

# Overview of the Professional Services Industry and the Legal Profession

*A report provided to the Alfred P. Sloan Foundation by the Harvard Law School  
Center on Lawyers and the Professional Services Industry*

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## **I. Introduction – The Professional Services Industry**

This report provides a general overview of the professional services industry in the United States, with a particular emphasis on the legal profession. It aims to identify the industry’s key defining characteristics and to outline the major issues and challenges that it faces, both now and in the coming years.

The professional services industry deserves serious study for two reasons. First, nearly every market segment of the modern economy – manufacturing, technology, transportation, energy, etc. – intersects on a routine basis with the professional services industry – lawyers, accountants, engineers, etc. – at multiple levels. In this sense, professional services can be likened to a DNA strand within the overall economic picture – a smaller, often un-noticed element that nevertheless exists within and influences every cell of the organism.

Second, the professional services industry is a powerful economic force in and of itself. At the dawn of the new millennium, the professional services industry accounted for some 17 percent of all employment in the United States and Western Europe.<sup>1</sup> It has grown more than 10 percent annually over the past 25 years and generates over \$1 trillion

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<sup>1</sup> Laura Empson, *Lessons from professional services firms*, Financial Times, Nov. 8, 1999.

in global revenues.<sup>2</sup> The largest professional services firms rival other industry sectors in both revenues and global reach. For example, “[t]he [world’s] largest accounting firm, PricewaterhouseCoopers, currently employs 130,000 people in almost 150 countries, with a 2005 gross revenue of US \$20 billion, making it larger than Fortune 500 companies such as Oracle, McDonald’s and Sears Holdings. The largest consulting firm, Accenture, is a Fortune 500 firm in its own right. The investment bank Goldman Sachs makes it into the top 100 of the Fortune rankings.”<sup>3</sup> The professional services industry thus is important not only as an inherent component of the inner business workings of all other aspects of the economy, but also as a major economic power in and of itself that plays an increasingly important role in the global economy.

At the outset, it is important to note that there is no common definition of “professional” services or universal understanding of how they differentiate from “services” in general. Some limit the term “profession” narrowly to the traditional fields of law, accountancy, medicine, architecture and engineering, whereas others adopt a broader conception that includes such diverse occupations such as “advertising, the clergy, consulting, education, investment banking, and nursing.”<sup>4</sup> It is not necessary to engage in that wider debate here. For present purposes, it suffices simply to set out the general traits that tend to characterize professional services and the manner in which they are delivered.

Three key characteristics fit this broad description. The first distinguishes “professional” services based upon barriers to entry. Many segments of the professional services industry have specialized requirements in education, training, and accreditation that must be satisfied before an individual can work in that specialty. Examples include law, accounting, medicine, architecture and engineering, each of which requires many years of formal higher education. The educational requirements do not themselves entitle a person to practice, however. They simply qualify an individual to progress into a further phase of testing, accreditation and training before the appropriate licensing and practice qualifications are achieved.<sup>5</sup>

A second characteristic of professional services is a high degree of self-regulation. This typically includes control over initial qualification and accreditation, as well as the creation and enforcement of a code of ethics or practice standards against which a professional’s ongoing work is measured. Such regulatory power often involves legal authority delegated to the profession by a government body or agency.

In Massachusetts, for example, the regulation of lawyers and the practice of law fall within the province of the Massachusetts Supreme Judicial Court. The SJC, however, has created an independent Board of Bar Examiners to develop and administer the

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<sup>2</sup> Laura Empson, *Professional Services Firm*, in Stewart Clegg and James Bailey (eds.), *INTERNATIONAL ENCYCLOPEDIA OF ORGANIZATION STUDIES* (Sage Publishing 2007).

<sup>3</sup> *Id.*

<sup>4</sup> Laura Empson, *Profession*, in Stewart Clegg and James Bailey (eds.), *INTERNATIONAL ENCYCLOPEDIA OF ORGANIZATION STUDIES* (Sage Publishing 2007).

<sup>5</sup> *Id.*

Massachusetts bar exam.<sup>6</sup> It also established a separate Board of Bar Overseers to investigate the conduct of lawyers and enforce the SJC’s ethical standards of legal practice.<sup>7</sup> These independent bodies make recommendations on whether attorneys should be admitted to (or prohibited from) legal practice in the Commonwealth, although the ultimate decisions rest with the SJC itself.

