

Public Service Implications of Evolving Law Firm Size and Structure

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Large law firms have grown rapidly in recent years and this growth has been accompanied by increased rationalization, specialization, hierarchy, meritocracy, diversity, and market orientation. As firms have grown in size they have simply outpaced earlier methods of monitoring and coordinating personnel, recruiting associates, and generating revenues (to compensate the larger staff).¹ To survive, firms have been forced to adapt by slowing growth, generating new sources of income, remolding existing governance structures, or accepting decreased—or at least different—profit distributions.

Many observers, concerned about the commercialization of law practice, regard these developments as inimical to lawyers' commitment to public service and conclude that there has been a decline in the pro bono activities of law firms. Wary of falling into the easy assumption that things have declined since the good old days, we seek in this chapter to test the accuracy of these assertions. We shall attempt to assemble some information that illuminates the connection between firm growth and pro bono work.

We first put our inquiry into context by reviewing the growth and transformation of the large law firm in recent years. We then sketch the perceptions of decline into commercialism that have accompanied the large law firm since its founding a century ago. Finally, we present, in

summary form, some data on the pro bono activities of a set of large firms.

The Emergence of the Big Firm²

The big firm and its distinctive style of practice emerged around the turn of the century. The break from earlier law practice can be depicted by a schematic comparison under the six headings of partners, other lawyers, relations with clients, work, support system, and new kinds of knowledge. Any of these indexes of the big firm can be found apart from the cluster, but we argue that the cluster hangs together to give the big firm a distinctive institutional character—a character that is changing as these features are rearranged.

In the big law firm, the loose affiliation of lawyers sharing offices and occasionally sharing work for clients is replaced by an environment in which clients "belong to" the firm rather than to an individual lawyer. The proceeds, after salaries and expenses are paid, are divided among the *partners* pursuant to an agreed-upon formula.

Unpaid clerks and permanent assistants in the big law firm are displaced by a select group of academically trained associates (as they came to be called), or *other lawyers*, chosen on grounds of potential qualification for partnership. These associates are salaried lawyers who are expected to devote their full efforts to the firm's clients. To provide them with the necessary incentives, the firm holds out the prospect of eventual promotion to partnership, but only after a prolonged probationary period during which the associates work under the supervision and tutelage of their seniors and are gradually assigned increased responsibility. As we have argued elsewhere, the presence of a steady supply of highly qualified but inexperienced young recruits is one of the key ingredients of the big law firm.³ The gap between their certified promise and their untested quality of performance underlies what we refer to as the "promotion-to-partner tournament."

Large firms represent large corporate enterprises, organizations, or entrepreneurs with a need for continuous (or recurrent) and specialized legal services that could be supplied only by a team of lawyers. *Relations with clients* tend to be enduring. Such repeat clients are able to reap benefits from the continuity and economies of scale enjoyed by the firm.

The *work* of large firms involves specialization in the problems of particular kinds of clients. It involves not only representation in court,

but also services in other settings and forums. The emergence of the large firm represents the ascendancy of the office lawyer and the displacement of the advocate as the paradigmatic professional figure. Litigation no longer commands the energies of the most eminent lawyers. By 1900, Robert Swaine concluded, "the great corporate lawyers of the day drew their reputations more from their abilities in the conference room and facility in drafting documents than from their persuasiveness before the courts."⁴

The emergence of the big firm was associated with the introduction of new office technologies, a new *support system*. The displacement of copying, clerks, and messengers by the typewriter, stenography, and the telephone greatly increased the productivity of lawyers.

The proliferation of printed materials—reports, digests, treatises—rendered obsolete the earlier style of legal research and required mastery of *new areas of specialized knowledge*. The acquisition of legal skills changed, too. Between 1870 and 1910 the portion of those admitted to the bar who were law school graduates rose from one-fourth to two-thirds.

The blending of these features into the big law firm as we know it is commonly credited to Paul D. Cravath. In the first decade of this century, he established the "Cravath system" of employing outstanding graduates straight out of law school on the understanding that in return for a salary, training, a "graduated increase in responsibility," and the possibility of progressing to partnership after an extended probationary period, young lawyers would work exclusively for the firm and eschew practices of their own.⁵ Though most fully articulated by Cravath, many elements of the big firm had been around for several decades.⁶ Cravath's innovation was to add the promise that, with the right credentials, hard work, and perseverance, the younger attorney's relationship to his or her mentors would eventually mature into an enduring and permanent partnership.

Innovative organizers elsewhere came up with similar combinations of these elements. Wayne Hobson noted that "[Louis D.] Brandeis ... was the true pioneer of modern forms of law firm organization in Boston."⁷ At Warren and Brandeis he hired Harvard graduates of high academic achievement, paid them salaries (an innovation), and "was the first Boston lawyer to organize his office on the basis of taking bright young men quickly into partnership."⁸

The core of the big firm, we submit, is the promotion to partnership. Partners and junior lawyers are not equals, but are arranged in a hierarchy with command and supervision in the former. But the latter are neither

transient apprentices nor permanent employees. They are inchoate peers, fellow professionals of presently immature powers who have the potential to achieve full and equal stature.

