to partnership. Entrepreneurial capability or promise is held in high regard. It is most unlikely that anyone will rise to the highest levels of partnership compensation who is not an important "rainmaker." The law school can contribute to an associate's ability to do excellent legal work, but I do not perceive how it can teach or cultivate entrepreneurial or "rainmaking" abilities. I know of no law school worthy of the name that holds out that it can do such a thing. Yet, that ability has become a crucial factor for a successful future in legal practice.

Some of the extraordinary growth in lawyer's compensation can be dated to the early 1980's when large corporate take-over fights occupied center stage. Lawyers engaged in such battles noted that their counterparts in investment banking firms were realizing enormous incomes. They could perceive no legitimate basis for the income differential. There was mounting pressure to increase fees and to escalate profitability.

To lawyers who began practice in the 1950's, the compensation now paid associates by large firms is astonishing, even taking into account inflation. At present, law school graduates joining the large firms in New York and Washington are generally paid in their first year an annual salary in the neighborhood of \$160,000 plus a year-end bonus, and the compensation of associates in the eighth year, when they are eligible for

election to partnership, can be in the range of \$400,000.²⁴ Signing bonuses in the range of \$200,000 are paid to Supreme Court law clerks. These high stipends have been motivated by concerns that otherwise young lawyers will choose to join investment banking houses, hedge funds, accounting firms, and in-house corporate legal departments. Salaries at this level are by no means an unmixed blessing for the associates. Law firm managers understand full well the principle that profitability inheres in realizing revenues in excess of the salaries paid to associates, and they also appreciate the point that profitability is maximized by leveraging the number of associates relative to the number of partners. Since there are limits to the fees that a client will tolerate, there is substantial pressure on associates to work a large number of hours, and the number of associates who will advance to equity partner positions is strictly limited.

3. Specialization

One of the distinguishing characteristics of present day practice is the high degree of specialization.

In the 1950's, it was possible for young lawyers in Washington to aspire to be a generalist. There were ample opportunities to function in different areas of practice. I specialized in antitrust matters. I advised clients about such issues, I served as trial counsel in antitrust suits in the federal courts and in administrative proceedings, and I represented parties before the Department of Justice and the Federal Trade Commission. However, I also represented clients in many different areas of the law, *e.g.*, in auto safety, SEC, FCC and contractual matters, among others. I had projects with an international

²⁴ See N.Y. Law J., Sept. 20, '07, p. 1., col. 1.

dimension, and I functioned on legislative matters. I had an extensive appellate practice. My experience was not unique among the lawyers of my generation in Washington.

It would be difficult for a young lawyer today to handle such a broad range of matters. Clients seek out specialists who have expertise in a particular area. They particularly want lawyers who have had previous experience with similar matters. Within a short time after their entry into firms, young lawyers are directed to particular areas of practice, and they are expected to cultivate expertise with respect to specific subjects.

There is, of course, both a downside and an upside to specialization. Lawyers do gain a deeper, wider knowledge of a particular area. As a general rule, clients benefit from this trend. On the other hand, specialists may lose the capacity to see connections and relationships with other areas, and they tend to become narrower and less imaginative.

This demand by clients and law firms for specialization raises challenging questions for legal education. An area of specialty that students have studied in law school may diminish in importance, and new areas to which students have not been exposed will emerge. Students may choose to concentrate in law school in specialized area A, only to discover after graduation that there are diminished opportunities in that area, or that law firms are now focusing on specialized area B. Students may believe they wish to be litigators, and then discover they have no aptitude for that type of practice. Considerations such as these have led me to be skeptical about the advantages to students of a high degree of specialization in law school and have reinforced my conviction that a broad education is a better form of preparation for a future lawyer.

