

Working Notes

Deliberations of the Committee on Research About the Future of the Legal Profession On the Current Status of the Legal Profession

AUGUST 31, 2001

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INTRODUCTION

The Standing Committee on Research About the Future of the Legal Profession, chaired by Robert J. Grey, Jr. of Richmond, Va., took as its charge this year to develop a report on the current state of the profession, which will serve as a platform to examine the challenges and opportunities of change and how the legal profession can and should define its own future.

Three subcommittees were appointed to look at different aspects of the legal system and legal practice. The first, which examined the trends relating to globalization, was chaired by Judah Best of Washington, D.C. The second examined how Americans access legal services, and was chaired by M. Joe Crosthwait Jr. of Midwest City, Okla. The third, which looked at the state of private law practice, was chaired by James Lee Thompson of Rockville, Md.

This report gathers the information developed by all three subcommittees, and presents a list of trends affecting the profession and a list of questions the committee has identified, some provocative, that should be discussed as work moves forward.

PREFACE

The soul of any society is its law and its legal system. The American legal system, and hence our profession, are undergoing unprecedented change. The profession's clear and unalterable goal must be the preservation and advancement of those principles essential to the rule of law grounded in truth, justice and equality. The most fundamental of these are an independent bar and an independent judiciary. Our biggest challenge in reaching this goal is to recreate ourselves with a culture and a regulatory structure that preserves our core principles, protects our clients, and maintains our relevance.

We are in the midst of the biggest transformation of civilization since the caveman began bartering. The practice of law and the administration of justice are at the brink of change of an unprecedented and exponential kind and magnitude. This Age of Technological Revolution, together with the globalization of business and competition, are transforming our profession and our system of justice with at least the same intensity as they are everything else around us.

The symptoms of these monumental changes are becoming all the more familiar, while their implications, and the course of action to be taken, become increasingly enigmatic and complicated. We are increasingly seeing the many examples of how the Age of Technology and the Internet are rapidly transforming our world into a smaller and decidedly more complicated place. Be it good or bad, boundaries are blurring, and in many instances disappearing altogether. Globalization is a fact of life. Traditional and comfortable approaches and solutions are often ineffective, or even counter-productive, to addressing modern day problems, demands and needs. In so many respects, "This is the way we've always done it!" simply doesn't do it any more.

What does this unprecedented change imply for a precedent-oriented profession? How should the practice of law and the administration of justice change to take advantage of this rapidly changing world? How do we assure the survival of our core principles - those fundamental and enduring beliefs essential to the Rule of Law - in this Age of Revolution? What must we do now?

The Lodge Meets the Strategic Inflection Point

Jennifer James, an urban cultural anthropologist, in her book *Thinking in the Future Tense*, includes the organized bar with the medical profession and others as a "lodge culture" – one that enforces and maintains a nostalgic and no longer tenable view of the world. Lodges are cooperative alliances in which the members bond together for power or protection, or both. James argues that lodges are rarely visionary, but rather content with the status quo, and unwilling to acknowledge change. In times of rapid change, they become irrelevant.

In his 1996 book *Only the Paranoid Survive*, Andy Grove, co-founder and chairman of the board of Intel Corp., gave birth to the term "Strategic Inflection Point." A strategic inflection point is a moment, often unforeseen and more often not perceived until too late, when massive, unprecedented, and fundamentally unforeseen change occurs. All bets are off, and all the rules change. The premises and assumptions upon which success had been predicated are no longer true. A strategic inflection point is not an incremental or peripheral change. It is a fundamental and revolutionary transformation.

Strategic inflection points are not unique to this new world of technology, nor are they unique to business. Indeed, human history has been and will forever be defined by them. In business, a strategic inflection point is not merely price competition or incremental change, such as a "newer, better" widget. Rather, it is a radically new product, an innovative new technology, or a novel process or provider that renders widgets and the way they have been made or provided fundamentally obsolete. It is that point at which one industry is destroyed or becomes unrecognizable, and another is created. Electricity, the horseless carriage, the telephone, the airplane, and many other new technologies and products – not the least of which are the computer and the Internet – all created new businesses and enterprises and fundamentally altered those that survived strategic inflection points.

While certainly the law itself has changed dramatically over the past 225 years, the institution we call "the law" has changed very little. Until relatively recently, lawyers have been the unique providers of legal services, in and out of court, and have been the few to possess the "mystery" of the law through law books and training and to have, if you will, the key to the courthouse.

But like the rest of the world, the legal profession and the administration of justice are in the eyes of a strategic inflection point. Heritage is no longer our destiny, for we are in an age of revolution from which we will emerge distinctly, and perhaps unrecognizably, different. But will we be the ones to lead and define that change? Or are we going down the same road as the medical profession?

How a person, company or profession responds to a strategic inflection point determines their fate. To survive and prosper, we must envision, embrace, and create the future.

If the law were just another company, or just another industry about to become obsolete, it would matter little in the overall order of things what, if anything, we do. But the law is not just another business or industry. It is the foundation upon which our entire society and our system of justice and enlightened self-government are founded. Indeed, without lawyers this change would likely never have occurred! The risk is not about just our livelihoods and our businesses, although they are clearly in jeopardy. Our greatest peril is that if we cannot survive as an "industry" and as a profession, then the underlying core principles and the Rule of Law are themselves at risk.

Are We Just a Train?

Much to the chagrin of many members of our profession and to the surprise of yet others, the legal profession is not generally perceived by the public to be the center of the universe. The public, at least, is behaving accordingly. For us, the rapidly expanding delivery of legal services by non-legal entities should be seen as a symptom of an insidious, complicated and systemic condition that will sooner, rather than later, determine our future to the extent we do not first create it.

Peter Drucker, the famed organizational expert, in writing about the bankruptcy of Penn Central Railroad, said that the reason Penn Central failed is because it asked the wrong question. Penn Central said, "We have a train. Would you like to get on?" Drucker said the question should have been, "We are in the transportation business. Where would you like to go?" And so it is for the legal profession and the organized bar. We must first get the question right.

If all we do is drive trains to fixed destinations, and our potential passengers wish to go elsewhere (faster and cheaper, of course), we will not be able to meet their needs.

The best questions for us must look beyond what we already know we do, and address the very basics. Do we have a train that can go only where the tracks go, or do we provide a form of transportation with the destination to be determined by our passengers?

Why do we exist?

If we didn't exist would we, or society, invent us?

If so, what then would we look like and what then would we do?

Are we, as some argue quite persuasively, more concerned about preserving our track right-of-way than we are with transporting our passengers? If, in the final analysis, we have no passengers, then what is the worth of all that right-of-way? What will become of those seemingly important destinations to which perhaps only we go, or to which our passengers arrange different transportation?

Most lawyers charge by the mile of track covered rather than by the destination achieved. And that, together with the fact that all we appear to have is trains, has encouraged others to enter the transportation business. We have allowed others to transport our passengers, and indeed have encouraged some of our former passengers to walk, hitchhike, or ride with strangers who lack our knowledge of and commitment to the rules of the road.

We must now critically examine who we are, what we do, and – perhaps most important – what we do that only we can do. We must be willing to share that which does not require us, and staunchly defend that which demands our unique abilities and highest of standards. We must be willing and able to discard old paradigms and engender and embrace manifest change.

This self analysis calls upon us to examine the entirety of our legal profession and of our justice system, including the manner in which we select and train law students, the manner in which we strive to make legal services accessible and affordable, how we can assure the fair and impartial application of the law across the board, and, ultimately, how we preserve inviolate the Rule of Law.

TRENDS AFFECTING THE LEGAL PROFESSION

Trends Affecting the Profession and the Role of Law and Lawyers

- ◆ Legal services are, and will continue to be, provided electronically over the Internet and this trend will increase.
- ◆ The increasing commoditization of some forms of legal services (e.g., transactional documents, pro se dispute forms for divorce, wills in a box, and legal information services) will continue.
- ◆ Non-lawyers are providing legal and close-to-legal services electronically over the Internet and this will increase.
- ◆ Lawyers are engaging in substantial inter-jurisdictional representation, which will increase.
- ◆ Lawyers are facing increased competition from other professionals, primarily accountants and consultants, and the Internet is making this easier for them to do.
- ◆ Lawyers will be subject to rating systems, both internally from the legal community and externally from the public.
- ◆ Courts will move to electronic filing in all cases, which will require trial and litigation lawyers to learn and understand technology.
- ◆ More lawyers will begin working at home or in non-traditional office space.
- ◆ Electronic ADR and mediation systems will be used with increasing frequency.
- ◆ Litigation will become more of a specialty practice and we may yet see the barrister/solicitor model in the United State in the future.
- ◆ More “virtual law firms” will exist with and without affiliations with legal information websites.
- ◆ The use of unbundled legal services will increase.
- ◆ Auctions for legal services and reverse auction techniques will increase at all levels.
- ◆ Non-lawyers and MDPs will do ever-increasing amounts of legal work.

Trends Pushing Globalization

- Globalization of the financial markets.
- Demand by clients in major financial and commercial centers for legal services in multiple countries in respective individual matters or more generally.
- Relaxation of restrictions in foreign countries against lawyers from those countries being partners with or employed by law firms from the Home countries.
- Demand by clients that law firms have significant size to deal with major matters in multiple jurisdictions.
- Demand by clients for seamless services of equivalent quality across national borders.
- Enhanced communication capabilities.
- Competition from an increasing number of law firms with global practices.
- Competition from international accounting firms.