Firms can offer this promise only when they are confident that they can attract sufficient work to keep these young lawyers busy. That is, the senior lawyers have to have either clients who produce more work than the senior lawyers can handle themselves or a reputation that will attract such clients. Reviewing early firm histories, Thomas Pinansky notes that typically it was association with a corporation or a "super-capitalist" that provided the stream of work, and "the publicity from serving such clients and the expansive contacts of these clients result[ed] in a growing network of contacts for the emergent firm."⁹ For example, "when the law firm of Shearman and Sterling was established in 1873, Jay Gould promised Shearman that he would take his legal business to the new firm. . . . Gould was more than a rich client who assured the new firm a few large fees. At the time of the establishment of Shearman and Sterling, there were sixty-three cases pending involving Jay Gould. One year later, the figure had risen to ninety-seven."¹⁰

The frenetic pace and intense specialization of the large firm transformed the world of the younger lawyer. Conventional understandings of professionalism were violated by reducing young lawyers to anonymous employees, demanding a monopoly on their energies, and forbidding them independent relations with clients. This diminution of professional identity and status troubled many junior lawyers. William H. Dunbar, in his ninth year at Warren and Brandeis, complained that his name was acquiring "none of the value which seems to constitute the chief capital of a professional man." While he acknowledged the pecuniary benefits of his status, he remained troubled by the fact that it was the firm's, not his, reputation that benefited from "the success of all our joint labors."

During these early years law firms grew in size. In every city, the number of big firms (as big was then defined) grew at an increasingly rapid rate. And over time there were ever bigger firms: first in New York, then in other large cities, then in smaller cities.. This progression can be seen in Hobson's compilation of the number of firms with four or more lawyers, which grew from 15 in 1872, to 39 in 1882, to 87 in 1892, to 210 in 1903, to 445 in 1914, to "well over 1,000" in 1924.¹² The large law firm—and with it the organization of law practice around the promotion to partnership pattern—became the industry standard. Gradually, the older patterns of fluid partnerships, casual apprenticeship, and nepotism were displaced.

Circa 1960: The Golden Age of the Big Law Firm

By World War II, the big firm had become the dominant kind of law practice. It was the kind of lawyering consumed by the dominant economic actors. It commanded the highest prestige. It attracted many of the most highly talented entrants to the profession. It was regarded as the state of the art, embodying the highest technical standards. In the postwar years this position of dominance was solidified.

To get a reading on the changes over the past generation, we develop as a baseline a portrait of the big firm in its "golden age"—before the transformation that is now under way—of the late 1950s and the early 1960s; when big firms were prosperous, stable, and untroubled. The form had been tested; it was well established; it exercised an unchallenged dominance. It was a time of stable relations with clients, of steady but manageable growth, of comfortable assurance that an equally bright future lay ahead—which is not to say that its inhabitants did not look back fondly to an earlier time, when professionalism was unalloyed.

Circa 1960 New York City was home to a much larger share of big firm practice than it is now. In the early 1960s, there were twenty-one firms in New York with fifty lawyers or more, and only seventeen firms of that size in the rest of the country outside New York.¹³ A few years earlier, the largest firm in New York (and the country) was Shearman & Sterling & Wright, with thirty-five partners and ninety associates, a total of 125 lawyers. Three other Wall Street firms had over one hundred lawyers. The twentieth-largest firm in New York had fifty lawyers.¹⁴

To examine this golden age, we compiled data from the *Martindale-Hubbell Directory of American Lawyers* on two sets of firms: Group I consists of fifty firms that were among the largest in 1986; Group II consists of fifty smaller but still large firms ranked roughly between 200th and 250th in the United States in 1988.¹⁵

We were able to examine the sizes of thirty-five firms from each group in 1955 and 1965.¹⁶ In 1955 our thirty-five Group I firms ranged in size from seven to eighty-four lawyers, with an average size of forty lawyers. By 1965 their size ranged from thirteen to 112 lawyers, with an average of 62.6. The thirty-five firms in Group II ranged from six to thirty-five lawyers in 1955, with an average of 15.8; in 1965 they ranged from eight to forty-six, with an average of 25.1 lawyers. This was a period of prosperity and manageable growth for big firms. Over the decade ending in 1965, the Group I firms that twenty years later figured among the fifty largest

grew at an annual rate of 5.3 percent. The Group II firms grew at an annual rate of 5.5 percent.¹⁷

Firms were generally located in and identified with a single city. An earlier wave of European and Washington, D.C., offices had been largely abandoned.¹⁸ "Formation [in 1957] of a nationwide [sic] law firm with offices interlocking in Illinois, Washington, D.C. and New York" was startling, "so unusual that it had to be approved in advance by the Bar Association."¹⁹

Hiring

Firms in this era were built by promotion to partnership. Lateral hiring was almost unheard of, and big firms did not hire from one another. Partners might leave and firms might split up, but it did not happen very often.²⁰ Hiring of top law students soon after their graduation was one of the building blocks of the big firm. Most hiring was from a handful of law schools, and walk-in interviews during the Christmas break were the norm. Starting salaries at the largest New York firms were uniform—\$4,000 in 1953, rising to \$7,500 in 1963.²¹ The going rate was fixed at a luncheon attended by managing partners of prominent firms and held annually for this purpose.²²

Historically, the big firms had confined hiring to white, Christian males. Few blacks and women possessed the educational admission tickets to contend for these jobs, and although numerous Jews did, with a few exceptions they, too, were excluded.²³ This exclusion began to break down after World War II and accelerated after 1960. Jewish associates were hired and some moved up the ladder to partner. The lowering of barriers to Jews was part of a general lessening of social exclusiveness. In 1957, 28 percent of the partners in the eighteen New York firms studied by Smigel were listed in the Social Register; by 1968 the percentage had dropped to 20 percent. But blacks and other minorities of color were still hardly visible in the world of big law firms. In 1956 there were perhaps eighteen women working in large New York firms—less than 1 percent of their total complement of lawyers. As late as 1968, Cynthia Fuchs Epstein estimated, "only forty women were working in Wall Street firms or had some Wall Street experience."²⁴

Promotion and Partnership

Only a small minority of those hired as associates achieved partnership. Of 462 beginning associates hired by the Cravath firm between 1906 and

1948, only 44 (just under 10 percent) were made partners.²⁵ Cravath may have been the most selective, but it was not out of line with other firms. In 1956 Martin Mayer reported that the "chance of becoming a partner ... varies from one in seven to one in fifteen, depending on the firm and the year in which he joins it."²⁶ Spencer Klaw, writing two years later, provides a more optimistic assessment that partnership is achieved by "perhaps one out of every six or seven."²⁷

The time that it took to become a partner varied. For New York lawyers who became partners around 1960, the average time seems to have been just under ten years.²⁸ Outside of New York the time was closer to seven years.²⁹ Throughout the decade of the 1960s, the time to partnership became shorter.³⁰

One of the basic elements of the big firm is the "up-or-out" rule that prescribes that after a probationary period the young lawyer will either be admitted to the partnership or leave the firm. In this model there can be no permanent connection other than as a partner, though it is easy to overestimate the rigor with which the up-or-out rule was in fact applied.