4. Hours

In his remarks at the Yale Law School commencement in May 2004, Professor Langbein characterized the “lengthening of the work day and the work week, manifested in the pressure to increase billable hours” as “the most worrisome change in big firm practice.”²⁵ Langbein deplored these “patterns of overwork * * * as transparently wrong.” In his words, “These patterns cause grievous disruption to family and personal life, they foreclose opportunity for lawyers to participate in public and community affairs, and they intrude upon the potential for religious and cultural fulfillment. In short, these workloads diminish the lives of those who lead them.”

Langbein is right in pointing to the pressure on associates in large firms to work a substantial number of billable hours and the consequences of that practice. Some firms have established quotas, in the neighborhood of 2,000 billable hours, or the equivalent of 50 forty-hour weeks. Billable hours of that magnitude entail spending a high number of non-billable hours in the office. Such quotas usually cannot be met without working a substantial number of nights and weekends. Some firms announce that associates who work a specified number of billable hours will be paid a higher salary or a bonus. Firms that do not have billable hour quotas take into account the number of such hours by an associate in making decisions with respect to advancement; associates are made aware that high billable hours are a plus factor in election to partnership, and that billable hours below the average of one’s contemporaries are a handicap. Any associate with ambitions to advance to partner must satisfy these quotas or targets and demonstrate that he is a hard worker. These pressures are not limited to associates; the records of partners are

²⁵ Langbein, op. cit. supra note 10.

also scrutinized, and partners with low billable hours may be questioned by compensation committees; they may incur financial penalties, and their advancement may be impeded.

The habit of working long hours is not unique to the big law firms of today. It was the custom in my firm, when I was a young attorney, to work long hours,²⁶ and friends in other firms in Washington reported the same thing. We were expected to complete the task, however long it might take.

There are, however, several noteworthy points of difference between the situation in the 1950's and that of today. First, among many (although certainly not all) married couples in the 1950's, it was understood, in substance, that men would work and that women would remain at home and care for children. That social contract is largely a thing of the past; nearly all women now have careers of their own, and men are expected to share in rearing children. Oppressive work hours can thus be even more disruptive of family life than in the 1950's. In addition, associates in the 1950's and 1960's felt they had a realistic chance to become a partner; long hours were an investment, so to speak, in the future. Today, the probability that an associate will rise to partner has been substantially diminished, and there is less motivation, but no less pressure, to put in long hours.

A significant percentage of the associates in large firms are dissatisfied and disappointed by their work experience. There are a number of reasons for their disaffection: the long hours of work; the dissonance generated by the tension between the idealism of many young lawyers and the realities of large firm practice that is devoted primarily to representing corporate interests, leading to disillusionment; the drudgery

²⁶ Thurman Arnold liked to say to young associates (with a chortle): "Work until it hurts; the partners need shirts."

associated with working on large matters; and the lack of mentoring and the impersonal character of large firms. A number of law firms have sought to address the last factor, but the morale problem persists as evidenced by the high annual exodus rate of associates, apart from those encouraged by the firms to leave. The rate of associate attrition at large law firms is astronomic; a recent study ascertained that nearly 60% of all entry level associates at firms with more than 500 lawyers had departed by the end of their fourth year with the firm.²⁷

5. Branch offices: The nationalization and globalization of practice

In the 1950's, as a general rule, large firms were located in a single city. Their practice was derived from clients nationwide, and lawyers traveled extensively for meetings with clients and court engagements, but the firm was based in one locality. Cravath was perceived to be a New York firm, Jones Day a Cleveland firm, Covington & Burling a Washington firm, and Kirkland & Ellis a Chicago firm. A few firms had an office in London or Paris, but that was unusual. Today, of course, it is a commonplace for large firms to maintain branch offices in a number of cities. Moreover, a significant number of firms have established offices in many foreign countries; their practice is globalized. White & Case, a firm with more than 2,000 lawyers, has thirty-five offices located throughout the world. Many other examples of firms with a large network of domestic and foreign branch offices could be cited.