PART I: GLOBALIZATION

The Rise of International Deals

When the *American Lawyer* tracked European mergers and acquisitions in 1996, Shearman & Sterling had worked on just four deals and Simpson, Thacher & Bartlett had done five. By 1999 the value of European M&A deals approached \$1.3 trillion. Shearman & Sterling handled at least 46 deals by the end of 1999, and Simpson, Thacher & Bartlett, the second most active U.S. firm, had already handled 34 European transactions. Steven Davis, an M&A partner at LeBoeuf, Lamb, Greene & MacRae, stated that, "the European Union is really setting up policies to encourage a single market" and "that's driving a lot of consolidation." Davis Polk's John McCarthy added that, "there is a whole separate current of deregulation occurring across lots of industries, including industries that are consolidating, like Telecom, causing markets to look to do M&A." Steven Davis concluded by saying, "there is also an emerging global market."¹

The Global Three: Coudert Brothers, Baker & McKenzie, and White & Case

The notion of a global practice is not new: Coudert Brothers was founded in the in 1853 and is "a truly international law firm dedicated to providing legal advice on international business transactions and dispute resolution in the major business and financial centers around the world."² Coudert's first non-U.S. office was opened in Paris in 1879, and Coudert was the first U.S. firm to establish an office in Hong Kong (1972), Singapore (1972), Beijing (1979) and Moscow (1988). The firm maintains that "Coudert attorneys are qualified to practice globally in a wide range of jurisdictions, and a multitude of languages."³ We begin with a short analysis of Coudert, Baker & McKenzie and White & Case, three multi-office law firms with international practices.

¹ See Anna Snider, *American lawyers on the move: US law firms seen in lead on both sides of European deals*, N.Y.L.J., Nov. 15, 1999, at S6.

² Coudert Brothers, *World Wide Offices—Firm Overview*.

³ *Id.*

Headquartered in New York, Coudert Brothers has approximately 750 lawyers worldwide, located in eight North American and 20 overseas offices, as well as associated offices in Mexico City, Budapest and Prague.⁴ Coudert claims to be "a world law firm with partners from many nations – not simply an American law firm with foreign offices."⁵ Coudert has a relatively smaller network of offices than do White & Case and Baker & McKenzie. For example, its large Latin American practice is managed out of New York and Mexico City, with a network of local counsel distributed among 20 countries.⁶ Coudert has increased in size approximately 50 percent over the past three years. During that period of time they have acquired or promoted 220 lawyers into the partnership. The firm is governed by a managing partner and a five-person executive committee. The managing partner devotes 70 percent of his time to administration and travel among the firm's approximately 30 offices.⁷ The firm attempts to integrate further by having regular regional meetings at least twice a year. They use an internal communication system that is described as "hub and spoke." There are three hubs for the dissemination of e-mail and the communications system has been described as a "seamless linking."⁸ Coudert Brothers seeks to find those partners who are capable of generating considerable practices for others to service.⁹ They maintain that over the years they have accumulated a depth of talent and breadth of experience. In addition, their communications system is regarded by them as a "key element of our success"¹⁰ and is, from their point of view, a valuable service that they provide. Their offices are linked by an around-the-world, round-the-clock telecommunications system for voice and

⁴ Interview by Judah Best with Managing Partner, Coudert Brothers, May 2001.

⁵ *Id.*

⁶ See J. V. Beaverstock, R. G. Smith & P. J. Taylor, *Geographies of Globalization: U.S. Law Firms in World Cities*, 21 *Urban Geography* 95, 113 (2000) [hereinafter, *Geographies of Globalization*].

⁷ Interview by Judah Best with Managing Partner, *supra*, n. 4.

⁸ *Id.*

⁹ *Id.*

¹⁰ Coudert Brothers Promotional Materials, *supra* note 2 at 4.

data services. "But most importantly" they maintain, they are "linked by common training and personal friendships built from the experience of working together as one firm."¹¹

Baker & McKenzie is the largest law firm in the world and is the most globalized, with 1,800 lawyers working outside the U.S. "They are the law firm with the longest global pedigree, having originally grown internationally in the 1950s and 1960s to service the outflow of U.S. investment across the world."¹² Baker & McKenzie are intrinsically global in their organization. The Chicago office is not referred to as the firm's headquarters: Their publicity material identifies Chicago as merely the "founding office of the firm." Indeed, Baker & McKenzie has been termed a franchise operation and organized separately in each country in which it practices.¹³

The hundreds of partners all over the world each have an equal say in the policy of the firm. Eight partners form the Management Board of the Executive Committee, which meets regularly in different cities across the world. Baker & McKenzie "Does not have foreign offices, it simply has offices."¹⁴ They have "BakerNet," their internal communication system. This provides instant communication between offices for their various projects and instant access for clients to their lawyers' offices. "Becoming a client of Baker & McKenzie means having global accessibility for transfer of documents, advice and information around the clock and across the globe. BakerNet is organized around three hubs centered on Chicago, serving offices from Toronto to Santiago, London servicing offices from Madrid to Almaty, and Hong Kong, serving offices from Beijing to Melbourne."¹⁵

Finally, Baker & McKenzie operates with a "global network of offices, with each office having strong local roots."¹⁶ There is an attempt to maintain an inherently national nature of each country office as well as providing assistance with international matters.

¹¹ *Id* at 4.

¹² *Geographies of Globalization*, *supra* note 6 at 109.

¹³ See M. Stevens, *Power of Attorney: The Rise of the Giant Law Firms*, 156, New York: Simon & Shuster (1987) [hereinafter, *Stevens*].

¹⁴ Victoria Lee, *Who's Afraid of Baker & McKenzie?* *International FIN. L. REV.*, September 1993, at 9 [hereinafter, *Lee*].

¹⁵ *Geographies of Globalization*, *supra* note 6 at 11.

¹⁶ *Id* at 111.

White & Case has 39 offices in 27 countries. There are 291 partners in the firm, of which the majority are "equity" partners and a small number are "contract" partners. All told there are 1,400 lawyers at White & Case, 980 of them associates. In addition, they have approximately 85 lawyers designated "counsel" or "of counsel." Over the past three years, White & Case has been involved in a merger in Germany acquiring approximately 170 lawyers, a merger in Brussels with 25 lawyers, and in Italy adding 20 lawyers; they have also become involved in a joint venture in Singapore, which added an additional 70 lawyers.¹⁷

White & Case has been on a path of internationalization for over 20 years. In the past year or so, the firm grew an astounding 40 percent. White & Case is managed by a managing partner who is the head of an eight-person Board. The Board is elected by all of the partners and then picks the managing partner, who remains as the day-to-day manager of the firm. Unlike Baker & McKenzie, which has a decentralized global partnership, White & Case operates as a single partnership with New York as the headquarters.

White & Case regards themselves as having a strong name and that they are preeminent in several practice areas: (1) project finance, (2) bank finance, (3) leasing, and (4) international arbitration.

The jury remains out on whether any of these three law firms have achieved the right balance.¹⁸ Baker & McKenzie's critics pointed to their relatively low returns per partner and quality control problems.¹⁹ As a result, the firm has lost key partners in recent years.²⁰ Coudert has shown a particularly low profit per partner record and the loss of key partners.²¹

What, then, are the characteristics of a successful global operation? White & Case has defined a global legal practice as the representation of clients by a law firm in multiple countries ("Foreign countries") other than the one in which the principal office of the law

¹⁷ Interview by Judah Best with Managing Partner, White & Case, in New York, NY (Mar. 27, 2001).

¹⁸ *Geographies of Globalization*, *supra* note 6 at 111-115.

¹⁹ See D. L. Spar, *Lawyer's Abroad: The internationalization of legal practice*, 39 *CA. MGMT. REV.* 8 at 22 (1977).

²⁰ See *Lee*, *supra* note 14 at 9-10.

²¹ See *Spar*, *supra* note 19 at 23.

firm is located (the "Homecountry").²² We suggest that the concept of globalization contemplates a so-called "one-stop" law firm with offices in many countries around the world and which holds itself out as able to practice local as well as American and English law, and is capable of handling a wide variety of legal work for big companies and financial institutions. These three firms, more or less, fit the description. Whether they are successful financially is another matter.

International Expansion of U.S. Firms

Based on 1997 figures of the largest 250 U.S. law firms (as measured by the number of lawyers), 100 had offices outside the U.S. The historical basis for expansion was typically client led. Thus, Citibank opened a Paris office in 1967 and so did Shearman & Sterling. Expansion beyond a single international city began in the 1960s. By 1985 the top 250 U.S. law firms had 124 foreign offices among them. By 1997 U.S. law firms had 368 foreign offices – 307 of those offices are in Western Europe, Pacific Asia or Eastern Europe, and 269 of the 307 offices are found in just 15 cities.²³

Developing A Global Practice

What are the various models for developing a global legal practice? The answer to that appears to vary with the culture of the law firm. Some use correspondent law firms in foreign countries. Others form alliances with law firms in foreign countries. Still others establish offices in foreign countries that are staffed primarily by lawyers from the home country, and there are firms that establish offices in foreign countries staffed primarily by lawyers from the foreign countries. The final model is a merger with law firms in foreign countries. While these are examples of growth, they should not be considered exclusive. In some instances, U.S. law firms have merged with law firms in foreign countries and have established offices as well.²⁴

²² See Duane Wall & Walter Driver, *One Size Doesn't Fit All: Practical Strategic Planning for Law Firms*, (Mar. 15, 2001) (unpublished outline, on file with author) [hereinafter, *Unpublished Outline*].

²³ See *Geographies of Globalization*, *supra* note 6 at 100.

²⁴ See *Unpublished Outline*, *supra* note 22 at 1.

²⁵ See John E. Morris, *Traitor to His Class: Watch Out World*, THE AM. LAW., Jan. 6, 2000.