For associates who did not make partner, firms undertook outplacement, recommending them for jobs with client corporations and smaller firms.³¹ Ties might be maintained as the firm referred legal work to lawyers who left or who served as outside counsel to the corporation. And although departure from the firm was generally decreed by the up-or-out norm, some lawyers were permanent but not partners.

Partners were chosen by proficiency, hard work, and ability to relate to clients.³² But in many cases there was some consideration of the candidate's ability to attract business." And selection depended on the perceived ability of the firm to support additional partners.³⁴ Achieving partnership, the "strongest reward," meant not only status but security and assurance of further advancement: "they... know that they have tenure and feel certain that they will advance up the partnership ladder."³⁵ There was certainly pressure to keep up with one's peers, but competition between partners was restrained. In this environment, "Admission to the partnership of a leading firm was a virtual guarantee not only of tenured employment but of a lifetime of steadily increasing earnings unmatched by a lawyer's counterparts in the other learned professions."³⁶

But this should not lead one to conclude that the classic pattern of dividing the proceeds of the big firm partnership was some approximation of giving each partner an equal share—or a share by seniority (the so-called "lockstep" system).³⁷ By circa 1960 the prevailing practice was to

divide profits according to individualized shares, rather than a norm of equal participation.³⁸

Work and Clients

The work of the big firm was primarily office work in corporate law, securities, banking, and tax, as well as some estate work for wealthy clients. Divorces, automobile accidents, and minor real estate matters would be farmed out or referred to other lawyers.³⁹ Litigation was not prestigious work and was not seen as a moneymaker. Mayer estimated that "litigation ... occupies less than one-tenth the time of a large law firm" and reported that "some firms avoid it entirely."⁴⁰ He described big firm litigation in the early 1960s as involving taxes, contracts, personal injury defense, and defense of corporations and directors from shareholders suits. "But to most large law firms, the word 'litigation' connotes an antitrust suit, not because the number of such cases is large but because each of them represents so enormous a quantity of work."⁴¹ The surge of antitrust litigation tended to elevate the standing of litigators, who had been "overshadowed by office-lawyer partners . . . who seldom, if ever, went near a courtroom."⁴² Where big firms were involved in litigation, it was typically on the defendants' side. Big firms usually represented dominant actors who could structure transactions so that they got what they wanted; it was the other side that had to seek the help of courts to disturb the status quo. Disdain of litigation reflected the prevailing attitude among the corporate establishment: that it was not quite nice to sue.⁴³

Relations with clients tended to be enduring. "A partner in one Wall Street firm estimate[d] its turnover in dollar volume at 5 percent a year, mostly in one-shot litigation."⁴⁴ Many big firm partners sat on the boards of their clients⁴⁵—a practice that had been viewed as unprofessional earlier in the century, and would lose favor later.⁴⁶

As they grew, many firms broadened their client base, becoming less dependent on a single, main client. Corporations had strong ties to "their" law firms; relations tended to be enduring and unproblematic. A 1959 Conference Board survey on the legal work of 286 manufacturing corporations found that "three-fourths of them retain outside counsel on a continuing basis.... Companies most frequently report that 'present outside counsel has been with us for many, many years,' or that 'we are satisfied with the performance of our outside counsel and have never given any thought to hiring another.'⁴⁷

We have no evidence about how many hours people actually worked or billed. Smigel reported, "Some firms believe an associate should put in 1,800 chargeable hours a year and a partner 1,500, with the hours decreasing as the partner gets older."⁴⁸ It was widely believed, perhaps with some basis, that lawyers (especially associates) were not working as hard as they had in earlier times.⁴⁹

Outside New York

Circa 1960, New York still dominated the world of big-time law practice. Big firms elsewhere were constructed along the same promotion to partnership lines, but tended to operate a bit differently. Firms outside New York tended to be more recently founded. There was less departmentalization; lawyers were less specialized, and less supervised. Firm organization was less formal: there was less elaboration of rules about meetings, training, conflicts of interest and so on.⁵⁰ They had a smaller turnover of associates and less up-or-out pressure. Partnership was easier to attain and came earlier.⁵¹ There was more use of such intermediate classifications as junior or limited partners and more lateral hiring.⁵² Firms were also less highly leveraged. The ratio of associates to partners in Smigel's nineteen New York firms was two to one; in his non-New York firms it was one to one-and-a-half associates to one partner.⁵³

For big firms, circa 1960 was a time of prosperity, stable relations with clients, steady but manageable growth, and a comfortable assumption that this kind of law practice was a permanent fixture of American life and would go on forever. Notwithstanding their comfortable situation, many inhabitants and observers regarded the big firm world as sadly declined from an earlier day when lawyers were statesmen and served as the conscience of business.⁵⁴ Echoing laments that have recurred since the last century, partners complained to Smigel that law is turning into a business.⁵⁵ No longer, Mayer reflected, do young associates regard themselves as servants of the law and holders of a public trust; "they are too busy fitting themselves for existence in the 1950s, when efficiency, accuracy, and intelligence are the only values to be sought."⁵⁶

Big law firms enjoyed an enviable autonomy. They were relatively independent vis-a-vis their clients; exercised considerable control over how they did their work; and were infused with a sense of being in control of their destiny.