The branch office development by law firms has paralleled the globalization of business organizations. This phenomenon in legal practice reflects the belief that large

²⁷ The study was made by the NALP Foundation, a nonprofit organization located in Overland Park, Kansas, that examines law firm hiring trends and practices, and involved a study of law firms for the three-year period 2002-04. See The Wall Street Journal, May 2, 2006, p. B6.

multi-national corporations prefer to use lawyers in the same firm; their business operations are far flung; and corporations deem it advantageous to have outside counsel in the same geographic areas as their business operations. In addition, many transactions have multi-national aspects. For instance, a merger may involve firms with operations in a number of countries, and it is necessary for counsel to deal with governmental authorities in each of those countries. Branch offices may be helpful in dealing with such officials. Moreover, a law firm in Country A with an office in Country B may enjoy an advantage in obtaining the legal work of a business located in A that involves Country B, and vice versa.

From the perspective of lawyers within a firm of this type, such multi-branch offices present a number of issues.

First – Operations of this magnitude require a large commitment of managerial and administrative resources. It is a major challenge to integrate such branches with one another.

Second – When a firm is so widely scattered, it is virtually impossible to speak of a common firm culture. In the firms of the 1950's, the associates who became partners had grown up together in the law firm; they knew one another, and they tended to share a common set of values with respect to legal practice and the firm. When a firm has many branch offices, that is impossible. Partners either do not know most of their colleagues, or know them only tangentially. The bonds that link them are limited. That in turn reinforces the practice of making decisions by a small group on a bottom-line basis; it has solidified the transformation from a partnership to a corporate culture.

Third – It is difficult to make decisions based on a uniform firm-wide policy. Partners in office A may be called upon at a partnership meeting to vote on the election to

partnership of associates in branch office B, but they know almost nothing about such associates. Differences in competitive conditions may force the firm to compensate lawyers in some cities differently from lawyers in other cities, a practice that can be divisive.

Fourth – Ethical issues multiply, such as problems relating to conflicts in representation. Divergent ethical rules in different jurisdictions may also raise troublesome issues.

6. The Training of Young Lawyers

The late Judge Simon Rifkind once analogized the training of young lawyers in large law firms to the teaching of medical residents in a large hospital. He stated:

“Although the public generally is familiar with the term ‘a teaching hospital,’ the idea of a teaching law office has not yet been articulated. It is nevertheless true that, like the great teaching hospitals, the great law offices have become teaching institutions. They train young law school graduates to cope with the exceedingly intricate and complex legal problems which confront American business today. Indeed, that is the only place they can learn their craft. * * * Such transmission of the craft from one generation to the next is, in a great law office, accomplished not only by the method of watching a seasoned expert, but also by formal instruction. This is certainly true of well-known litigation departments of the great offices.”²⁸

²⁸ Rifkind, The Teaching Law Firm, New York Law Journal, Dec. 2, 1986, reprinted in Rifkind, One Man’s Word 40-41 (Vol. III, 1989).

Although large firms continue to perform this training function to some extent, it has been adversely affected by the increased financial pressures. Associates are pressed to work a high number of billable hours, and this limits the amount of time available for training. The supervision and feedback involved in training takes time, and partners generally have less time available for that purpose. This may result in increased outsourcing of training and a diminution of in-house training.

As Judge Rifkind noted, “an apprenticeship under a good master” is a critical part of learning the craft of lawyering. In the past, when firms were smaller, partners knew many of the associates, and they had an interest in training them for the reason that a goodly number of associates would become partners in the future. However, as to many associates with whom they now work, partners do not have such an interest. As I have noted, the turnover rate of associates at most large firms is extremely high, and only a handful of associates will be elevated to partnership. There is accordingly a diminished incentive for partners personally to invest valuable time in training associates who will leave the firm. A partner may understandably ask: why should I devote a lot of effort to training this associate when he or she will be gone from the firm in a year or two?

7. Ethics and Professional Responsibility

Ethical standards have been weakened by compensation systems geared to business generation, mounting economic pressures to meet firm budgets, and the intense competition for legal business. Nearly every one of the changes in the profession I have described have generated significant problems of professional responsibility.