A third characteristic of professional service providers is their ability to use specialized knowledge or training in a customized way to solve problems that their clients cannot solve for themselves. This distinguishes the professional service industry from other knowledge-based industries (such as pharmaceutical manufacturers, computer software companies, and the like). The “deliverable” for a professional service provider is the solution to a particular type of problem. The industry creates value through its ability to customize and apply specialized expertise to unique sets of factual circumstances.<sup>8</sup>

As noted above, these characteristics are by no means exhaustive. Rather, they are offered simply to illustrate some of the ways in which the professional services industry is characteristically different from the other “service” segments of the United States economy. With this general backdrop in mind, the report now focuses on one particular segment of the professional service industry – the legal profession.

The legal services industry was selected for detailed review here for three principal reasons. First, the practice of law falls within even the most restrictive definition of “professional services,” as it requires a high degree of specialized education, training and accreditation. Second, lawyering is a well-known and visible profession, and the practice of law generally is accompanied by a high degree of earning power and social prestige. Third, the legal profession faces many trends and challenges that are common to all aspects of the professional services industry. As such, it serves as a useful context in which to discuss such issues as consolidation and convergence among firms, pressures from globalization, the role of diversity, and the like.

## **II. Lawyers in the United States**

Lawyers in the United States are among the most highly-educated of all professional service providers. Individuals generally cannot be admitted to practice law until they have completed both college and law school (a total of 7 years of higher education).<sup>9</sup> Once this formal education is completed, law school graduates still must pass their local state’s bar exam, pass a character fitness review, and swear an oath to abide by and uphold the local rules of practice as an officer of the court.<sup>10</sup>

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<sup>6</sup> See Massachusetts Board of Bar Examiners, <http://www.mass.gov/bbe/>.

<sup>7</sup> See Massachusetts Board of Bar Overseers, <http://www.mass.gov/obcbbo/>.

<sup>8</sup> Laura Empson, *Lessons from professional services firms*, Financial Times, Nov. 8, 1999.

<sup>9</sup> See, e.g., Information Pertaining to the Admission of Attorneys in Massachusetts, Massachusetts Board of Bar Examiners, March 2006, ¶¶ 3.1 – 3.3, available at <http://www.mass.gov/bbe/barapprulesaug2002.pdf>.

<sup>10</sup> *Id.* ¶¶ 2.1 and 5.1 – 5.3.

All of this represents a considerable up-front investment for an aspiring lawyer, both in terms of years devoted to the study of law and the financial expense of acquiring a legal education. The endeavor should not be lightly undertaken. A comprehensive study of new lawyers admitted to the bar in 2000, for example, revealed an average of \$70,000 in total indebtedness at graduation.<sup>11</sup>

There are approximately 1 million practicing attorneys in the United States today.<sup>12</sup> About 75 percent of them are in private practice.<sup>13</sup> About 8 percent of attorneys work in private industry, some as in-house lawyers, and others as managers.<sup>14</sup> Another 8 percent work for the federal, state or local governments, most at the local level.<sup>15</sup> Three percent of lawyers work for the judiciary.<sup>16</sup> Most of the remaining attorneys work in education, public defender's offices or non-profit organizations.<sup>17</sup>

Even within private practice, attorneys work under a variety of conditions. Approximately half of such lawyers practice law by themselves.<sup>18</sup> These "solo practitioners" benefit from flexible hours and choice of practice area but, at least in the early stages of their careers, often face the additional burdens of uncertain cash flow and considerable variation in personal income.

Other lawyers choose to work alongside their colleagues and practice together in law firms. Such firms typically are structured either as straightforward partnerships or as limited liability entities such as professional corporations, limited liability corporations, or limited liability partnerships. The firm may concentrate in a single practice area to which all of its lawyers are devoted (such as a litigation boutique), or it may be comprised of practitioners with many different specialties offering clients a broad range of legal services under one roof.

Fifteen percent of private practitioners work in small firms of 2-5 lawyers.<sup>19</sup> Another 13 percent work in firms of 6-20 lawyers, and 10 percent work in firms of 21-100 lawyers.<sup>20</sup> The largest law firms, those with more than 100 lawyers, employ about 14 percent of private practitioners.<sup>21</sup> Attorneys in these firms command the highest salaries; generally speaking, the larger the firm, the higher the salary. This is true even for recent law school graduates with little (or no) substantive experience in the actual practice of law. First year lawyers at firms with more than 500 attorneys earn between

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<sup>11</sup> Gita Wilder, *Law School Debt Among New Lawyers – An After the JD Monograph*, pp. 11-13, available at [http://www.nalp.org/assets/645\\_ajddebtmonograph2007final.pdf](http://www.nalp.org/assets/645_ajddebtmonograph2007final.pdf).