The Transformation of the Big Firm

The more numerous and more diverse lawyers of our day are arrayed in a very different structure of practice than their counterparts a generation earlier. There has been a general shift toward larger practices.⁵⁷ The number of lawyers working in sizable aggregations, capable of massive and coordinated legal undertakings, has multiplied many times over.⁵⁸ One estimate stated that in 1988 there were 35,000 lawyers at 115 firms with more than two hundred lawyers, and a total of 105,000 lawyers in 2,000 firms larger than twenty lawyers.⁵⁹

Growth

In the late 1950s there were only thirty-eight law firms in the United States with more than fifty lawyers—and more than one-half of these were in New York City.⁶⁰ In 1985 there were 508 firms with fifty-one or more lawyers.⁶¹

Not only were there more big firms, but they were growing at a faster rate. The firms in our Group I (fifty of the largest firms in 1986) grew from an average size of 124 in 1975 to 252 in 1985.⁶² In this period, the average size of our Group II firms (forty-four of the 200th to 250th largest in 1988) doubled, from forty-four to eighty-eight lawyers.⁶³ The average annual growth rate over this ten-year period was 8 percent for Group I and 7.9 percent for Group II.⁶⁴ These rates are considerably higher than the rates at which these same firms were growing twenty years earlier. From 1955 to 1965, the average annual growth rate was 5.3 percent for the Group I firms and 5.5 percent for Group II firms.⁶⁵

In 1960 big law firms were clearly identified with a specific locality, as they had been since the origin of the big firm.⁶⁶ But by 1980, of the one hundred largest firms, eighty-seven had branches. Of all firms with fifty or more lawyers, 56.8 percent were in more than one location and 24 percent were in three or more locations in 1980.⁶⁷ Some of this branching was by "colonization," but most of it involved mergers with firms (or with groups defecting from firms) in the new locality. "Washington has been the favorite site for branches. In 1980, 178 firms from outside Washington had branches there.⁶⁸ But as branching activity has increased, Washington offices have become a declining portion of all branches.

In the 1980s the home office and branch pattern was joined by the genuine multicity law firm.⁶⁹ To capture the dynamic of multicity growth, we compared twenty of the largest firms based in New York City (NY)

and twenty of the largest firms based outside New York City (ONY) in 1980 and 1987.⁷⁰ The twenty NY firms had a total of seventy branch offices in 1980 and ninety-nine branches in 1987. The twenty largest ONY firms had a total of 61 branches in 1980 and 124 branches in 1987. Thus there was a 41 percent increase in branches of NY firms over this seven-year period and a 103 percent increase in branches of ONY firms.

Not only did the number of branches increase, but so did their size. The average size of each branch of a NY firm went from eight lawyers in 1980 to seventeen in 1987. The branches of the ONY firms grew from an average of fifteen lawyers in 1980 to thirty lawyers just seven years later. The growth in branches accounted for 31 percent of the total growth of the twenty NY firms and 69 percent of the total growth of the ONY firms. The percentage of lawyers outside the largest office rose from 15 percent to 21 percent for the NY firms, while doubling from 21 percent to 42 percent for the ONY firms.

We can see that branches grew much faster than main offices during this period. By 1987 there were a number of firms that had a substantial portion of their lawyers away from the largest office. Eight of the NY firms had more than 25 percent of their lawyers outside the main office (up from four in 1980); and seventeen of the ONY firms had more than 25 percent of their lawyers outside the largest office—seven had more than 50 percent outside.

Increasingly, large firms operate on an international basis. Of the one hundred largest firms in 1988, some forty-four had a total of 136 overseas offices.⁷¹ Our comparison of the twenty largest NY and twenty largest ONY firms indicates that the largest NY firms have more overseas branches, but the gap is closing. The twenty NY firms had thirty-nine in 1980 and forty-three in 1987. Their ONY counterparts had nine in 1980 and twenty-one in 1987. Foreign offices tend to be a larger share of the offices of the NY firms (36 percent in 1987) than of the ONY firms (15 percent in 1987).

Over the past generation, there has been a marked movement away from New York City as the nation's legal center.⁷² In 1957 there were twenty-one firms with over fifty lawyers in New York City and only seventeen in the rest of the country.⁷³ In 1980 there were 72 firms of fifty-one or more lawyers in New York State, but in the whole country there were 287.⁷⁴ In twenty years New York City's share of large firms had fallen from more than one-half to less than one-quarter. New York City has retained a somewhat larger but declining share of the very largest firms. In 1987 thirty-two of the one hundred largest firms were based in

New York (down from thirty-six in 1975).⁷⁵ The one hundred largest firms were based in twenty-four cities (up from eighteen in 1975).⁷⁶

Work and Clients

The type of work big firms do has also been changing; there has been a surge of corporate litigation since the 1970s as well as an increase in the number, size, and responsibility of in-house legal departments.⁷⁷ Long-term retainer relations have given way to comparison shopping for lawyers on an *ad hoc* transactional basis.⁷⁸ Corporations that view legal expenses as ordinary costs of doing business rather than as singular emergencies now monitor legal costs, set litigation budgets, demand periodic reports, and require presentations from competing outside firms before awarding new business.

Law practice has also become more specialized. Within large firms, specialization has become more intense and the work of various levels more differentiated.⁷⁹ Much routine work has been retracted into corporate law departments, shifting the work of large outside firms away from office practice and toward litigation and deals.⁸⁰ With more deals, higher stakes, more regulation to take into account, and more volatile fluctuations of interest and exchange rates, there is greater demand for intensive lawyering. The large, contested, or risk-prone, one-of-a-kind, "bet your company" transaction—litigation, takeovers, bankruptcies, and such—makes up a larger portion of the work of big law firms. Since few clients provide a steady stream of such transactions, and those that have them increasingly shop for specialists to handle them, firms are under pressure to generate a steady (or increasing) supply of such matters by retaining the favors of old clients and securing new ones.