Many are looking with considerable interest at the merger of New York's Rogers & Wells, Germany's Pünder, Volhard, Weber & Axster and Clifford Chance to create a 3,000 lawyer global firm with estimated revenues of \$1.2 billion during its first full year. Analysis of their background indicates that economics has played the pivotal role in this merger. Thus, for example, Rogers & Wells lost \$2.2 million operating its small London, Frankfurt and Hong Kong offices in 1998, while Pünder was losing money in Hong Kong and barely breaking even in New York. Clifford Chance was squeezing out an 11 percent profit for its 40-lawyer practice in New York and Washington, D.C., which is far below the 40-plus percent margins it was posting in London and Western Europe and far below the profit of such offices as Moscow and Hong Kong.²⁵

Globalization By U.K. Firms

London firms appear bent on a program of globalization. Let's look at several examples:

Lovells, a London-based international law firm previously known as Lovell, White & Durrant, was formed in 1998 through the merger of two London firms, Lovell, White & King and Durrant Piesse, and a subsequent merger in January 2000 with a German firm, Boesebeck Droste. Lovells currently has 1,100 lawyers worldwide in 21 offices, and three associated offices, in Alicante, Amsterdam, Beijing, Berlin, Brussels, Budapest, Chicago, Dusseldorf, Frankfurt, Hamburg, Ho Chi Minh, Hong Kong, London, Milan, Moscow, Munich, New York, Paris, Prague, Singapore, Tokyo, Vienna, Warsaw, and Zagreb. Lovells is very full service, particularly in the U.K. The senior partner of the firm has indicated that Lovells will continue its aggressive overseas expansion and that it believes the expansion is essential to serve globalizing clients. They have been particularly focused on expansion in the past few years because they feel that core European alliances are being forged now, and there will be nothing left later. They have preferred to expand by merging with smaller local firms. Lovells will continue to expand its U.S. presence and does not rule out a merger with a U.S. law firm.²⁶

²⁶ Interview by Mary Cranston with Senior Partner, Lovells (March 2001).

Herbert Smith, with more than 850 lawyers in offices in Bangkok, Beijing, Brussels, Hong Kong, London, Moscow, Paris, Singapore, and Tokyo, is frequently said to have the best litigation practice in London. They have recently announced a contractual alliance with the German firm Gleiss Lutz. There is no clear commitment to merge, but the relationship will give Herbert Smith a presence in major German cities. In January 2001, the firm also announced an alliance with a local Singapore corporate boutique, Arfat, Selvam & Gunasingham. Herbert Smith will continue to grow overseas, but believes in building around its core strengths as opposed to expanding its geographic coverage. They are interested in a merger with a top New York capital market law firm, but say that those firms are not interested in merging at this time. Herbert Smith has a lock step system and an accrual accounting system, which they believe creates serious issues in negotiating a U.S. merger. They believe that continued consolidation and the creation of global law firms is inevitable, and that the compensation and accounting issues will be dealt with.²⁷

Cameron McKenna was created by the recent merger of two large U.K. firms. The firm is full service with particular strengths in banking and finance, corporate, energy, project and infrastructure finance, and property. The firm worldwide has 715 lawyers and offices all over the world with the exception of the United States. The firm has an expanded alliance with a number of firms throughout Europe, including the Netherlands, Belgium, Germany, Austria, France, and Switzerland. The alliance brands itself under the name CMS, and there is a contractual relationship governing referrals and cost sharing. There is a commitment to work toward full merger, but no agreement requiring it. Cameron McKenna is very interested in growing overseas rapidly and is in favor of the gradual approach, where the firms first form an alliance, and if that goes well, proceed to full merger. They are convinced there will be a large U.S.-U.K. merger, but believes there are serious accounting and cultural issues that will make such mergers complicated. Cameron McKenna uses a lock step system moderated by a bonus pool.²⁸

Denton Wilde Sapte is also the product of a recent U.K. merger. It has 850 lawyers and 300 lawyers affiliated through alliance. Offices are particularly in the Middle East.

²⁷ Interview by Mary Cranston with Senior Partner and Partner, Herbert Smith (March 2001).

²⁸ Interview by Mary Cranston with Senior Partner and Managing Partner, CMS Cameron McKenna (Mar. 5, 2001).

They also have a number of alliance partners, including Spain, Germany, Austria, Denmark, Hungary and Sweden. They are a full-service firm with sector strengths in bank and finance, energy, technology and property. They are very interested in further global expansion and see a merger with a U.S. firm in their future at some point, but they are intensely focused on Europe at this time.²⁹

Ashurst Morris Crisp is one of London's top corporate firms, with a stronger U.K. focus than some of the other firms listed above. It has looked to expand by merger and has had extended discussions with Clifford Chance and then last year with Latham & Watkins. This firm has 618 lawyers with ten offices. It is strong in finance, IPOs, management buyouts, and equity capital markets. Ashurst has a lock step and a strong senior partner governance model. It is interested in the United States, but only if there is a very special fit with its existing strengths. They seem less concerned about the expansion of other U.K. firms in Europe believing that steady growth in their core competencies is the more appropriate focus.³⁰

Simmons & Simmons has about 800 lawyers firm wide and offices in Abu Dhabi, Brussels, Hong Kong, Lisbon, London, Madrid, Milan, New York, Paris, Rome and Shanghai. Simmons had an alliance with the Federson firm in Germany, but that firm elected to merge with White & Case. Simmons is looking to fill that hole. It seems very focused on its profit improvement strategy and improving its value proposition for its key clients and less focused on overseas expansion. It is strong in a broad spectrum of practice areas including M&A and capital markets, and has a good reputation in important sectors, including pharmaceuticals, biotech, telecom, and transportation.³¹

Cravath: The Little Swiss Watch

At the other end of the spectrum are the New York law firms that are disinclined to engage in mergers with English firms and have no interest in establishing an international global leviathan. Among these firms is Cravath, Swain & Moore, which is one of the

²⁹ Interview by Mary Cranston with Managing Partner for International Strategy, Denton Wilde Sapte (March 2001).

³⁰ Interview by Mary Cranston with Senior Partner, Ashurst Morris Crisp (March 2001).

³¹ Interview by Mary Cranston with Senior Partner and Managing Partner, Simmons & Simmons (March 2001).

preeminent law firms in the world. The firm was founded in 1919, has approximately 400 lawyers, including 79 partners, and maintains offices in New York, London and Hong Kong only. In a brochure, Cravath "emphasizes the quality of its legal services" and goes on to say that "we are not, and will never try to be, the largest law firm measured by number of lawyers." The brochure states that the law firm stands on its record of success for clients, and that its goal "is to be the firm of choice for clients with the most demanding transactions and cases."

Cravath has one counsel and 79 partners, of which the majority are in New York, two in Hong Kong and two in London. The managing partner has said that there's been a deliberate determination not to grow and that Cravath partners "want to be partners with people we know and trust." The Managing Partner, Robert Joffe, has said that the firm feels it cannot trust lateral partners.³²

Cravath provides services only with regard to U.S. law and takes no interest in practice elsewhere. There are no mergers contemplated, but the firm has a considerable amount of international business that it services for clients that have been with the firm for more than 50 years.³³ They do not feel a need to open an office overseas. If they have a matter that involves the application of German law, they would associate with a local German law firm. Cravath's managing partner has stated that the firm will "go find the best person we can and we'll tell the client that's what we've done." He continued by saying, "We think that's better than telling the client we're using our partner in Berlin because he just happens to be idle."³⁴ It is clear then that one of the countervailing forces towards the seemingly irresistible movement towards cross-Atlantic mergers is an American sense of elitism. Only time will tell whether the Cravath model is outdated or can withstand economic forces driving toward globalization. The question, as always, is, if per partner profits go down, will they change?

³² Interview by Judah Best Best with Managing Partner, Cravath, Swaine & Moore (March 2001).

³³ *Id.*

³⁴ See *The Battle of the Atlantic*, ECONOMIST, Feb. 26, 2000, available in LEXIS, News Library, ECON File.

The Quiet Revolution: Mergers Within the U.S.

We cannot move on without discussing the subject of the quiet revolution, the national mergers within the U.S., because they present the same problems of economics, competition, and threats upon professionalism presented by international globalization. Indeed, these mergers may be a precursor toward international expansion. In the last year, New York's Winthrop, Stimson, Putnam & Roberts, composed of 265 lawyers, merged with San Francisco's Pillsbury, Madison & Sutro, composed of 490 lawyers. Pillsbury Winthrop, LLP, was created with seven offices in California, as well as offices in Connecticut, New York City, Washington, D.C., Northern Virginia, and Palm Beach, Florida, as well as offices in London, Hong Kong, Singapore, Sydney and Tokyo.³⁵ In the same period of time Paul, Hastings, Janofsky & Walker, based in Los Angeles, a 610-lawyer firm, merged with New York's Battle Fowler, a 120-lawyer law firm; Chicago's Winston & Strawn, 607 lawyers, merged with New York's Whitman, Breed, Abbot & Morgan, 178 lawyers; and Cleveland's Squire, Sanders & Dempsey, a 550-lawyer law firm, acquired San Francisco's Graham & James, a 126-lawyer California firm.³⁶

We see many of the same forces for change within the U.S. that are exhibited in the global law firms. Each presents an attempt to produce a firm that can support high profits per partner and also sustained growth.³⁷ In both the domestic and global firms there will be competition with other firms for clients. There will be competition with other firms for lawyers. And, in the early stages, it is apparent that the new giant national law firms are prepared to pay high salaries for particular local lawyers and will pay higher than local

³⁵ Investigation by Judge Joan Irion.

³⁶ See Wendy Becker, Miriam Herman, Peter Samuelson & Allen Webb, *Lawyers get down to business*, THE MCKINSEY QUARTERLY, Mar. 22, 2001 [hereinafter, *Lawyers*].

³⁷ Pillsbury Winthrop explains "some elements" of its growth/merger as competition from large globalized firms, expanding globalization needs of clients, [and a need for] more depth in case practice areas." Pillsbury Winthrop believes that they are competitive in smaller/local offices (citing successful offices in Sacramento, Orange County, Palm Beach, as examples) as well as in their international offices (London, Sydney, Hong Kong, Singapore, and Tokyo.) Investigation by Judge Joan Irion.

standards for associates. While we can all understandably yearn for the Cravath model, with its sound, friendly culture of support for highly-paid lawyers, the question becomes whether a firm that is resistant to growth and expansion like Cravath can continue to survive, particularly in the hot markets of New York and Europe. Can a Cravath, with its slow growth and relatively small opportunity for promotion, compete successfully for associates? Their loss of a valued partner to an English competitor – unheard of in the recent past – may be a harbinger of things to come.