<sup>12</sup> ABA, *National Lawyer Population by State*, available at <http://www.abanet.org/marketresearch/2004nbrolawyersbystate.pdf>.

<sup>13</sup> ABA, *Lawyer Demographic Tables*, available at [http://www.abanet.org/marketresearch/lawyer\\_demographics\\_2006.pdf](http://www.abanet.org/marketresearch/lawyer_demographics_2006.pdf).

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

\$135,000 and \$160,000 per year (plus bonus).<sup>22</sup> By contrast, first year attorneys in firms of 2-25 lawyers earn approximately \$67,000 per year.<sup>23</sup>

The remainder of this report focuses principally on one particular group of lawyers: those practicing in large law firms. Compared to other attorneys, this group faces novel challenges while also confronting the pressures facing the industry as a whole. For example, clients uniformly complain about the rising costs of securing quality legal services, whether those services are rendered by solo practitioners or by famous lawyers at large and prestigious firms. But this upward trend in costs is amplified in large firms, which many companies can no longer afford to hire. At the same time, such firms must address other challenges that solo practitioners do not, such as competition from large accounting firms and from legal service providers overseas.

Similarly, large firms face unique pressures in connection with racial and gender diversity, particularly at upper levels. Overall, the legal profession is not as diverse as other professions. Minorities make up about 10 percent of lawyers, whereas they make up roughly 20 percent of accountants, physicians, surgeons, and professors.<sup>24</sup> The role of women in the profession is another key issue, as women are statistically under-represented in law firm partnerships and other aspects of legal practice.<sup>25</sup> Large firms, which in many ways are the most visible segment of the legal industry, face pressure from both clients and the public at large to improve in this regard.

Moreover, although large firms employ only 14 percent of all lawyers,<sup>26</sup> emerging data suggests that they now employ 28 percent of new lawyers.<sup>27</sup> Finally, large firms are stepping stones to other important positions in the legal industry, including prominent government postings, appointments to the judiciary, new careers as in-house counsel, and even the practice of law in smaller law firms.

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<sup>22</sup> NALP, *Salaries Up at Largest Firms for First Time Since 2000*, press release Aug 1, 2006, available at <http://www.nalp.org/press/details.php?id=62>.

<sup>23</sup> *Id.*; Zusha Elinson, *Corporate Clients Take Note as More Firms Announce Associate Raises*, The Recorder, May 9, 2007.

<sup>24</sup> ABA, *Miles to Go: Progress of Minorities in the Legal Profession, Executive Summary*, available at <http://www.abanet.org/minorities/publications/milesummary.html>.

<sup>25</sup> ABA, *A Current Glance at Women in the Law 2006*, available at [www.abanet.org/women/CurrentGlanceStatistics2006.pdf](http://www.abanet.org/women/CurrentGlanceStatistics2006.pdf).

<sup>26</sup> ABA, *Lawyer Demographic Tables*, available at [http://www.abanet.org/marketresearch/lawyer\\_demographics\\_2006.pdf](http://www.abanet.org/marketresearch/lawyer_demographics_2006.pdf).

<sup>27</sup> NALP/ABF, *After the JD: First Results of a National Study of Legal Careers*, Table 3.1, 2004, available at [http://www.nalpfoundation.org/webmodules/articles/articlefiles/87-After\\_JD\\_2004\\_web.pdf](http://www.nalpfoundation.org/webmodules/articles/articlefiles/87-After_JD_2004_web.pdf).

### III. Challenges Facing Large Law Firms

#### A. *The Rising Cost of Legal Services*

From individuals to corporations, those who seek legal assistance uniformly complain about its cost.<sup>28</sup> Over the last decade, corporate firms have increased their hourly rates by 6-8 percent annually, nearly double the rate of inflation.<sup>29</sup> Such rate increases have been a driving force behind the increased profitability of many large and mid-sized law firms. In one sample, rate increases accounted for two thirds of revenue gains achieved between 2003 and 2004.<sup>30</sup> The cost of legal services has increased in part, however, to cover the rising costs of attracting and retaining top law school graduates. The current starting salary at large national law firms is between \$135,000 and \$160,000, before signing and year-end bonuses.<sup>31</sup>

As firms continue to compete to hire and retain top law school graduates, clients are forced to find ways to cut their ever-increasing legal bill. Although most large corporate clients still purchase legal services on an hourly basis, these companies now exert greater control over outside counsel than in the past. Many companies have instituted e-billing systems to monitor firm expenditures, and several have promulgated lengthy guidelines to constrain spending. Such guidelines might, for example, preclude the use of first year associates, who may not be worth their hourly rate. They also may impose staffing restrictions and pre-limit the time that a lawyer can spend on certain types of legal tasks.