Competitiveness

The new aggressiveness of in-house counsel, the breakdown of retainer relationships, and the shift to discrete transactions has made conditions more competitive. Law practice has become more openly commercial and profit-oriented—more like a business.⁸¹ Firms rationalize their operations; engage professional managers and consultants; and worry about billable hours, profit centers, and marketing strategies. "Eat what you kill" compensation formulas emphasize rewards for productivity and business-getting over equal shares or seniority.⁸² There is more differentiation in the power and rewards of partners; increasingly, standing within the firm depends on how much business a partner brings in.⁸³ Rising overhead

costs and associate salaries put pressure on partners. In many firms, partners work more hours with no commensurate increase in income.⁸⁴

The need to find new business leads to aggressive marketing. Some firms take on marketing directors, a practice unheard of in 1980; but by 1985 there were forty such positions in law firms nationwide.⁸⁵ By 1989 "almost 200 law firms ha[d] hired their own marketing directors."⁸⁶ The push for new business also brings about increased emphasis on "rainmaking" by more of the firm's lawyers. Those lawyers who are responsible for bringing in business enjoy a new ascendancy over their colleagues.⁸⁷ The thrust for business-getting resonates throughout the structure of the firm. Thus a report on big firms in the southeast: "The shift from a traditional reliance upon a small number of rainmakers to the aggressive stance that everyone must make rain has resulted in a reduction in numbers of associates receiving a vote for partnership as well as—in many cases—a redivision of partners' profit pie. Many firms also go a step further by eliminating non-producing partners and restructuring or jettisoning non-productive departments."⁸⁸

The search for new business has been directed not only toward would-be clients, but also to existing ones. In a setting where corporations are more inclined to divide their business among several law firms, firms engage in "cross-selling" to induce the purchaser of services from one department to avail itself of the other services from the firm.⁸⁹

Lateral Hiring, Mergers

In the classic big firm, almost all hiring was at the entry level; partners were promoted from the ranks of associates. Those who left went to corporations or smaller firms, not to similar large firms, since these adhered to the same "no lateral hiring" norm. But starting in the 1970s, lateral movement became more frequent. At first firms made an occasional lateral hire to meet a need for litigators or to fill some other niche. But soon lateral hiring developed into a means of systematically upgrading or enlarging the specialties and localities they could service, and of acquiring rainmakers who might bring or attract new clients. As lateral movement increased, a whole industry of "headhunter" firms emerged, gaining respectability as it grew.⁹⁰ The number of legal search firms grew rapidly, from 83 in 1984, to 167 in 1987, to 244 in 1989.⁹¹

The flow of lateral movement expanded from individual lawyers to whole departments and groups within firms to whole firms. Mass defections and mergers became common, enabling firms to add new depart-

ments and expand to new locations at a stroke. A casual search of the legal press from 1985 to 1989 produced a list of seventy-one mergers involving eighty-three firms with more than fifty lawyers; in fifty-eight of these mergers, at least one of the merging firms had one hundred lawyers—a sizable portion of the whole population of firms of that size.⁹² Mergers were not only a way to grow, but also a convenient device to shake out or renegotiate terms with less productive partners.

Firms hired laterally not only by mergers but also by inducing specific lawyers to change firms, "cherry picking" as it came to be called in the late 1980s. A 1988 survey of the five hundred largest law firms found that over one-quarter reported that more than one-half of their new partners were not promoted from within but rather came from other firms.⁹³ But lateral movement takes place not only at the partner level. The same survey found that one-quarter of the responding firms reported that more than one-half of their associates were hired laterally. Increasingly, associates move from one big firm to another. A 1989 *New York Law Journal* survey found that at twenty-three of the thirty largest firms in New York, an average of 24 percent of the associates coming up for partnership were laterals.⁹⁴

The other side of this movement involves splits and dissolutions of firms.⁹⁵ As firms get larger the task of maintaining an adequate flow of business may become more precarious. Firms are more vulnerable to defections by valued clients or the lawyers to whom those clients are attached. Size multiplies the possibility of conflicts of interests, and the resulting tension between partners who tend old clients and those who propose new ones can be solved by a breakaway. Surrounded by other firms attempting to grow by attracting partners with special skills or desirable clients, firms are vulnerable to the loss of crucial assets. So dissolution may be catalyzed by lateral movement and merger activity, and such breakups in turn stimulate a new round of lateral movement.

Hiring

As firms have grown and required larger numbers of qualified associates, recruitment activity has intensified. Recruiting visits to law schools, extensive summer programs, brochures, and expense-paid "call-backs" of candidates have become familiar parts of the big law firm scene. Starting salaries have increased dramatically, beginning with a great contraction of the supply of associates in the late 1960s. The Vietnam War draft diverted law graduates to other occupations in which they could obtain

deferments, just when 1960s activism induced disdain for corporate practice among many students, who instead sought work in poverty law and public interest law. The percentage of elite law graduates entering private practice dropped precipitously.⁹⁷ Confronted by criticism that their work was unfulfilling and inimical to the public interest, many firms acceded to demands that recruits be able to spend time on *pro bono publico* activities.⁹⁸

Firms responded to their supply problem not only by accommodating their recruits' public interest impulses, but by a sharp increase in compensation. In 1967 the starting salary for associates at elite firms in New York City was \$10,000, scheduled to increase to \$10,500 for 1968. In February 1968 the Cravath firm, breaking with the "going rate" cartel, raised the salaries for incoming associates to \$15,000, setting in motion a new competitive system of bidding for top prospects. Firms that wanted to be considered in the top stratum had to match the Cravath rate. The change in New York starting salaries reverberated throughout the upper reaches of the profession. The salaries of more senior associates had to be raised to preserve differentials; the take of junior partners had to be adjusted accordingly; and firms outside New York, though paying less, had to give corresponding raises to maintain parity with their New York rivals. Unlike later increases in compensation, this one was not accompanied by pressure to bill more hours; in fact, it appears that hourly billings were dropping during this period."