Enter the Big Accounting Firms

In the meantime, the big five accounting firms have announced that they wish to become leading global players in the legal profession. Four of them rank among the top 10 global employers of lawyers,³⁸ and many of the largest law firms in France, Spain, and other European countries are owned by or affiliated with accounting firms.³⁹ The managing partner of one major firm has said that the only thing that saves the large law firms in the U.S. from true competition with the accounting firms is the Securities and Exchange Commission's Regulation S-X⁴⁰ with regard to the requisite independence that auditors must have in order to provide appropriate auditing functions to their audit clients.

³⁸ Graphics from The Hildebrandt Institute:

New Classes of Competitors: Four of the Big-5 Accounting Firms are Among The Top Legal Employers Worldwide

Global ranking by number of lawyers (2000)	Firm	Number of lawyers	Number of countries
1	Clifford Chance	2,840	
2	Andersen Legal	2,784	102
3	Baker & McKenzie	2,767	
4	KPMG	1,900	70
5	Freshfields Bruckhaus Deringer	1,792	
6	PriceWaterhouseCoopers (Landwell)	1,706	100
7	Ernst & Young	1,451	145
8	Skadden, Arps	1,424	
9	Eversheds	1,415	
10	Jones, Day	1,409	
11	Allen & Overy	1,238	
12	Lovells	1,162	

Source: Legal Media Group, IFLR50: The World's Largest Law Firms, 2001

³⁹ See *Lawyers*, supra note 36.

⁴⁰ Interview by Judah Best.

In its report accompanying Amendments to Rule 2-01 of Regulation S-X, the Commission finds the provision of legal services incompatible with the independence required to perform the audit function:

We believe that there is a fundamental conflict between the role of an independent auditor and that of an attorney. The auditor's charge is to examine objectively and report, regardless of the impact on the client, while the attorney's fundamental duty is to advance the client's interest. As discussed in the Proposing Release at greater length, existing regulations, the U.S. Supreme Court, and professional legal organizations have deemed it inconsistent with the concept of auditor independence for an accountant to provide legal services to an audit client. Accordingly, we are adopting the proposed rule as to legal services with a few modifications. Final Rule 2-01(c)(4)(ix) provides that an accountant is not independent of an audit client if the accountant provides any service to an audit client under circumstances in which the person providing the service must be admitted to practice before the courts of a U. S. jurisdiction.⁴¹

The SEC also notes in passing that the large accounting firms are in the process of selling off some of their business because of a variety of dissatisfactions. For example, recently Ernst & Young sold its management consulting business to Cap Gemini Group S.A., a large and publicly-traded computer services company headquartered in France. KPMG has sold an equity interest in KPMG Consulting to Cisco Corporation and is in the process of registering additional shares in its consulting business to sell to the public in an initial public offering. PricewaterhouseCoopers has announced an intention to sell portions of its consulting businesses. And Grant Thornton recently sold its e-business consulting practice.⁴²

Ethics rules prohibiting American lawyers from sharing fees with non-lawyers have also affected the capacity of the accounting firms to compete in the U.S. However, it is clear that accounting firms will continue to hire U.S. tax lawyers and are beginning to form alliances with U.S. law firms. Most notably, Ernst & Young recently financed a new Washington, D.C., law firm specializing in tax law.⁴³ Regulation S-X does not prevent accounting firms from providing tax counseling at least to non-audit clients, and as noted,

⁴¹ Final Rule: Revision of the Commission's Auditor Independence Requirement, Release Nos. 33-7919; 34-43602; 35-27279 (to be codified at 17 CFR Parts 210 and 240).

⁴² *Id.* at 76013.

⁴³ *See Lawyers*, *supra* note 36.

they are paying premium dollars to hire tax counselors to provide this service. It appears that the principal impact of those protections is felt by the medium sized and smaller law firms in the U.S., which depend on being able to provide a variety of counseling services including tax. What is harder to ascertain is the impact of the competition of the large accounting firms in the global market for the provision of legal services to non-audit clients where they are not impeded by U.S. ethical rules.

Professionalism

One of the major concerns in the movement towards globalization is professionalism and the establishment of adequate standards of practice. While all of the law firms interviewed indicated that they have training programs for associates, few had such programs for partners. Where U.S. law firms grow through merger with foreign firms, there appears to be no program underway to ensure the adequacy of the new foreign partners, at least with regard to U.S. professional standards. One firm's managing partner remarked that some of the new partners received as a result of merger are "less sophisticated" than the U.S.-trained lawyers. In the largest of these global firms supervision appears minimal, and training does not appear to be part of the semiannual regional meetings that are used in order to communicate with the new foreign partners. It is also unlikely that a managing partner rushing to maintain relationships with his partners scattered in 30 offices all over the world will have a meaningful role in lawyer supervision. This situation is very close to the problems that were engendered in the early 1980s when American firms were first expanding by branching into other U.S. cities. In most of those cases these branches were merely the acquisition of existing law firms without any home city supervision or additional training. In one such instance a major New York firm branched by acquisition of an existing San Diego law firm. The branch and its parent became embroiled in litigation as a result of an alleged failure of diligence, and costs and embarrassment hung over the firm for years.⁴⁴

While no one wishes it to happen, all of the elements for a repetition of such a professional embarrassment are present in the emerging global law firms. It may well be that establishment of the quality, supervision, and control over professional conduct that is now commonplace in the U.S. offices of major law firms will only come about globally after a similar catastrophe.

⁴⁴ See, *After a \$40m payment, it's not over yet for Rogers and Wells*, THE NAT. L. J., April 14, 1986, at 1.

PART II: ACCESS TO LEGAL SERVICES

Access for the Poor

Despite efforts to provide justice to all Americans regardless of economic status, the poor in America have inadequate and ineffective access to systems of civil justice and dispute resolution. These limitations are the result of insufficient resources, misdirected policies and inconsiderate methods of operations.

Notwithstanding gains made during the last quarter of the 20th century to secure funding for legal services for the poor, these efforts have fallen dramatically short of meeting fundamental legal needs. Legal Services Corporation funding for the last two years has been \$330 million – significantly better than in some recent years when Congress cut LSC's budget, but lower in inflation-adjusted dollars than in the program's early years. LSC has provided funding to local grantees throughout the states. Almost 20 percent of Americans are eligible for LSC assistance; some 80 percent of those eligible are unable to attain legal assistance.

Many states also have provided funding for justice initiatives and substantial sums of money have been generated from interest on lawyer trust accounts, or IOLTA programs. In recent years, IOLTA programs have generated \$100 million per year. While these resources have improved funding and created the ability for some to gain access to legal services where they would not have been able to do so in the past, the funding for legal services for the poor continues to be insufficient. Research, including the 1993 ABA Comprehensive Legal Needs Survey, demonstrates this limitation. Generally, all resources combine to meet about 20 percent of the civil legal needs of the poor.

This insufficient funding also creates divisions in the approaches taken by legal aid providers. Some services provide limited legal support and *pro se* assistance to their clients, who are then expected to proceed without full representation and just do the best they can. Other services restrict intake and accept a small fraction of potential clients, denying any assistance to the rest. Still other providers apply their resources toward impact litigation designed to use the law in ways that shape policies to end poverty.

Funding sources frequently impose limitations on the subject matter of the legal issues that may be addressed, hampering efforts by lawyers serving the poor to fully use the law as a resource. Most notably, the congressional authorization of LSC includes a series of restrictions, not only on the direct use of the funding, but also on the use of funds from other

sources. LSC lawyers, for example, cannot take on class actions, or lawsuits seeking attorney's fees or reapportionment, or dealing with abortion or prisoner rights. Consequently, those who provide legal assistance to the poor must do so within fractionalized offices and a multitude of bureaucracies.

Access to systems of civil justice and dispute resolution is also denied to the poor because of fundamental methods of operation by the courts and dispute resolution forums. Geographically, courts tend to be centralized. While they may be accessible by public transportation in urban areas, courthouses are frequently difficult to reach, particularly in rural areas. Other dispute resolution facilities, such as arbitration and administrative hearing facilities, and even community mediation centers, tend to lack outreach or neighborhood accessibility. In addition to geographic constraints, courthouses and centers for civil dispute resolution tend to operate only during daytime hours of workdays. This limitation makes access particularly difficult for those with child care obligations and the working poor, who are less likely to be excused from work and almost certain to lose money from the job when they are able to leave. While some jurisdictions maintain branch courthouses to help overcome the distance barrier, a notable exception to the centralized courthouse is found in Ventura County, Calif. The court has purchased a large mobile home that tours the county, particularly low-income areas, to bring the resources of the court to the neighborhoods.

Those who are not literate in English or do not speak English are also denied full access to systems of justice. Even though courts provide translation services within the courtrooms, resources to enable people to translate pleadings and procedural explanations are lacking.

Although many lawyers contribute their services to the poor, the legal profession lacks the resources to meet the legal needs of the poor on a *pro bono* basis. Many lawyers have recognized a professional obligation to provide free legal services to the poor, which is frequently cited as a value that distinguishes the legal profession from businesses. ABA Model Rule 6.1 encourages lawyers to provide legal services to the poor and suggests that each lawyer dedicate 50 hours per year to public service.