Roughly one-third of companies also are experimenting with alternative fee arrangements.<sup>32</sup> IKON Office Solutions, for example, uses fixed-fee arrangements for all of its non-compete litigation.<sup>33</sup> Such agreements provide valuable predictability for companies seeking to create budgets at the beginning of the year. Other corporations have experimented with more complex fee regimes in order to give firms an incentive to resolve matters quickly.<sup>34</sup> Blended rates, in which the client and law firm share both the up-side and down-side of legal risk, are becoming increasingly common. Still other companies, most notably General Electric, have conducted online-auctions to find cost-effective firms.<sup>35</sup>

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<sup>28</sup> ABA, *Public Perceptions of Lawyers, Consumer Research Findings*, April 2002, available at <http://www.abanet.org/litigation/lawyers/>; Susan Beck, *GCs Engage in 'Collective Bargaining' for Legal Fees*, *Corporate Counsel*, July 18, 2005.

<sup>29</sup> Emma Schwartz, *Law Firms Gain, but With Big Caveat*, *Legal Times*, April 22, 2005.

<sup>30</sup> *Id.*

<sup>31</sup> Zusha Elinson, *Corporate Clients Take Note as More Firms Announce Associate Raises*, *The Recorder*, May 9, 2007; NALP, *Salaries Up at Largest Firms for First Time Since 2000*, press release Aug 1, 2006, available at <http://www.nalp.org/press/details.php?id=62>.

<sup>32</sup> Mary Swanton, *Ninth Annual Report of Corporate Law Departments*, *Inside Counsel*, May 2006.

<sup>33</sup> Stephanie Lovett, *Billing and Wooing: Firms Offer Payment Options*, *The Legal Intelligencer*, February 26, 2007.

<sup>34</sup> *Id.*

<sup>35</sup> Emma Schwartz, *Law Firms Gain, But With Big Caveat*, *Legal times*, April 22, 2005.

Large firms thus often find themselves devoting substantial resources to satisfying clients through a variety of creative fee arrangements, which in turn limits the time that legal practitioners actually can devote to the practice of law. As one expert put it, “[i]n this environment the over-tired and highly stressed professional might argue that it was the client, not the professional, who exercises real power and who has won the battle for domination.”<sup>36</sup>

### ***B. Commercialization Pressures - Law as a Business***

Law firms increasingly view themselves as businesses. They are paying more attention to bottom line profitability, which in turn has led to a number of internal structural changes. Modern firms are more likely to be run by a full time manager, offer fewer opportunities for equity partnership, and impose greater burdens on their associates, both in terms of increased productivity and billable hour requirements and a longer time frame before partnership eligibility.

Law firms traditionally were managed by a partner who nevertheless spent the bulk of his or her time practicing law. Many firms still follow this traditional approach. The managing partner of the large New York firm Cravath, Swaine & Moore, for example, continues to practice actively because he feels that his credibility as a manager depends on his credibility as a practitioner.<sup>37</sup> As firms increase in size and complexity, however, it is becoming increasingly difficult to perform both roles successfully. Several large firms have overtly eschewed the traditional practice in order to allow their managing partners to focus on the growth and management of the firm as a whole. The leaders at Orrick, Herrington & Sutcliffe and Bingham McCutchen, for example, have assumed full time management responsibilities.<sup>38</sup>

It is likely that this trend will continue. As Harvard Law School Professor David Wilkins has noted: “Many firms that have radically moved themselves up the prestige and profitability ladder and expanded their geographic scope have had full-time leaders . . . This is clearly one model for a successful 21<sup>st</sup> century firm.”

Increased cost pressures have caused firms to alter their internal structure in other ways as well. Large firms contain at least two tiers of lawyers: partners and associates. Partners own a share of the firm’s total revenue, while associates are salaried employees usually working toward a period of eligibility – often a minimum of 8-10 years in practice – after which they might then become a partner. In the past, partnership brought with it high personal income and lifelong job security. But no longer. Half of the firms that posted a 15 percent or greater increase in profits per partner in 2006 also thinned their partnership ranks.<sup>39</sup> Even firms that are not actively divesting partners are

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<sup>36</sup> Laura Empson, *Profession*, in Stewart Clegg and James Bailey (eds.), *INTERNATIONAL ENCYCLOPEDIA OF ORGANIZATION STUDIES* (Sage Publishing 2007).

<sup>37</sup> Nathan Koppel, *Big Law Firms Try New Idea: The True CEO*, Wall Street Journal, January 22, 2007.