For example, the Enron bankruptcy and the collapse of some other large companies in the past several years have revealed the enormous pressure on counsel to issue opinions clearing questionable transactions. Deference may be given to the

demands of a major client that accounts for a significant percentage of a law firm's annual gross revenues, fees that can total tens of millions of dollars. The pressure to bring in a substantial new matter leads to rationalizing the abandonment of an existing client and to resolving client conflict issues in favor of a newcomer. In high stakes litigation, financial pressures have led to widely publicized incidents involving the suppression or destruction by counsel of relevant documents and information.

The search for new legal business has generated solicitation practices that would have been unimaginable a half century ago. Many law firms now have departments that develop marketing strategies for attracting new clients.

The large fees charged for a major matter, *e.g.*, representation in a corporate tender offer battle, or the fees now sought (and realized) by counsel in class action cases and mergers, have shattered long accepted notions of a "reasonable fee." The fees in this magnitude have been among the factors that have undermined the notion that lawyers are members of a learned profession rather than business persons.

II. The New Demographics

As I have indicated, the major law firms in the 1950's were composed almost exclusively of white, Anglo Saxon Protestant men. The culture of such firms is well depicted in the novels and short stories of Louis Auchincloss. A firm that includes Catholics, Jews, Asians and members of other ethnic and religious groups will have an altogether different culture. The new culture is much less formal, more entrepreneurial, more hospitable to new ideas, and probably less collegial. The disintegration of entry barriers for women, African-Americans, and other minority group persons will result in further dramatic changes in the culture of law firms.

Half a century ago, there were only a few women in the legal profession. When I was a student at the University of Chicago Law School in the late 1940's, there were only about a half dozen women in a class of 125 students. There were no women professors.²⁹ In the winter of 1950, I visited friends in Cambridge, Massachusetts, and I discovered that there were no women – none at all – in the Harvard Law School, either as students or faculty members.

As far as I can recall, there were no women associates in the principal law firms in Washington in 1950. There were a few women in the Department of Justice – notably the legendary Beatrice Rosenberg in the Criminal Division -- and there was one woman in the mid-50's on the U.S. District Court for the District of Columbia: Judge Burnita Shelton Matthews. Arnold, Fortas & Porter hired its first woman associate in 1952: Patricia Wald, subsequently a federal Court of Appeals judge.³⁰ She was (and is) a most unusual person. Patricia Wald had been an outstanding student at the Yale Law School, and she had served as a Law Clerk to Judge Jerome Frank of the U.S. Court of Appeals for the 2nd Circuit. When she finished her clerkship, he gave her a one sentence letter of reference: “She is the best law clerk I ever had.” She enjoyed an advantage in seeking employment at Arnold, Fortas & Porter apart from her outstanding record and the Yale connections of Abe Fortas and Thurman Arnold; Fortas had worked with Jerome Frank

²⁹ In 1951, two years after I graduated, Soia Mentschikoff was appointed to the Chicago law school faculty. She was the first woman professor. Presently, there are thirty persons on the University of Chicago faculty, of whom eight are women.

³⁰ Patricia Wald has had a remarkable career. She subsequently became Chief Judge, U.S. Court of Appeals for the District of Columbia Circuit (retired), and a judge on the International Tribunal for the former Yugoslavia. She also served as a member of the President's Commission on the Intelligence Capabilities of the United States Regarding Weapons of Mass Destruction.

during the New Deal era at the Agricultural Adjustment Administration, and both he and Arnold were warm friends of Judge Frank.

The percentage of women in the profession did not change much until around 1980. The American Bar Foundation study³¹ shows the following with respect to the total number of women and their percentage in the profession:

Women Lawyers: Number and Percent
in Lawyer Population in Selected Years

<u>Year</u>	<u>No. of Women Lawyers</u>	<u>% of Lawyer Population</u>
1951	5,540	3%
1960	7,434	3%
1971	9,947	3%
1980	44,185	8%
1991	159,377	20%
2000	288,060	27%

Women now account for approximately one-third of the profession, and that number is projected to grow considerably higher. In most major law schools, the ratio between men and women is now about 50-50.