In 1986, when the highest-paid beginning associates were getting \$53,000, Cravath administered a second shock by unilaterally raising salaries to \$65,000.¹⁰⁰ At the time of the first "Cravath shock," the big firm "going rate" referred primarily to a few dozen firms, located mostly in New York; by the time the second increase occurred, the big firm world consisted of several hundred geographically dispersed firms, many of them national in scope. Long-accepted city differentials have been eroded by branching, especially by recent moves by New York firms into other legal markets, causing some firms in those localities to match the higher New York salaries.

As the number and size of large firms has increased, recruitment has become more-competitive and more meritocratic, leading to changes in the social composition of the new recruits. The range of law schools from which the big firms recruit has widened and recruitment goes "deeper" into the class. Barriers against hiring Catholics, Jews, women, and blacks have been swept away. The social exclusiveness in hiring that was a feature of the world of elite law practice in 1960 has receded into insignificance.

Performance in law school and in the office counts for more, and social connections for less.¹⁰¹

By the late 1980s the population of big firm lawyers included a significant number of women and members of minority groups. A 1989 survey of the 250 largest firms found that 24 percent of their lawyers, 9.2 percent of partners, and 33 percent of associates were women.¹⁰² A 1987 survey of these firms reported that women were "40 percent of the associates hired in the last two years, the same percentage as women in law school."¹⁰³ The percentage of women partners has been increasing at a rate of approximately 1 percent a year since 1981. These numerical gains have taken place while many women have expressed dissatisfaction with working conditions and career paths in large firms, especially as these obstruct and penalize child-rearing.¹⁰⁴ Women are less satisfied than their male counterparts with practice in large firms, and with law practice in general.¹⁰⁵ Blacks remained underrepresented in the world of large law firms: in 1987 they made up 2.1 percent of associates and 0.8 percent of partners.¹⁰⁶

Leverage

Firms have become more highly leveraged over time—that is, the ratio of associates to partners has risen. Using the data from our Group I set of fifty of the largest firms in 1986, we calculated the change in associate to partner ratios at five-year intervals from 1960, the midpoint of the golden age, to 1985.¹⁰⁷ During that period these firms grew from an average size of 48 to 239, and the ratio of associates to partners increased 28 percent from 1:15 to 1:47. "The ratio of associates to partners rose consistently during the successive five-year intervals, with the exception of the period from 1965 to 1970 where there is a slight decrease in the ratio of associates to partners. This dip would be consistent with the initial phasing-out of permanent associates and the tightening of the labor market, *both of which occurred about this time."¹⁰⁸

Because of the well-known (but less well-explained)¹⁰⁹ difference in the leverage of large New York City firms and those located elsewhere, we again divided our firms into those whose principal office is located in New York (NY) and those whose principal office is found outside of New York (ONY). During the 1960 to 1985 period, the ONY firms grew somewhat faster, but the NY firms continued to be more highly leveraged. In New York the average ratio of associates to partners increased from 1:36 in 1960 to 1:82 in 1985. The firms in other cities, by contrast, had only an average of 1:03 associates per partner in 1960 and 1:16 in 1985."¹¹⁰

This means that the NY firms are not only more heavily leveraged than the ONY firms, but also that the differences are increasing. The average number of associates per partner in the NY firms grew by 34 percent between 1960 and 1985, while for the ONY firms it increased by only 13 percent. Moreover, in 1960, 20 percent of ONY firms had associate-to-partner ratios exceeding that of the average NY firm. By 1985 none of the ONY were more leveraged than their average NY counterpart.

Promotion and Partnership

Over the two decades preceding 1980, the period during which lawyers served as associates before becoming partners became shorter. Researcher Robert Nelson found that the average time spent as associates by those promoted to partnership in large Chicago firms during the 1950s was 7.5 years; this fell to 7.21 in the 1960s; to 6.19 for those promoted between 1970 and 1975; and to 5.64 for those promoted between 1976 and 1980.¹¹¹ But in the 1980s the time to partner began to increase again. A study of five large New England firms found that associates had to wait eight or nine years instead of seven.¹¹² A *National Law Journal* survey of thirty-five firms in seven localities found that some two-thirds of associates hired in the late 1970s had spent seven to eight "years to partner,"¹¹³ and many partners anticipated a further stretchout.¹¹⁴

Generally, increases in leverage suggest that a smaller percentage of associates will be promoted to partner. A 1987 *National Law Journal* survey of promotion at the five largest firms in each of seven localities revealed both regional and interfirm disparities. The portion that made partner varied, from the lowest range of 10 to 35 percent in New York to the highest of 29 to 64 percent in Los Angeles. The portion making partner at the five largest Chicago firms ranged from 33 to 48 percent, higher than the percentage Nelson (writing in 1988) anticipated for the coming years, but lower than he reports for the period then just past.¹¹⁵ Similarly, lowered estimates of the percentage that will make partner are suggested by an account of large firm practice in the southeast, which reported that "managing partners at many major firms speak openly of their expectations that no more than 10 percent of any incoming class eventually will make partner."¹¹⁶

A constriction of promotion to partnership, anticipated elsewhere, seems to have arrived already in New York's largest firms. A 1989 *New York Law Journal* survey computed the chances of achieving partnership "twenty-two of the thirty largest firms in New York City in 1980 and