In spite of the recognition of this obligation and the outstanding level of commitment provided by some lawyers, most do not provide a meaningful level of *pro bono* work for the poor. The average lawyer put in 39 hours of *pro bono* work in 2000 compared to 40 hours in 1999 and 56 hours in 1992 – a decline of nearly a third in less than a decade. And recent dynamics in the practice of law suggest that voluntary *pro bono* service may decline. For

example, the salaries of associates in large firms have dramatically escalated in the past two years. While the current levels of compensation may not be retained in the long run, they pressure new lawyers to commit increasing amounts of time toward billable hours to justify their salaries. Also, an increasing number of lawyers are employed outside of law firms and, in particular, within major multi-national consulting firms. Some of these lawyers are not practicing law, and most are outside of systems that encourage *pro bono* and instill the professional obligation to provide public services to the poor.

The impact of insufficient resources, restrictive policies, limited methods of operations by the courts and dispute resolution mechanisms, and inadequate *pro bono* services provided by lawyers deny the poor access to justice because of their economic circumstances. As a result, the poor are left without recourse in the law, without confidence in the American system of justice, and with the need to resolve their disputes outside of the rule of law. Because equal access to justice is a fundamental core value of the legal profession, the future of the profession mandates a reversal of this trend.

The Cost of Justice

The cost to individuals to seek remedies through the justice system often exceeds, or appears to exceed, the value of those remedies, causing people to proceed without a lawyer, ignore legal obligations, or forego the justice system as a method of resolving conflicts even though they could substantially benefit by exercising their rights.

And indeed, many legal matters do cost more to pursue than they are worth. The cost of a lawyer's services is too high for many people in need of personal legal services and not perceived to be of value, even for those who can pay the expense of those services.

Delivering legal services in the traditional method involves a number of steps that make the function labor-intensive and costly, including marketing, consulting, advising, drafting, negotiating, advocating and litigating. Most of these functions depend on the skills of the individual lawyer and cannot be assigned or outsourced. Lawyers must also manage their practices, continue their education and research aspects of their cases.

In the last quarter of the 20th century, lawyers began to employ a variety of economic measures to reduce the costs of their services. They limit their time for research by specializing in niche roles. They outsource client development through advertising and participation in lawyer referral services. They leverage their time through the use of paralegals and office assistants. They have automated, and rely on boilerplate forms and

standardized pleadings. Nevertheless, the individualized nature of each specific case requires the lawyer's time and attention, resulting in costs that are beyond value in many instances.

The costs and perceived costs of using the justice system combine with the economics of the practice of law to create a latent legal marketplace where people of all economic status fail to employ that system. The future of the legal profession requires the delivery of legal services in ways that are cost effective so that matters are addressed and disputes resolved within the rule of law.

Pro Se Representation

Although statistical information across state boundaries is limited, it is likely that most court matters involve traffic violations, misdemeanor charges, landlord/tenant disputes, collections or small claims cases where at least one of the litigants appears before the court without a lawyer. Hence within the courts overall, *pro se* is the rule rather than the exception.

Pro se litigants in these settings are more likely to be defendants, tenants or debtors who did not choose to be in court at all, but who are summoned to appear and given the opportunity to defend. They lack a trained advocate and are subjected to the authority of the courts, rather than viewing the courts as resources for conflict resolution or solutions to legal problems. They face prosecutors, *pro se* landlords skilled in the procedures to collect rent, or the landlord's counsel, and lawyers representing companies in high volume collection matters.

For family law matters, the paradigm is shifting from one where most litigants were represented in court by a lawyer to one where many litigants proceed *pro se*. In some jurisdictions, particularly those in western states such as Arizona and California, *pro se* is now the dominant method of divorcing, with legal representation generally limited to those cases with substantial property interests or disputes involving the interests of minor children.

In most circumstances, people lack resources to advise them of the risks, consequences, benefits or detriments of proceeding with or without a lawyer. Some research indicates that family law *pro se* litigants are challenged by the procedure, but believe they are capable of doing an acceptable job without a lawyer, although in some instances, litigants did not take advantage of opportunities to obtain temporary child support prior to a final hearing and did not fully appreciate the tax consequences of their dissolution agreements.

People proceed *pro se* for different reasons. Some cannot afford a lawyer and have no economic alternative. Some proceed *pro se* because the cost of hiring a lawyer exceeds the value of that which is at issue, such as traffic court defendants, tenants who are planning to move, or debtors who need to enter into a payment schedule.

And others, such as people seeking a divorce, may proceed *pro se* because they believe they can navigate the system and accomplish their legal matter suitably without a lawyer and the associated costs. The considerations in these latter instances involve the complexity of the matter, the significance of that which is at issue and the jeopardy, or opportunity to return if the matter is not done properly in the first place. These considerations are then weighed against the costs and benefits of proceeding with the representation of a lawyer.

Approaches to *pro se* litigants taken by the courts and other forums of dispute resolution and by the legal profession are mixed. Some forums facilitate *pro se* representation and others impose barriers that deny effective access to justice.

To the extent that courts and other forums of dispute resolution are accustomed to *pro se* litigants, those forums tend to be administered in ways that accommodate the fundamental needs of the litigants. They process the matters in ways that foster resolution, albeit often with great expediency and minimal standards of due process. But when *pro se* litigants appear in forums otherwise dominated by lawyers, they may be viewed as disruptive. They are often held to the procedural standards applicable to and expected of trained advocates, even when these obligations prevent the *pro se* litigants from getting their stories told as they attempt to present their cases or offer their defenses. Lawyers facing *pro se* litigants in an adversarial setting may demand as part of their litigation strategy and obligation to their clients that *pro se* litigants comply with the rules of the court.

In response, some courts are providing resources to prepare *pro se* litigants to comply with the procedural requirements of their cases. Court staff facilitators and self-help service centers have emerged to give individual, hands-on assistance to anyone requesting their information and direction. Lawyers are also responding to the needs of *pro se* litigants, as they unbundle their services. By providing isolated or discrete functions of the lawyering process, such as legal advice, document preparation or negotiations, lawyers serve as a resource to *pro se* litigants who may otherwise depend on less reliable alternatives. In some instances, the courts provide *pro se* litigants with referral information on lawyers who are willing to provide unbundled services.

Technology

Technology in general and the Internet in particular are resulting in dramatic changes in the delivery of personal civil legal services. Technology is facilitating enhanced avenues of access to legal services and forums of dispute resolution, redefining aspects of the practice of law and restructuring legal institutions. Limitations on the capacity of technology to effectuate these changes result from policies that reflect an unwillingness to accommodate innovations. These policies may conflict with consumer demands for the technology-based services.

The Internet creates a forum to enhance client development far beyond current mechanisms. Methods currently include: 1) individual firm or lawyer web sites, 2) on-line directories, 3) online lawyer referral services, 4) multi-functional information and advice sites, and 5) case-bidding or matching services.

Individual law firm web sites permit a lawyer to provide potential consumers with far more information about the firm's capabilities than any other media. The information is provided at all times at all places at less expense than virtually any other client development vehicle.

Beyond web sites, lawyers use the Internet by participating in a variety of on-line vehicles that are sometimes similar to off-line mechanisms and sometimes unique to the Internet. Simple online lawyer directories allow those with legal needs to cross reference the legal subject matter with the jurisdiction and obtain information about participating lawyers. Lawyer referral services have begun to develop web sites and create another option for potential clients. They sometimes require lawyers to meet objective standards in order to participate on the referral lists, giving viewers a measure of assurance that the lawyers are competent.

An online delivery mechanism that has emerged as a result of the Internet is case-bidding, which matches those who need legal services with those who are willing to bid on those services. Case bidding is a modification of RFPs commonly used when corporate clients select firms for specific legal services at a determined price range. The Internet facilitates this process for those with personal legal needs who do not otherwise have ready access to information about legal services or the costs of lawyers. Potential clients post information through the bidding service. Participating lawyers can then obtain the information and decide whether they are interested in taking the case. If so, the lawyers make a bid that is presented to the potential clients. Clients then decide whether to pursue the

match. This method of client development is simply not feasible outside of the Internet. It is also an example of an innovation that challenges the legal profession's willingness to use technology to change the delivery of legal services.

The Internet also has the potential to convey information about the capacity of individual lawyers and firms from perspectives other than the firms themselves. Consumer feedback mechanisms have emerged throughout the Internet. Objective ratings and reviews are available for products such as vacuum cleaners and detergents, while subjective opinions are shared for everything from books to mortgage companies. Lawyers should expect that the ratings provided by Martindale-Hubbell will be but one small barometer of their services, standing next to broadly posted client feedback detailing the level of care, overall satisfaction and results of individual files.

Another impact the Internet has on client development is the ability to relegate legal services to one of a series of needs that a person may have as a result of a life transition. For example, a person who decides to end a marriage may need the services of a lawyer as well as a realtor, financial advisor, mental health counselor and spiritual advisor. Similarly, someone incapable of appropriate personal budgeting and money management may need a lawyer for a bankruptcy, as well as a debt counselor and, perhaps, a substance abuse counselor. Myriad services no longer need to be centered on the provider, but can now be focused on the needs of the client/customer/patient. Web sites can seamlessly connect clients to the services they need. While the organized bar is divided on the issue of multidisciplinary practices, the Internet facilitates a similar result for the consumer without the creation of integrated practices or joint businesses.

New technologies delivered over the Internet are restructuring legal services in ways that not only create greater efficiencies in providing legal services, but also simultaneously limit, expand and redefine the role of lawyers who provide those services.

For example, document assembly creates an environment that gives the consumer the ability to complete documents, such as pleadings, that are relatively complex, by asking the consumer a series of relatively easy "yes" or "no" and fill-in-the-blank questions. The responses are then electronically formulated in a way that result in the necessary documents for the legal matter. The technology does the "translation" that had been the function of the lawyer.

Data transfer allows digital documents to be transmitted over any distance nearly instantaneously and therefore facilitates electronic filing of documents with the courts. While

this function reduces the time it takes a law firm to make a physical filing, it can be so simple that it doesn't require the law firm at all. A client can file his or her own documents, if not with desktop equipment then through a copy center or currency exchange such as those that now provide faxing services.