<sup>38</sup> *Id.*

<sup>39</sup> *Behind the Numbers: Noteworthy Trends and Newsmaking Firms in the Years Am Law 100*, The American Lawyer, May 2007.

promoting fewer associates and taking longer to do so by virtue of a steadily lengthening partnership track.

Many firms have tried to address the issue by creating a middle-tier position: the non-equity partner.<sup>40</sup> Although compensation formulas vary, these attorneys usually receive a small share of the firm's profits but obtain the bulk of their compensation through a fixed salary. Such non-equity partners typically earn between 20-50 percent of what equity partners earn.<sup>41</sup> For some, non-equity partnership is a stepping stone toward full partnership; for others, it is the highest level of success that the lawyer will achieve at the firm.<sup>42</sup> The end result for legal practitioners is that equity partnerships have become more profitable than ever, but are much harder to come by and far easier to lose.<sup>43</sup>

Even as the eventual rewards of partnership have become harder to achieve, large firms now are requiring more of their associates along the way. In the 1960s, associates billed an average of 1,500 hours per year.<sup>44</sup> By 1989 that number had climbed to 1,820.<sup>45</sup> By 2000 it was about 2,100 hours.<sup>46</sup> These trends have continued over the last few years. Fourteen percent of all firms now *require* associates to bill at least 2,000 hours, compared to only nine percent in 2004.<sup>47</sup> Of the largest law firms, those over 700 attorneys, 32 percent require associates to bill at least 2,000 hours.<sup>48</sup>

Large firms thus appear to be responding to an increasingly-competitive environment with two primary strategies. Along with increasing revenue targets on a per-lawyer basis, firms have continued with their ongoing efforts to trim costs and divest unprofitable partners. Since 2002, such efforts have led to a widening gap in firm profitability, where the most profitable firms continue to increase profitability at a greater rate than their smaller peers.<sup>49</sup>

### **C. Increased Competition from Accounting and Consulting Firms**

In the 1990s law firms began to face increased competition from large accounting firms. By the year 1998, traditional accounting and auditing represented only 34 percent

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<sup>40</sup> Aric Press and John O'Connor, *Lessons of the AM Law 100*, The American Lawyer, May 2007.

<sup>41</sup> Alison Frankel, *Am Law 100: Veil of Tiers*, The American Lawyer, June 29, 2004.

<sup>42</sup> Charles Toutant, *Most Tier Partners Still 'On Path' to Equity Status, Survey Finds*, New Jersey Law Journal, May 25, 2006.

<sup>43</sup> Elizabeth Goldberg, *Midlevel Associates Survey: Firms Improve, but Complaints Continue*, The American Lawyer, August 1, 2006; Aric Press and John O'Connor, *Lessons of the AM Law 100*, The American Lawyer, May 2007; *Behind the Numbers: Noteworthy Trends and Newsmaking Firms in the Years Am Law 100*, The American Lawyer, May 2007.

<sup>44</sup> Susan Saab Fortney, *Soul For Sale: An Empirical Study of Associate Satisfaction, Law Firm Culture, and the Effects of Billable Hour Requirements*, 69 U. MISSOURI KANSAS CITY L. REV. 239 (2000).

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> NALP, *How Much Do Associates Have to Work?*, April 2007, available at <http://www.nalp.org/content/index.php?pid=489>.

<sup>48</sup> *Id.*

<sup>49</sup> Jim Schroeder, *The Gap Widens*, The American Lawyer, June 1, 2007.

of the total revenue generated by the “Big 8” accounting firms.<sup>50</sup> Recognizing the significant revenue opportunities presented, such firms successfully branched out and began to provide consulting and quasi-legal services, including litigation support, dispute consulting services, and representation for clients in tax disputes.<sup>51</sup> A small minority of firms began to experiment with ways to provide other legal services, such as preparing estate planning documents and assisting clients in forming legal entities such as corporations.<sup>52</sup> To address these changes, several jurisdictions began considering proposed amendments to the rules of legal practice that would allow “multidisciplinary practices,” which would merge law firms with other professional service providers.<sup>53</sup>

Two key events have largely derailed efforts to create multidisciplinary firms within the United States.<sup>54</sup> First, the American Bar Association, after studying the issue, issued a report in 2000 in which it declined to alter the provisions of its Model Rules that preclude lawyers from sharing fees with non-lawyers (including other professional service providers). Although states are not bound by the Model Rules, they are highly influential and form the basis of the ethical rules of legal practice that have been adopted in many jurisdictions.