1989. Some 25.1 percent of the associate classes of 1968, 1969, and 1970 (including laterals assigned to those classes) had become partners by 1980; but only 18.8 percent of the classes of 1978, 1979, and 1980 had become partners by 1989.¹¹⁷ These lower figures seem more in the neighborhood of the chances of becoming a partner back in the 1950s.¹¹⁸

We noted earlier that in the 1960s firms applied the up-or-out norm with increasing stringency. In the early 1970s permanent associates were described as "a dying breed ... being phased out by attrition at most firms."¹¹⁹ But before the end of the decade the institution was reinvented.¹²⁰ Firms modified the promotion to partnership model by creating a new stratum of permanent salaried lawyers:¹²¹ nonequity partner, special partner, senior attorney, senior associate, participating associate, and so on. As a Washington legal headhunter observed, "Everyone is studying this because everyone is running against the same economic realities. The larger classes of associates are coming up, and there is just not enough room at the top."¹²²

Firms also have increased the use of personnel who are not eligible to be partners. This is most evident in the increasing delegation of work to paralegals—that is, lower salaried, nonlawyer employees performing routine legal tasks under the supervision of lawyers. Paralegals are present across the spectrum of law firms, but they have become a particularly important and growing presence at big law firms. The search for leverage without "the additional pressure created by regular associates eager to make partner" is also evident in the hiring of associates on a lower-paid, nonpartnership track.¹²³ The presence of these low-paid lawyers enables firms to compete for "low-end, price-sensitive business," including routine work that previously might have been done in-house by corporate law departments.¹²⁴ A 1988 survey found that twenty-three of the five hundred largest law firms had added "staff attorney" positions outside the partnership track during the preceding year.¹²⁵

* Another device for enlarging capacity without engaging new associates is the use of "temporary" lawyers. These "legal temps" are not employees of the firm, but are supplied by agencies that screen and certify them. The use of temporaries enables firms to respond to fluctuations in demand (often, but not always, in connection with litigation) without the increase in overhead necessary to accommodate additional regular employees. Such jobs attract lawyers who wish to work part-time or irregularly. Temporaries are used frequently by smaller firms to enable them to handle more business without expanding; big firms use them to enlarge capacity without adding to the partner-associate core.¹²⁶

In these ways the classic big firm notion of promotion to partnership—that all the lawyers are potentially members of a fraternity of peers—is attenuated. But if all lawyers are no longer potential peers, some nonlawyers are being invited into the core of the firm's operations. Firms feel pressure to provide more services; we have already noted the drive to cover more specialties and more locations. Since legal services are often consumed in conjunction with other services, "Firms have brought in engineers, teachers, lobbyists, regulatory economists, banking regulators, ^ nurses, doctors, and business managers (MBAs) and other nonlawyers to help provide client services."¹²⁷ Other firms have established coordinate "nonlegal" businesses (investment advice, economic consulting, real estate development, consulting on personnel management, marketing newsletters, and so forth). A lawyer whose firm branched out into office support services said that acquisition of this business was "like a company that makes peanut butter buying a company that makes peanut butter jars."¹²⁸ Others project a grander vision—that of the evolution of law firms into diversified knowledge conglomerates: "If the railroads had asked themselves what business they were in and had answered 'Transportation,' they might be in the airline business [today]. . . . We realized we were in the business of selling knowledge, whether we were advising legal clients, giving seminars, doing investment banking, making video tapes, or publishing newsletters."¹²⁹

As the firm copes with the exigencies of its new competitive environment, the situation of the junior lawyers becomes more precarious and pressured (although they are more rewarded); however, the partnership core is even more affected. Partners are under mounting pressure to maintain a high level of performance—and performance that fits the business strategy of the firm. Many new features of the law firm world (mergers, lateral movement) amplify the power of dominant lawyers within a firm to sanction their errant colleagues—and the prevalent culture endorses such sanctions. So partners worry about having their prerogatives or shares reduced or even being "pushed off the iceberg" or "departnerized."¹³⁰ As with professional athletes, there are real possibilities of downward movement. "[W]kh profits being squeezed and competition on the rise," sported one consultant, "many firms can no longer afford to support these [unproductive' or 'disaffected'] partners. Firms are trying to 'rehabilitate' these partners, decreasing some partners' incomes and asking others to leave."¹³¹ Thus in 1982 a long-established Seattle firm of eighty-seven lawyers dismissed eight partners, along with six associates, on grounds ^{1/1}^ "the firings were necessary to increase profitability and keep talented

attorneys from being hired away."¹³² The unassailable security and tenured prerogative of partnership is no longer assured. "Partnership used to be for life, but it is no longer."¹³³

As the world of big law firms undergoes these dramatic structural changes, many of its inhabitants experience considerable distress about commercialization, the decline of professionalism, and the loss of the distinctiveness of law practice.¹³⁴ To some extent this distress about lost virtue is a constant feature of elite law practice. But what distinguishes current worries from those of a generation ago is that the latter at least had stable expectations about the large firm as an institution. If the inhabitants of the golden age thought the large firm was already too big, they at least harbored few doubts about its durability.¹³⁵ Now this sense of stability has been shaken.

Still, the link of the big firm with aspirations to professionalism is ambivalent. Law practice—or at least that part of it that serviced large organizations—departed a century ago from the individual practice format for doing legal work, but it never arrived at the great bureaucratic corporation as a format for practice. (Perhaps the promotion-to-partnership firm should be credited with averting such developments by permitting development of sufficient scale to undertake the most large-scale and complex work.¹³⁶) Law practice never suffered the separation of ownership from control; control of work by others was, in aspiration at least, only temporary. Compared to other business services, law remained relatively unconcentrated, decentralized, and unbureaucratic.