The commoditization of legal services has been demonstrated in various ways in recent years, most notably through over-the-counter software that enables people to prepare their wills and other basic legal documents. More recently, the concept of using technology to provide legal products, or productization, has expanded. Proprietary brief banks are available where clients can obtain legal memoranda on issues within the topics of the banks. Some major firms have dedicated resources to creating legal data banks that allow subscribing clients to access information and answer many of their own legal questions.

Expert systems allow consumers to answer a series of questions that then provide screening, intake or some degree of information that advances the consumer's legal matter. For example, a high volume law firm or legal aid service may have potential clients answer a series of questions that result in a determination of whether the individual qualifies as a client. In the case of a private firm, that screening may include matching with a series of protocols imposed by the firm. In the case of legal aid, it may involve means testing and income qualifying. Experts systems may assist in the threshold determination of legal rights, such as whether the person will be able to obtain an order of protection in a domestic abuse case or whether the person has valid defenses in eviction.

The Internet is using neural networks to answer questions, including legal questions. Sending out bots to locate sites that are responsive to questions and producing the results, these networks also internalize those results and use them when the same question is asked another time. This way, the network feeds its own information needs and expands its abilities to be responsive. (See askjeeves.com for an example).

Perhaps most important, technology enables lawyers to redefine their services. As noted, technology creates document assembly and thereby enhances form preparation. It provides data transfer and thereby economizes case filing. It takes simple, although important, legal services and allows the clients to do them themselves. It facilitates the functions of screening and intake. And it allows for mechanical searches resulting in the identification of important information.

But nowhere does technology supplant the role of the lawyer who adds value to the client by providing knowledge, judgment and wisdom. Technology expands affordable

access to legal services and provides lawyers the opportunities to seek justice for all. The challenge to the legal profession is to make this role the centerpiece of its cultural norms.

Not only are the roles of lawyers redefined by technology and the Internet, but so too are forums of dispute resolution. Just as the Internet enables clients to complete transactions through the use of distance lawyering, without ever meeting those who perform the services, it also enables courts and dispute resolution forums to use technologies in ways that enhance current operations and redefine methodologies of core functions.

Some courts now accept electronic case filings. Briefs are filed on disks and court files are available on the Internet. However, beyond the automation of the court systems, the Internet is facilitating completely new forums of dispute resolution. Specialty forums have emerged to resolve narrow issues. For example, a small number of entities have been authorized to arbitrate domain name disputes online. A forum exists to resolve complaints resulting from transactions on the online auction site eBay. Online mediation is enabling disputants to resolve matters outside of the courts and regardless of their distance from one another. In a more traditional forum, Michigan has announced plans for the first cybercourt, where non-jury cases involving technology and high-tech businesses can be handled online instead of in a courtroom. Briefs will be filed on-line, evidence viewed by streaming video, oral arguments delivered by teleconference, and conferences held by e-nail. As Gov. Engler said, "At a time when you can go from idea to I.P.O. at warp speed, we need to have a way to get through the court system at a faster rate."

The Role of the Law

The relationships between lawyers and other service providers and institutions are being redefined in ways that affect the delivery of personal civil legal services. These relationships require examinations of the application of ethical principles to different types of legal services and consumer demand for restructured interaction among various service providers.

The focus of the legal profession's debate on multidisciplinary practice has generally been on legal services provided to business interests, rather than to individuals. The debate involves the propriety of lawyers partnering with non-lawyers to provide a range of services to customers. In the business context, MDPs would provide services such as accounting and consulting alongside the legal services provided by the partnering lawyers. The concerns expressed by those who oppose MDPs is that the services would not be provided with the

protections now extended to legal clients, such as confidentiality and the absence of unacceptable conflicts of interests. The legal profession has precluded MDPs through ethics rules that demand the independence of counsel and through prohibitions of fee sharing and the participation of business structures that give non-lawyers authority over lawyers.

However, individuals could have better access to personal legal services if those services were more widely available and associated with other personal services. If law firms joined with brokerage and banking services, insurance agencies, realtors, tax preparation services, financial planners, and substance abuse and mental health counselors, clients could receive holistic services and lawyers could expand and facilitate client development. Those jurisdictions that permit MDPs may find a significant change in the models providing personal civil legal services.

Holistic personal services are already advancing in the delivery of services to people with low incomes. Lawyers team with social workers, job training programs and housing advocates in efforts to meet the entire needs of clients, rather than proceeding under the belief that resolving an immediate legal problem will be the extent of the necessary relief.

Technology is also facilitating these multi-service approaches, where web sites are focused not on a legal problem but on a life-transition problem, such as the death of a family member or the end of a marriage. While these matters do involve major legal issues, those who experience the problems often need assistance from a variety of types of services. Web sites can seamlessly refer people to resources that address all of their needs.

Restructured delivery mechanisms can provide a broader range of services designed to meet individual needs more effectively than any one of those services could. The delivery of legal services would be enhanced if provided within a holistic context, but those services may not continue to be provided with the full range of protections now inherent in the fidelity of the lawyer-client relationship.

Alternative Dispute Resolution

The emergence of alternative dispute resolution (ADR) has expanded opportunities for people to resolve conflicts, but ADR has limitations that need to be examined.

Historically there have been three methods of dispute resolution: 1) self-help, 2) litigation or arbitration, where a third party decides the disputes, which the disputants are expected to honor, and 3) negotiation or mediation, where the parties decide the resolution themselves, sometimes with the guidance of an independent neutral. Obviously, the

dominant method of resolution in the court system is litigation. Hearing bodies resolving disputes within institutions such as schools and labor unions have also relied on this method. In response to the sense that courts and hearing bodies are slow, cumbersome, complicated, expensive, and sometimes viewed as unjust, alternative dispute resolution mechanisms have become more widely available in recent decades. These mechanisms primarily provide mediation as the alternative method.

A network of public and privately funded community-based mediation and conflict resolution centers has spread throughout the country. Private mediators and, in a few instances, commercial mediation centers have emerged to offer this service as well. For low, or in some cases no, costs, people can arrange for mediation in an effort to resolve their disputes quickly. One of the principles of mediation is that people are empowered to make their own decisions and are then more likely to abide by their agreements..

But mediation of personal disputes has limitations that are not always addressed in its implementation. For example, parties may not come to the table in parity. Spouses may have a dominant/submissive relationship that cannot be overcome as they try to mediate and compromise aspects of a divorce or resolve issues of abuse. Similarly, employer/employee and landlord/tenant relationships are seldom in parity. And the success of mediation frequently depends on the willingness of the parties to engage the process and make good faith attempts to resolve their problems; it is less likely to be a satisfactory alternative if it is mandated, for example as part of a court pre-requisite to a full hearing. Also, mediators may have limited training and education, supervision and experience, particularly those serving in community centers that provide the services free.

Alternative dispute resolution is capable of expanding access to the resolution of conflicts in affordable ways, but should not be considered an appropriate alternative in all circumstances.

Demographics

Demographic factors of the general American population, including age, education, mobility, national origin and race, define the need for personal civil legal services. Populations in various demographics need access to legal services that pertain to their specific issues and need readily available mechanisms to locate those lawyers who are competent and able to provide those services on an affordable basis.

For example, the elderly historically have used personal legal services less than the middle aged. They are less mobile, less likely to divorce, and more secure in their personal finances. On the other hand, the elderly have a variety of specific legal needs as a result of their age, including estate planning and health care issues. In the near future, the baby boomer generation will create substantial demand for elderly law services; but as that generation dwindles, legal needs will shift again.

Similarly, as the general population becomes more literate and well educated, more people are able to proceed *pro se*, or at least contribute toward meeting their legal needs, resulting in a greater demand unbundled legal services. A more mobile population will place greater demands on technology to overcome geographic limitations, enabling people to continue to receive services from the same lawyer regardless of their location or helping them to find a lawyer in the location where they need them.

A larger immigrant population influences the needs for legal services in both immediate and long-term ways. Immigrants need services related to their immigration status, and influxes in particular populations influence residential, workplace and health care settings, which have associated legal issues.

The demographics of the legal profession, including both sheer numbers and ethnic and gender make-up, influence the ability of people to gain access to legal services. For several decades the percentage of lawyers has increased substantially more than the percentage of the general population in America, and the ratio of lawyers to people has steadily increased in recent decades.

Yet the legal profession fails to reflect the demographics of our society. The percentage of women who have entered the profession has increased dramatically in the past 40 years – women now represent nearly 30 percent of the legal profession and about half of all law students, and they have achieved near parity in entry-level positions. But women have not yet obtained proportional roles in leadership positions in the legal profession. They are under-represented in bar leadership, in academia, in the judiciary and in large firm partnerships. Only 15 percent of the partners at large law firms are women, a figure no longer attributable to their "recent" influx into the profession. Further, the annual median salary of women lawyers is 73 percent of men's. Women constitute 31 percent of law school faculty, 6.4 percent of tenured faculty, and 10.4 percent of law school deans. They comprise 42 percent of legal aid lawyers and public defenders.

Racial minorities have an even lower percentage of representation within the legal profession. While the number of minority law students has nearly quintupled over the past three decades (from 5,568 in 1971-72 to 25,253 in 1999-2000), this still represents only about 20 percent of total J.D. enrollment. *Miles to Go 2000*, the ABA Commission on Racial and Ethnic Diversity in the Profession's Report on diversity in the legal profession, using data available up to May 2000, showed that:

1. Minority representation in the legal profession is significantly lower than in most other professions.

- Total minority representation in the profession is about 10 percent.
- Combined African American and Hispanic representation in the profession in 1998 was just 7 percent in 1998, compared to 14.3 percent among accountants, 9.7 percent among physicians, 9.4 percent among college and university teachers, and 7.9 percent among engineers. The only professions with lower levels of African American and Hispanic representation were dentists (4.8 percent) and natural scientists (6.9 percent).
- The United States population is projected to be almost 60 percent "minority" by 2050.