Although there are a substantial number of women associates in the large law firms, women still account for only about 17 percent of the partners,³² and they are significantly under-represented in the upper levels of the management of law firms. A number of factors probably account for the high level of departure by women associates and the relatively low percentage of partners.

The traditional demand by large law firms of single-minded dedication to practice is one factor. A Harvard University economist, Claudia Goldin, commenting on the

³¹ See op. cit. supra, note 9.

³² See Seth Stern, Traffic on the Off-Ramp, Harvard Law Bulletin, Fall 2006, p. 28.

controversy with respect to women in science, made the following observations which are pertinent to the situation facing women in law firms:

“They [the firms] expect a large number of hours in the office, they expect a flexibility of schedules to respond to contingency, they expect a continuity of effort through the life cycle, and they expect – and this is harder to measure – but they expect that the [employees’] mind is always working on the problems that are in the job, even when the job is not taking place.”³³

Many women understandably find it difficult to satisfy these demands and expectations consistently with obligations they feel toward their families. They are much more likely than men to seek leaves of absence and work assignments that do not entail such commitments, which in turn affect their opportunities for advancement.

One factor generating change is that an increasing number of women occupy important executive positions in business and in corporate legal departments, and such women welcome their counterparts in the private law firms as counsel.³⁴ The status of women and their working conditions in the profession have vastly improved in the past half century. Stereotyped views of women still persist, but they are less prevalent. Law firms have become responsive to the special concerns of women as child-bearers and as parents. Provision is now made for health insurance during maternity; daycare centers and other child care arrangements are widespread; leave time for maternity is universal; and many law firms are prepared to negotiate flexible time arrangements for women with children. Nevertheless, women who work fewer hours are less likely to be elevated to

³³ The N.Y. Times, Feb. 24, 2005, p. C2.

³⁴ Women are still substantially under-represented in the executive echelons of Fortune 500 companies.

partnership, and it remains a major challenge to balance a career in a high-powered law firm with parental responsibilities.

In his talk at the Yale Law School commencement in May 2004, Professor Langbein stated:

“The excessive time demands characteristic of large-firm practice weigh disproportionately on women, who tend to be the primary caregivers for children and sometimes for elderly parents. The struggle to get the firms to rethink these hours is largely being led by women. Indeed, the growing feminization of the legal profession is the most important counterforce that is coming to bear against the ethos of overwork that pervades so many large firms. I think that a legal profession that is 40 to 50 percent female, which is where we are headed, is not going to tolerate 55- and 60-hour work weeks.”

Langbein may be right, but it is by no means clear how law firms will resolve the conflict between the demands of law firm managers and clients and the demands of women in the firm.³⁵ The pressure to work long hours is not only fueled internally within the law firms by the desire to maximize net earnings for partners, but is also a response to the insistent demands of clients whose operations are worldwide in every time zone.

Women lawyers and judges have significantly influenced the substantive law in a number of areas, *e.g.*, gender discrimination, domestic violence, and the law pertaining to reproductive rights. It is not yet clear how the increase in the number of women lawyers will affect the manner in which law is practiced. Will it lead, for example, to changes in the law firm’s work ethic as suggested by Professor Langbein? The potential ramifications of the feminization of the profession remains obscure.

³⁵ Some firms have already addressed this issue by permitting women to work on a flex-time basis. Further, a substantial amount of work can now be done from home with a computer and a fax machine.

* * *

A parallel change involves the significant growth in the number of minorities in the large firms. As I recall, there were three black students in my law school class at Chicago in the late 1940's. It would have been futile for them to seek employment after graduation with the vast majority of law firms; discrimination was widespread and intense.