Second, corporate scandals such as the collapse of Enron have highlighted the complexities and conflicts of interest that can arise when different types of professional services are delivered by a single firm. These events fueled the passage of restrictive legislation such as the Sarbanes-Oxley Act, which restricts a firm’s ability to offer different types of professional services to the same client. Under Sarbanes-Oxley, accounting firms that provide auditing services to corporate clients are precluded from providing a host of other services, including consulting and quasi-legal services.<sup>55</sup> Because the remaining “Big 4” accounting firms audit some 78 percent of public companies in the United States,<sup>56</sup> these firms now have far fewer opportunities to pursue multidisciplinary practices.

Although accounting firms face many barriers to providing legal services, law firms have continued to diversify. According to one study, 95 of the country’s largest law firms owned a total of 140 ancillary businesses such as lobbying firms, litigation related software companies, and insurance companies.<sup>57</sup> It is unclear whether this trend will continue. As the practice of law becomes more profitable, law firms will have fewer

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<sup>50</sup> Kimberly E. Frank, *CPAs’ Perceptions of the Emerging Multidisciplinary Accounting/Legal Practice*, Accounting Horizons, March 2001.

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> Mona L. Hymel, *Multidisciplinary Practices: Where are They? What Happened?*, Tax Notes, May 10, 2004.

<sup>54</sup> *Id.*

<sup>55</sup> Securities Exchange Act of 1934, section 10A(g), as modified by the Sarbanes-Oxley Act of 2002, 107 Pub. L. No. 204, 116 Stat. 745.

<sup>56</sup> Robert Bloom and David C. Schirm, *Consolidation and Competition in Public Accounting*, The CPA Journal, June 2005.

<sup>57</sup> Leigh Jones, *Mind Their Own Business? Law Firms Think Otherwise*, The National Law Journal, June 22, 2005.

reasons to invest in non-legal enterprises. Further, lawyers may lack the expertise to run competitive ancillary businesses.

Certain European nations are poised to allow full multidisciplinary practices. Following a report by England's "Clementi Commission," for example, all British companies, from accounting firms to grocery stores, soon may be authorized to provide legal services.<sup>58</sup> Great Britain also may allow outside investors to own and manage law firms.<sup>59</sup> As the results of such developments unfold overseas, lawyers and policy makers in the United States are likely to pay close attention.

Although there is no solid evidence that U.S. clients presently are demanding "one-stop shopping" for professional services,<sup>60</sup> the substantial profit potential of multidisciplinary firms remains.<sup>61</sup> The forthcoming British experiment, combined with ongoing economic pressures and the need for many kinds of interrelated expertise to solve today's complex problems, are likely to revive the multidisciplinary debate in the not-too-distant future.

#### ***D. Globalization***

The globalization pressures affecting many business sectors have impacted the legal industry as well. In order to compete for transnational business deals, firms increasingly must possess knowledge of foreign regulatory laws, have a local presence within each relevant country, and offer expertise in international dispute resolution. Many U.S. firms have gained international offices through mergers, organic growth, and the development of more informal ties with foreign firms. Most large firms have pursued a mixed growth strategy, utilizing each of these methods at various times.<sup>62</sup> In addition to satisfying client demands, globalization can also help an American law firm's bottom line. In 2006, for example, the Frankfurt office of the New York law firm White and Case proved to be its most profitable.<sup>63</sup>

Law firms and U.S. companies also have begun to experiment with outsourcing legal work to countries such as India. Currently, there are approximately 1,300

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<sup>58</sup> Bob Yates, *Global Reach May be the Large Firm's Trump Card*, Chicago Lawyer, June 2006.

<sup>59</sup> *Era of 'Tesco law' is upon us*, Times Online, November 15, 2006, available at <http://business.timesonline.co.uk/tol/business/law/article1087184.ece>.

<sup>60</sup> *Compare South Carolina Report on Multidisciplinary Practice of Law*, available at [www.schar.org/pdf/committee/prmdpreport.pdf](http://www.schar.org/pdf/committee/prmdpreport.pdf) (noting the lack of hard evidence support client demand for integrated services) with Jim Grote, *Multidisciplinary Practices: Emerging Slowly... Very Slowly*, Journal of Financial Planning, April 2002 (noting that professionals in multidisciplinary practices thought that clients demanded integrated services).

<sup>61</sup> Mona L. Hymel, *Multidisciplinary Practices: Where are They? What Happened?*, Tax Notes, May 10, 2004.

<sup>62</sup> Sandra Neilson-Moore, *Law Firm Networks: Going Global*, Legal Week, May 31, 2007.