2. Minority entry into the profession has slowed considerably since 1995.

- Nationally, minority representation among law students is holding at about 20 percent, despite the effects of voter initiatives and lawsuits banning affirmative action in law school admissions. However, the growth in minority law school enrollment, which had been steady since 1985, ended in 1995. Over the five years after 1995, minority law school enrollment has increased only 0.4 percent, the smallest five-year increase in 20 years.
- Minority enrollment has dropped significantly in top public law schools in states that have banned affirmative action. In 1999 there were only two African Americans in the first year class at UCLA, and only two African Americans and four Hispanics in the first year class at the University of Washington Law School.
- In 1999, the total number of minority law graduates in the United States dropped for the first time since 1985.

3. The distribution of minority lawyers still differs significantly from that of whites.
 - Minorities are more likely than whites to enter government, public interest and business, and less likely to enter private practice. In 1998 only 49.5 percent of minority law graduates entered private practice, compared to 57.1 percent of whites. African Americans, in particular, are less likely than other groups to enter private practice.
 - Minority women are especially likely to take government and public interest jobs. In 1998, 23.6 percent of minority female graduates entered government or public interest, compared to 18.9 percent of minority men and 15.2 percent of whites. Only 46.5 percent of minority female graduates entered private practice, compared to 52.8 percent of minority men and 57.1 percent of whites.
 - The percentage of minority law graduates entering business has increased substantially, from 6.3 percent in 1987 to 15.2 percent in 1998. As a result, the percentage of minority graduates entering the for-profit sector (private practice and business) has increased. In 1987, 60.9 percent of minority graduates entered the for-profit sector, compared to 72.6 percent of whites. In 1998, 64.7 percent of minority graduates entered the for-profit sector, compared to 70 percent of whites. At the "sector" level, therefore, minority and white career paths are converging.
4. Minority representation in upper-level jobs remains minuscule, especially in the for-profit sector.
 - Minority representation among law partners remains less than 3 percent in most cities, and minority partners tend to be "partners without power," clustered at the bottom of firm management and compensation structures.
 - Minority representation among general counsel in the Fortune 500 is 2.8 percent.
5. Progress has been especially slow for minority women in the profession.
 - Minority men significantly outnumber minority women in most upper-level jobs. Minority women make up less than 1 percent of capital partners in Chicago, and only 1.2 percent of income partners. There is only one minority female general counsel in the Fortune 500, only six minority female federal appellate judges, and two minority female law school deans.

- Law firm attrition rates for minority women are higher than for any other group. Fully 12.1 percent of minority women leave their firms within the first year of practice, and more than 85 percent leave by the seventh year.

6. Minorities in general continue to face significant obstacles to "full and equal" participation in the profession.

- The attack on affirmative action in law school admissions threatens to have a devastating effect on minority applications and admissions to law school. An analysis of law school admissions decisions for the 1990-91 applicant pool found that under a "numbers-only" admissions policy (where admissions are based solely on applicants' LSAT scores and undergraduate GPAs), African American admissions would drop 80 percent, Hispanic admissions would drop 51 percent, Asian American admissions would drop 37 percent, and Native American admissions would drop 55 percent.

- A numbers-only admissions policy also would deny admission to many graduates who could perform well in law school if admitted, pass the bar, and enjoy successful legal careers. A study published in 2000 of more than 1,000 University of Michigan Law School graduates found that minority graduates were admitted to the bar at about the same rate as whites, and enjoyed equally successful careers, as measured by income, career satisfaction and public service.

- Minorities in law firms continue to have difficulty building business among white clients, and gaining access to mentors and training within the firm. Minority women, in particular, feel isolated in white male dominated firms.

These demographic limitations in the legal profession create huge barriers to access, especially when the criminal justice system shows significant disproportionate incarceration of minority youth. In a Building Blocks for Youth Initiative 2000 report, *Justice for Some*, researchers found that about two-thirds of the studies of disproportionate minority confinement showed negative "race effects" at one stage or another of the juvenile justice process. This issue is accentuated with judges, bar leaders and other decision-makers who lack diversity and often the sensitivity and understanding necessary to advance the interests and meet the legal needs of those who are different.

This growing chasm is a significant issue for the legal profession and will become more so as it goes forward.

PART III: THE CHANGING FACE OF PRIVATE LAW PRACTICE

In 1996, Richard Susskind noted in his book *The Future of Law* that changes in technology will fundamentally, irreversibly and comprehensively change legal practice, the administration of justice and the way in which non-lawyers handle their legal and quasi-legal affairs.

Private law practice is squarely in the midst of this change, as technology and numerous other factors are challenging the ingenuity and creativity of lawyers. The good news is that the legal profession is adapting quickly and innovatively, creating new patterns of practice, developing detours around regulatory rules that might stifle growth and competition, finding resourceful methods of handling the increasing costs of practice and overhead, and adopting new tools of management as competition from professional service firms increases.

Solo, small, mid-size and large firms all are transforming themselves through technology. Small firms are using technology to become more flexible and to compete on an even playing field. More practice is being conducted at home or at remote locations. Solo practitioners may be admitted and maintain virtual offices in multiple jurisdictions, both domestic and international.

Solo and small firms, which traditionally have individual clients and provide personal legal services, and thus are more vulnerable to the *pro se* movement, are finding that technology has opened up the latent legal market. Such firms are using the Internet to reach the large group of low- and middle-income consumers. Increasingly, members of the public and prospective clients are requesting unbundled services – limited services from lawyers for discrete single tasks, such as assistance in drafting a complaint or assistance in preparing a memorandum of law, instead of complete legal representation from the beginning to the end of a case. As noted in the Access portion of this report, clients are looking to lawyers to provide cross-disciplinary services as their needs for services arise out of life transitions that may include a need for advice from a team of professionals, from social workers to lawyers, rather than focusing on services from the individual provider's perspective.

Solo and smaller firms have excellent sources on the web to replace the need for libraries and research associates, including sites such as FindLaw, www.findlaw.com,

with a comprehensive index of links to resources in more than 30 practice areas and a growing library of free court opinions and statutory codes. Launched in July 2000, www.lexisone.com, a free service aimed at solos and small firms, features Supreme Court cases since 1790 and selected federal and state cases from 1996, some 6,000 legal forms, the Martindale-Hubbell Law Digest, and a broad collection of links to legal resources. Other sections focus on practice management, professional development, marketing and lifestyle. ("The 10 Best Legal Sites on the Web," Robert J. Ambrogi, Law Technology News, July 23,2001).

Proactive law firms are using some of the following techniques to maintain their relevance and to compete for business in the changing legal marketplace:

- Using the Internet and technology to become more cost effective in providing legal services;
- Becoming more consumer- oriented and client-driven;
- Affirmatively assisting clients who wish to litigate on a *pro se* basis and supplying unbundled legal services for clients who request them;
- Restructuring fee agreements to develop alternatives to the hourly billing rate; and
- Restructuring law offices to reduce overhead costs and unnecessary personnel expenses.

In the field of litigation, more firms are turning to mediation and arbitration as less expensive alternatives to full blown litigation. While some feel this portends a move toward litigation as a specialty practice, and eventual adoption of the British barrister/solicitor model, litigation continues to play a huge part in American law and top litigators are moving innovatively to enhance their offerings.

According to the *National Law Journal*, the latter half of the 20th century saw explosive growth not only in the number of lawsuits brought in the United States, but also in their scope, both as instruments for social change and as tools for battling large corporations. Because the outcome of such lawsuits can often make or break a company, they are termed "bet-the-company" litigation. A *National Law Journal* survey (7/30/01) outlined some of the new areas of litigation and how high stakes litigators continue to adopt new strategies to provide the best possible services to their clients. Survey

respondents identified such growing areas of litigation as intellectual property litigation, pharmaceutical litigation on a mass torts level, employment and environmental claims, and age, sex and race discrimination litigation. The lawyers adapt to multidistrict or multistate litigations by partnering with local firms, using a team management approach, employing technology to transfer volumes of documents and materials in seconds, constant sharing of information, employing top-notch public relations partners, and maintaining constant open communications with clients in a true partnership where both the lawyer and the clients agree on strategy.

Law Firm Growth and Cost Expansion

Increased competition from professional services firms and increased demands from clients for seamless service are also fueling law firm growth and forcing developing of new ways to manage overhead costs.

Gross revenue among the top 100 law firms rose an average of 19.5 percent in 2000, and profits per partner grew an average of 10.2 percent. For the second 100 firms, gross revenues increased an average of 12.2 percent while average profits per equity partner increased by 11.9 percent. San Francisco's Brobeck, Phleger & Harrison's gross revenue rose more than 50 percent, and its partners' take-home pay increased by more than a third. However, the firm has had to grow rapidly to achieve this growth, expanding 60 percent since early 1999. In 2000 alone it made 272 lateral hires, in addition to a class of 65 first-year associates, and it now has offices in 11 cities and pays starting associates a salary of \$135,000, plus a discretionary bonus as high as \$35,000. (*American Lawyer*, July 3, 2001).

One of the ways firms are managing this revenue growth is through de-equitization of partners. In the *American Lawyer* survey, in firm after firm healthy growth in revenue was paired with a decline in the number of equity partners. For example, San Francisco's Heller Ehrman White & McAuliffe last year posted a 33 percent growth in revenue and added 110 lawyers to its associate ranks, while the number of equity partners fell from 144 to 138 and the number of nonequity partners more than doubled to 38. At Morgan, Lewis & Bockius, revenue rose 20 percent with a 20.7 percent decrease in the number of equity partners. New York's Shearman & Sterling froze its equity partnership

at 163 but more than doubled its number of nonequity partners to 24. (*American Lawyer*, July 3, 2001).

Merger and practice-group acquisition were other popular methods for achieving growth in 2000. In 1995 the number of Am Law 100 firms with more than 500 lawyers was 17. Last year it was 45. (*American Lawyer*, July 3, 2001).