In Washington in the 1950's, there were no African-Americans in the large law firms. Black lawyers in the city primarily represented clients in the local African-American community. Some of them were to emerge years later as prominent figures, *e.g.*, Spotswood W. Robinson III, who became Chief Judge of the U.S. Court of Appeals for the D.C. Circuit, and William B. Bryant, who became Chief Judge of the U.S. District Court for the District of Columbia.

At that time, the Bar Association of the District of Columbia, the voluntary organization of District lawyers, excluded black lawyers from membership. I have a vivid memory of the dramatic meeting of the Association in the mid-1950's when a group of the city's younger lawyers banded together to eliminate this rule and to admit black lawyers into the organization.

There is a profound difference between the employment opportunities for black law school graduates a half century ago and the situation that prevails today. Discrimination in employment is now illegal. At present, the large law firms aggressively recruit black graduates. To some extent, this policy may be a result of the pressure exerted by many corporate clients who insist on diversity in the legal staffs of the firms they retain. But, I believe, this hiring policy basically reflects the view that racial discrimination is immoral and unjust, an attitude that is deeply embedded in law

school culture. Black persons now account for about the same proportion of associates as they represent in law schools, roughly 8%. However, there is a very troublesome aspect of the black experience in large law firms. The rate of attrition of black associates is extremely high, perhaps two to three times that of their white counterparts. Further, the percentage of black partners is extremely low. A significant number of black lawyers leave their law firms for jobs in the government and the corporate sector. A literature of formidable magnitude addresses these issues. One theory, advanced in the mid-1990's by Professor David Wilkins and G. Mitu Gulati, is that the tenure and advancement of young black lawyers are profoundly affected by stereotyped beliefs and preconceptions of partners concerning the capabilities of black associates that lead them to be pessimistic about the quality of work they will receive from such persons.³⁶ Few such persons, it is said, are viewed by partners as "superstars" who will develop into firm leaders. Black persons experience difficulty in finding mentors. Consequently, such associates tend to receive less training and mentoring, fewer challenging assignments, and less responsibilities, all of which are critical to advancement. Disappointed and frustrated, such associates leave the firm long before they are eligible for partnership. Another hypothesis was advanced recently by Professor Richard H. Sander of the University of California at Los Angeles, who carefully examined a mass of statistical data concerning law school graduates and law firm hiring practices.³⁷ Sander's theory, in substance, is that large law firms seek out students with excellent academic credentials; that outstanding law school performance is in relatively short supply among minority

³⁶ David B. Wilkins and G. Mitu Gulati, Why Are There So Few Black Lawyers in Corporate Law Firms? An Institutional Analysis, 84 Calif. L. Rev. 493 (1996).

³⁷ Richard H. Sander, The Racial Paradox of the Corporate Law Firm, 84 N.C. L. Rev. 1755 (2005).

students; and that firms seeking diversity in their cadre of associates hire black students who, on average, have law school grades below those of white students hired at such firms.³⁸ Sander states that black associates tend to be perceived by partners as less able and that “minority associates quickly find themselves receiving far less mentoring and training than they want, performing less challenging tasks, fewer substantive assignments, and not developing the close informal relationships with partners that will be signified by regular social interaction. They find themselves marginalized and superfluous, and their predictions that they will not be long with the firm are fully borne out.”³⁹

The situation appears to be improving, albeit very slowly. One of the most helpful developments is deeper awareness of the problem and a desire to implement changes that will yield meaningful diversity.

III. The New Technology

In the 1950’s, when I entered practice, there were no computers. There were no fax machines, or e-mail, or cell phones, or Palm Pilots, or laptops, or BlackBerrys, or Tablet PC’s. There were no Xerox machines. Documents were duplicated by a cumbersome process resulting in copies awkward to work with. I can still recall my astonishment when I first saw Xerox documents in the early 1960’s. Further, there was no electronic filing on court dockets, and court opinions could not be immediately retrieved.