<sup>63</sup> *Behind the Numbers: Noteworthy Trends and Newsmaking Firms in the Years Am Law 100*, The American Lawyer, May 2007.

professionals in India that provide legal services to U.S. clients.<sup>64</sup> These professionals generated about \$56 million in revenue in 2005.<sup>65</sup> The scope of outsourced work varies. Some firms use Indian companies to provide only paralegal-level research assistance, electronic document management, due diligence research, and document review. But others are sending more important work to India, such as patent applications and other intellectual property and transactional work. Lexadigm, an India based legal services company, recently was hired to assist in the writing of a brief for the U.S. Supreme Court.<sup>66</sup>

Although outsourcing is not yet widespread, demand for such services will only increase as cost-conscious clients pressure large law firms to reduce expenses as much as possible. Some commentators have predicted that the market for legal services in India will reach \$300 million by 2010, and \$960 million by 2015.<sup>67</sup>

### ***E. Nationalization and Multi-Jurisdictional Practices***

Within the United States, each state has the power to license and regulate the practice of law within its borders. A lawyer that has passed the bar exam and is licensed to practice in one state is not automatically entitled to practice law in another jurisdiction. Although there often are mutual courtesies between states that allow lawyers to practice *pro hac vice* (for one case) in jurisdictions where they are not admitted, such reciprocity is by no means obligatory. Some states require all attorneys to sit for their bar exam, while others admit out-of-state attorneys to their bar if the lawyer has a certain number of years of practice elsewhere, usually five or more.

This state-by-state licensing scheme was adequate at one time because most legal work was local. Today, however, it is common for lawyers to represent individuals and corporations with business dealings in multiple states. Unfortunately, the regulation of legal practice at the state level has failed to develop in tandem with business realities. This often creates impediments to the efficient delivery of legal services.

For example, it is unclear how much contact a New York lawyer can have with a California client before she crosses the line into the unlicensed practice of law in California.<sup>68</sup> In a 1998 decision, the California Supreme Court threw into doubt the legitimacy of a practice that most lawyers previously had taken for granted – that they could advise out-of-state clients as long as they worked in conjunction with an in-state

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<sup>64</sup> Manish Raj, *United States Legal Industry and Legal Process Outsourcing to India*, Indiana Journal of Global Legal Studies, (forthcoming), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=960967#PaperDownload](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=960967#PaperDownload).

<sup>65</sup> *Id.*

<sup>66</sup> Daniel Brook, *Are Your Lawyers in New York or New Delhi?*, Legal Affairs, May/June 2005.

<sup>67</sup> Manish Raj, *United States Legal Industry and Legal Process Outsourcing to India*, Indiana Journal of Global Legal Studies, (forthcoming), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=960967#PaperDownload](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=960967#PaperDownload).

<sup>68</sup> *Birbrower, Montalbano, Condon & Frank, P.C. v. Superior Court*, 949 P.2d 1 (Cal. 1998), discussed in Stephen Gillers, *Lessons From the Multijurisdictional Practice Commission: The Art of Making Change*, 44 ARIZ. L. REV. 685 (2002).

lawyer.<sup>69</sup> Although this “local counsel” system imposed additional costs on clients, it ensured that states could exercise at least some control and oversight over out-of-state lawyers.

Given the need to clarify and modernize the field, in 2002 the American Bar Association altered its Model Rules to facilitate the multi-jurisdictional practice of law. These new rules allow lawyers more flexibility in “temporarily” practicing law in other jurisdictions. For example, a transactional attorney can provide legal services out-of-state as long as the services are “reasonably related to the lawyer’s practice in a jurisdiction in which the lawyer is admitted to practice.”<sup>70</sup> The revised Model Rules are still under consideration in most jurisdictions. There is a general consensus, however, that reform is needed to align the regulation of legal practice with modern economic and business realities.

The law is similar in its treatment of non-American lawyers who wish to practice in the United States. Many states allow foreign lawyers to take the bar exam after completing an advanced law degree, or LLM, in American Law at an accredited law school within the United States. Foreign lawyers are still subject to the state-by-state regulatory system, however, and thus may need to sit for multiple bar examinations in order to practice law in more than one jurisdiction.

#### ***F. Diversity***

Overall, the legal profession is not as diverse as other professions. Minorities make up about 10 percent of lawyers, compared to roughly 20 percent of accountants, physicians, surgeons, and professors.<sup>71</sup> This pattern is even more striking in high-prestige legal jobs. Less than 4 percent of law firm partners are members of minority groups, as are slightly more than 4 percent of general counsels in Fortune 1000 companies (which often draw upon large firms to fill high-level legal positions).<sup>72</sup> Minorities that do make partner also tend to fall lower on the rungs of partnership compensation.<sup>73</sup>

Minority women are even more underrepresented. Only 1 percent of partners in Chicago area law firms, and a similar 1 percent of general counsels in Fortune 1000 companies, are minority women.<sup>74</sup> Minority women also enter private practice in smaller numbers than other groups and leave law firms sooner.<sup>75</sup> Compared to white males, they

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<sup>69</sup> *Id.*

<sup>70</sup> Model Rules of Professional Conduct, Rule 5.5.