New proxy statements filed with the Securities and Exchange Commission show that consulting by professional services firms continues to be a huge growth area – and one in which law firms have yet hardly made a dent. Tax work, employee benefits, M&A due diligence, management consulting, SEC registration statements, litigation support, compliance – these are all potentially fruitful areas for law firms, and areas in which consulting firms increasingly compete, both in the U.S. and internationally. (*American Lawyer*. June 28, 2001)

Another area where firms are expanding is in the development of ancillary services. A *New York Times* article on May 31 this year, “Competition Sprouts One-Stop Law Firms,” noted that as competition among law firms has increased, associate salaries have skyrocketed and demand for "one-stop" shopping has grown, a small but growing number of law firms are using their twin assets of reputation and client base to move into multi-faceted services, adding nonlegal businesses as a way not only to serve their clients but also to lift the bottom line. Firms engaged in such diversification may provide anything from environmental consulting to human resources outsourcing, real estate title services to money management, allowing them to surmount potential ethical concerns by ensuring that consultants and lawyers work on the same side of a transaction, and by carefully complying with rules that govern conflicts of interest and ethics.

In 2000, the legal community saw a huge increase in associate compensation spawned in Silicon Valley as a reaction to the movement of the some of the best and brightest young lawyers to the dot.coms or e-commerce companies. The salary increases in California created a ripple effect that caused law firms in other areas to raise their associate salaries even when no similar threat of associate attrition existed. As a result, large law firms around the country were increasing their annual associate compensation by between \$15,000 and \$35,000.

To handle the slow-down in the economy in 2001, law firms are keeping their first-year associate salaries at levels set in 2000 or at the beginning of 2001, putting an

end to the latest era of massive associate pay raises. (*National Law Journal*, August 2, 2001.) Managing the cost of associates in a slower economy has also created a new pattern of practice – the shifting practice group. A *Legal Times* article on August 8, “Shift in Firm Strategies,” discusses this new approach, where firms teach transactional associates to move from the corporate side to increasingly active groups such as litigation and bankruptcy. An example of this is San Francisco-based Brobeck, Phleger & Harrison, which shifted about 30 associates from its corporate department to areas such as securities litigation and bankruptcy. Additionally, 10 associates at Brobeck have moved into knowledge management, a nonbillable administrative area where associates work on internal projects. The article notes that this is much more likely to occur with the very young lawyers – the first-year through third-year range – when they are still very flexible.

To finance these changes, a number of these firms took on significantly more debt, according to a recent study conducted by Citigroup, the leading lender to U.S. law firms.

Last year, three of the 10 firms surveyed had total "approved debt facilities" of more than \$200 million. None of the firms had that much debt exposure three years earlier. Debt facilities include long-term loans for capital improvements, revolving lines of credit that many firms draw upon early in the year to cover operating expenses while collections lag, and letters of credit firms often have to provide when renting space.

In 1997, four firms had more than \$100 million in total debt facilities. All 10 firms had exceeded that amount by the end of last year. (*Legal Times*, July 16, 2001)

Increased Knowledge Management

Throughout all of this change, law firms in the 21st century are finding that one of the most important aspects of the practice of law is harnessing the knowledge of the lawyers throughout its offices to develop core knowledge management systems and thus provide more efficient services and attract new clients. An example of an innovative system is the Dallas-based firm of Akin, Gump, Strauss, Hauer & Feld’s case-study site, designed as a repository for all future firm case studies. It currently holds one major case with a database of almost every important document in the case and more than a dozen

video clips of Akin Gump lawyers discussing case strategy. (American Lawyer Media, July 23, 2001)

In his *London Times* column of August 7, 2001, Richard Susskind noted the new internet-based networks of lawyers who are now competing with conventional law firms, citing models of virtual teams of specialist, independent, practitioners assembled to conduct particular pieces of work where the team is disbanded on completion. A recent example of this approach is ipath (www.ipath.com), a network of U.S. lawyers, each with impressive credentials and many with experience of working in-house. This method provides efficiencies and costs savings for clients, as well as a more flexible way of life for lawyers.

Another approach mentioned is where clients divide their own legal assignments into discrete packages and distribute some to regular law firms and others to networks of specialists who are more expert or offer better value for money, such as LRN (www.lrn.com), in business in the U.S. since 1994 and used by nearly 200 of the Fortune 500 companies. LRN deploys an international network of 1,700 legal experts who are able to deliver expert legal research from analyses and summaries to surveys.

Very sophisticated firms are now using deal rooms where clients can monitor the progress of their lawyers, review the documents, identify who is doing their work and review costs. Examples are London's Allen & Overy with newchange (www.newchange.com), Andersen Legal's Dealsight (www.andersenlegal.com), Linklaters Clients@Linklaters (www.linklaters.com/english/news) and CliffordChanceConnect (www.cliffordchance.com/connect). LawCommerce in the U.S. (www.lawcommerce.com) aims to create a worldwide standard for deal rooms, a common technology platform. (Susskind, *London Times*, July 17, 2001)

Even firms that are not as sophisticated in information technology, or as well-funded as the top world firms, are using technology systems to increase their efficiency and to meet clients expectation for faster, better, and cheaper. Document management, once a huge burden in large litigation cases and still a problem for many firms, is an area where new systems allow searchable online document depositories to manage the millions of documents firms need. An article in *The Recorder*, August 8, 2001, discusses CaseCentral Inc, a secure, searchable online document repository that had 80 million pages under management in 2000 and a customer base that grew 300 percent in 12

months to approximately 600. Of those clients, about 70 percent are law firms, including more than 60 of the AmLaw 100. In an average case, CaseCentral stores between 500,000 and 1 million documents. Some 35 lawyers and paralegals from at least five law firms or corporations have access to the password-protected Web site. (*The Recorder*, August 8, 2001)

For those firms that have been slower and more tentative in adapting to technology, new businesses are developing less dramatic products, using smaller legal utilities and desktop enhancement to move lawyers to technology use through programs they use all the time. One such utility, Deal Proof 3.0, can read a document and quickly provide summaries of certain arguments, and is designed to make it much easier to absorb long, complex documents such as lease agreements and certificates of incorporation. More than 125 medium-sized and large firms are now using Deal Proof. (American Lawyer Media, August 6, 2001.)

Whatever their technology levels, 77 percent of law firms are now online. In a survey of corporate America on the use of the web to find legal services, nearly two-thirds of those surveyed have gone online to locate outside legal counsel. More than one-third surf the Web for legal services weekly or more often. (*Legal Times*, August 15, 2001).

Hot Areas of Practice

An article in the *Legal Intelligencer*, July 10, 2001, noting trends in law practice, indicated that four practice areas that are still red-hot – intellectual property, technology, entertainment, and labor and employment. The number of lawyers registered to practice before the Patent Office rose more than 20 percent, to 24,100, between April 1998 and June 30, a spokeswoman said. The increase mirrors the growth of the broader intellectual property field, which also includes copyrights, trademarks and trade secrets. (*Chicago Tribune*, July 28, 2000) Also coming up as hot areas are bankruptcy and international arbitration.

QUESTIONS ABOUT THE FUTURE OF THE LEGAL PROFESSION

1. Given that equal access to justice is a fundamental core principle of the legal profession, what opportunities do the changes affecting the profession offer to help make that a reality?
2. Given that provision of legal services is no longer the sole domain of lawyers:
 - What is the role and relevancy of the organized bar?
 - What are the implications for our regulatory system?
 - What, if any, changes must occur in legal education to meet the changing reality of the profession?
3. Given that the law is not just another business or industry, but is the foundation on which society, the justice system and enlightened self-government are founded:
 - Can the legal profession on a global basis preserve its values and character in an increasingly borderless society?
 - Must lawyers continue their role as guardians of the justice system?
 - What is the lawyer's role in ensuring an independent bar and judiciary?
 - Does society care whether the profession provides factual support for its claim that without lawyers democracy would not exist?
4. Given that traditional barriers among the professions are falling because clients find them to be irrelevant, what are the essential elements of the practice of law that must not be ceded to others?
5. Given that society is moving away from a world where clients or users have no choice but to deal with a profession or specialty on the terms set out by that profession or specialty, are there outdated or historical premises that the legal profession must reconsider?
6. Given that law firms that emphasize the business dimensions of practice rather than the professional are shaping their cultures and the profession in a way that is different from the past:

- Can the profession benefit from the experiences of business while still maintaining its professional values?
 - How can the profession replace the eroding levels of pro bono that are driven by the business orientation?
7. Given that the general population is becoming less white and Euro-centric, is the legal profession, which can claim only 10 percent members of color, rendered less effectively and credible in relating to the general population?

NEXT STEPS

In its first year of work, the Committee on Research About the Future of the Legal Profession took as its charge to develop a report on the current state of the profession to serve as a platform to examine the challenges and opportunities of change and how the legal profession can and should define its own future.

In the upcoming year, the Committee will work with legal futurist, Stuart Forsyth, to begin to define the preferred future of the legal profession, including proposed action steps that would foster that future. The Committee will:

- Scan extensively, particularly outside the profession, for major trends that will affect the future of the profession
- Seek widespread input from inside and outside the legal profession
- Develop alternative futures for the legal profession
- Choose the preferred future of the legal profession
- Engage in back-casting, focusing on a particular future and tracing back how it would have come to be and what changes must have occurred at each step to create that future
- Determine action steps that would foster the preferred future.

The members of the Committee are listed below.

Robert J. Grey, Jr., Chair
Louraine C. Arkfeld
Judah Best
Mary Bailey Cranston
M. Joe Crosthwait, Jr.
Suzanne Elaine Gilbert
Joan K. Irion
Myles Lynk
Ramon Mullerat
Lonnie A. Powers
E. Thomas Sullivan
Peter M. Suzuki
Theodore R. Tetzlaff
James Lee Thompson
H. Thompson Wells, Jr.