³⁸ There is no solid correlation between excellent performance in law school and the skills required to succeed in the profession. A law school exam cannot test for some characteristics that are the hallmark of a first-rate lawyer, *e.g.*, excellent judgment and skill in inter-personal relations. Moreover, as I have noted, law schools cannot teach individuals how to generate legal business, a trait that is highly prized in the profession.

³⁹ Id. at 1820.

The new information technology has been an important factor in reshaping the way in which law is practiced. The mega-law firm with numerous branch offices would not have emerged in the absence of computers and the other methods of communication that are now available. Rapid communication among hundreds of lawyers is required, for example, to deal effectively with conflict of interest issues raised by potential new clients.

Judge Posner observed a decade ago that “The use of computers for document preparation, indexing, and legal research, and of facsimile machines and other communications equipment, has increased the traditionally low capital requirements of law firms, raising the minimum efficient size of firms and hence contributing to the astonishing growth in the average size of firms * * *.”⁴⁰

More recently, the costs of information technology have been mounting with the result that small firms are finding it increasingly difficult to match the technology capabilities of large firms.

The new technology has changed legal practice in many ways. For example:

(i) It has relieved associates of some tasks that were once laborious and time-consuming. It is now possible to say with considerable certainty that a search for all of the relevant precedents or statutes in all of the states on a particular point of law is comprehensive, or that all of the thousands of documents with respect to some issue have been reviewed.⁴¹

⁴⁰ Posner, op cit supra note 12, at 66.

⁴¹ Paralegals have taken over some of the tasks once performed by associates.

(ii) It has improved a firm's ability to manage transactions and those situations where documents are standardized and need only be adapted to the particular matter.

(iii) In a large case involving many lawyers within the firm, it is now possible to communicate rapidly with colleagues. Lawyers located in branch offices in different cities who are working on the same case or transaction can now quickly exchange information.

(iv) It has facilitated deposition and trial practice. To illustrate: A lawyer taking or defending a deposition can now instantly gain access to relevant documents. In the late 1990's, while I was engaged as trial counsel in an antitrust case in the U.S. District Court for the Southern District of New York, I was invited by the Court to participate in the experimental use of screens located on counsel's tables that would simultaneously display ongoing proceedings in the courtroom. This real time technology expedited the trial. For example, objections on the ground that a question had been previously asked and answered could not previously be ruled upon by the Court without the laborious re-reading of the transcript by the Court reporters; such objections could easily be resolved by scrolling the screen.

(v) The new technology has improved communications with clients. For instance, in the past a client might call outside counsel to consult about a suit instituted against the client. It was frequently a time-consuming task for counsel so contacted to assemble information concerning the proceeding, but with current technology, such data can be downloaded in a few minutes.

Are clients more efficiently served as a result of the new technology? Are lawyers better able to advise and assist clients? Yes, I think so. I am doubtful, however, that the new technology has enhanced the satisfaction individuals feel in being a lawyer.

CODA

If history is a guide, there will be significant changes in the legal profession in the next fifty years. The momentous changes in the profession during the past half-century have enhanced the ability of lawyers to serve clients more effectively. Competition among lawyers is beneficial to clients. The lowering of barriers to entry into the profession because of gender, religion, race, or ethnic background is certainly a praiseworthy development. On the other hand, I do not find among young lawyers of today that I encounter the sense of excitement about their work, or the pride in being a lawyer, that was the case for many young lawyers of my generation. It was fun – indeed, it was exhilarating – to be a young lawyer in Washington in the 1950's and 1960's. There was a sense of adventure. I rarely encounter that spirit today. Given the present economic structure of the profession, I wonder whether we will see a renaissance of that spirit among young lawyers. There are exciting challenges confronting the profession – *e.g.*, the internationalization of many legal issues and the pressing need for reform of our system of civil and criminal justice. Perhaps, these may inspire a renewal of the spirit that prevailed a half century ago.