<sup>71</sup> ABA, *Miles to Go: Progress of Minorities in the Legal Profession, Executive Summary*, available at <http://www.abanet.org/minorities/publications/milessummary.html>.

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> ABA, *Visible Invisibility: Women of Color in Law Firms, Executive Summary*, available at <http://www.abanet.org/women/woc/wocinitiative.html>.

<sup>75</sup> *Id.*

tend to experience a less-supportive work environment, have more limited client contact, and report a greater number of unfair performance evaluations.<sup>76</sup>

While this pattern is harshest for minority women, non-minority women also are underrepresented at large firms. Although 30 percent of lawyers are women, they make up only 17 percent of law firm partners and a similar 16 percent of Fortune 1000 general counsels.<sup>77</sup> This pattern also is reflected in other types of legal careers. For example, only 20 percent of law school deans are women, despite the fact that 70 percent of assistant deans are women.<sup>78</sup> Similarly, women make up only 27 percent of tenured faculty but comprise 43 percent of non-tenured faculty.<sup>79</sup> Women also are underrepresented in both the state and federal judiciaries, where they make up roughly 20-30 percent of judges.<sup>80</sup>

Some corporations have attempted to put pressure on law firms to increase their diversity. Wal-Mart, for example, reportedly fired a firm that failed to comply with its diversity guidelines.<sup>81</sup> Law firms are likely to face increasing pressures to diversify in the future, as clients demand increased accountability in this regard and the demand for skilled associates encourages firms to tap into underutilized pools of talent.

### **G. *Stress and Mental Health***

Lawyers are at greater personal risk of depression and alcoholism than the general population.<sup>82</sup> In a 1990 study, lawyers were found to be more prone to depression than any other profession<sup>83</sup> and they were deemed almost 4 times as susceptible to the disease as the general population.<sup>84</sup> More recent studies have confirmed this general result.<sup>85</sup>

The legal community has responded by founding numerous support groups for struggling attorneys. Today, all fifty states have programs to assist lawyers suffering from depression or substance abuse.<sup>86</sup> As associates work longer hours, and partners see their job security erode, it is likely that such services will continue to play a vital role in supporting practitioners within the legal services industry.

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<sup>76</sup> *Id.*

<sup>77</sup> ABA, *A Current Glance at Women in the Law 2006*, available at [www.abanet.org/women/CurrentGlanceStatistics2006.pdf](http://www.abanet.org/women/CurrentGlanceStatistics2006.pdf).

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

<sup>81</sup> Ross Todd, *Are Law Firms' Diversity Efforts Discriminatory?*, *The American Lawyer*, March 17, 2007.

<sup>82</sup> *See generally*, ABA Commission on Lawyer Assistance Programs, <http://www.abanet.org/legalservices/colap/>.

<sup>83</sup> W.W. Eaton, J.C. Anthony, W. Mandel & R. Garrison, *Occupations and the Prevalence of Major Depressive Disorder*, 32 *J. OCCUPATIONAL MED.* 1079 (1980).

<sup>84</sup> *Id.*

<sup>85</sup> *See* Sacha Pfeiffer, *Law and Disorder*, *The Boston Globe*, June 27, 2007.

<sup>86</sup> A state-by-state directory is available at <http://www.abanet.org/legalservices/colap/lapdirectory.html>.

## **IV. Conclusion**

Law firms face a number of shifting economic challenges in the coming decade. Large firms must continually balance the costs of attracting and retaining talented associates against an increasing demand to provide cheaper legal services. These tensions are likely to be exacerbated by increased competition from overseas, which likely will pressure firms to squeeze even more productivity and revenues out of their lawyers – both at the partner and associate levels.

Although U.S. firms are now somewhat insulated from competition from accounting firms, experiments in Great Britain and elsewhere with multidisciplinary practices might reenergize the debate in the U.S., potentially creating even more competition for law firms. In many ways, the traditional practice of law – as reflected in the structure of law firms, the role of lawyers in society, and the regulation of legal practice itself – is now an endangered species. In the coming years, law firms and lawyers will have to continually reevaluate their chosen profession in light of a rapidly-shifting global economy for legal and other professional services.