The Perceived Decline of Civic Virtue

Before the turn of the century, there was already a sense that the legal profession had compromised its integrity and, by too closely embracing business, its identity. In 1895 the *American Lawyer* complained that:

The typical law office ... is located in the maelstrom of business life ... in its appointments and methods of work it resembles a great business concern ... the most successful and most eminent of the bar are the trained advisors of business men.

... [The bar] has allowed itself to lose, in large measure, the lofty independence, the genuine learning, the fine sense of professional dignity and honor.... For the past thirty years it has become increasingly

contaminated with the spirit of commerce, which looks primarily to the financial value and recompense of every undertaking.¹³⁷

After the turn of the century, John Dos Passos complained: "From 'Attorneys and Counselors at Law' they became agents, solicitors, practical promoters, and commercial operators.... Entering the offices of some of the law firms in a metropolitan city, one imagines that he is in a commercial counting-room or banking department."¹³⁸ It was not only a distinctive ambiance that was lost, but also the connection with the pursuit of justice:

It may ... be safely said that the prevailing popular idea of the lawyer, too often justified by facts, is that his profession consists in thwarting the law instead of enforcing it. ... The public no longer calls them "great" but "successful" lawyers.... It is the common belief, inside and outside of the profession, that the most brilliant and learned of the lawyers are employed to defeat or strangle justice.¹³⁹

The frenetic pace and intense specialization of the large firm repelled many established lawyers.¹⁴⁰ By the 1930s the scale and stability of the large law firms was recognized in the pejorative phrase "law factory."¹⁴¹ Describing the bar in 1933, Karl Llewellyn observed that corporate practice had become "itself a business ... [with] a large staff, a highly organized office, a high overhead, more intense specialization." These firms attracted the "ablest of legal technicians" and fostered a "lopsided" business perspective that ignored the wider public functions of the bar.¹⁴² Specifically, critics deplored the distributive implications of the development of the large firm. A. A. Berle ascribed to it the abandonment of the notion that the lawyer "was an officer of the court and therefore an integral part of the scheme of justice" and its replacement by a notion of the lawyer as "paid servant of his client. . . . [T]he complete commercialization of the American bar has stripped it of any social functions it might have performed for individuals without wealth."¹⁴³

This grim assessment was shared by Chief Justice Harlan Fiske Stone, who described "[t]he successful lawyer of our day ... [as] the proprietor or general manager of a new type of factory, whose legal product is increasingly the result of mass production methods."¹⁴⁴ Stone deplored the commercialization and deprofessionalization of the large firm lawyer:

More and more the amount of his income is the measure of success. More and more he must look for his rewards to the material satisfactions

derived from profits as from a successfully conducted business, rather than to the intangible and indubitably more durable satisfactions which are to be found in a professional service more consciously directed toward the advancement of the public interest...[I]t has made the learned profession of an earlier day the obsequious servant of business, and tainted it with the morals and manners of the marketplace in its most anti-social manifestations.¹⁴⁵

Thus the large firm was felt to be profoundly at odds with professional traditions of autonomy and public service. In its stable golden age, around 1960, inhabitants and observers regarded the large firm world as sadly declined from an earlier day when lawyers were statesmen and served as the conscience of business.¹⁴⁶ Echoing laments that have recurred since the last century, partners complained to sociologist Erwin Smigel that law is turning into a business.¹⁴⁷

As large firms have grown and multiplied, despondency about the decline of law practice from its virtuous and collegial past has intensified. Within the legal profession itself, many share the sense that law has freshly descended from a noble profession infused with civic virtue to a commercial pursuit.¹⁴⁸ In the most erudite and theoretically sophisticated account of decline, the dean of the Yale Law School counsels idealistic young lawyers to stay clear of large firms, whose "harshly economizing spirit" and "increasingly commercial culture" is inimical to the commitment to public service that is the hallmark of professional identity.¹⁴⁹

So we find a curious double-image in which large firm lawyers embody the professional ideal of technical proficiency and service to clients at the same time that the firm is seen as betraying other aspects of professionalism. Internal complaints about the loss of collegiality and the abandonment of public spiritedness are matched by public misgivings about the effects of large firm lawyering. For even as large firms solve the problem of providing quality legal services to large entities, they raise problems of access to justice. By efficiently assembling great concentrations of talent and resources and placing them at the service of powerful economic actors (and occasional rich individuals) who can afford their fees, large firms accentuate this disparity in the public's ability to use the legal system.¹⁵⁰

In short, one of the most persistent and important critiques of the large American law firm is that it does too much for the rich and too little for the poor. This is part of a wider critique that faults the legal profession for abandoning its obligation to promote justice.¹⁵¹

Pro bono publico activity by large law firms is responsive both to the

perceived decline in public service and to the sense that firms accentuate inequalities in access to justice. Unfortunately, there are no data that enable us to measure the long-term trends in public service activity by large firms, or their overall distributive effects. But we do have some data that allow us to see whether the increasing size of firms in itself marks a decline in public service.

Recent Changes in the Amount of Pro Bono Activity

The conventional view is that the growth and transformation of the large law firm portends the destruction of the public service commitment of large law firm lawyers. But one should be cautious in romanticizing the good old days as a public service Utopia. Ultimately, whether the large law firm has affected the amount and type of public service provided by the legal profession is an empirical question.

We begin with the *American Lawyer's* annual surveys of pro bono contributions of large firms available from 1990 to 1993, covering pro bono activities in the preceding years. After combining the pro bono data with the *American Lawyer* financial data, we were left with fifty-nine firms for which complete data sets exist for both 1990 and 1993. Admittedly, the data suffer from several defects. First, they are relatively recent and cover only two reporting periods. Second, the data are based largely on self-reporting by the law firms and are subject to all the potential problems associated with self-reporting. Finally, the data cover only pro bono work, not the broader category of public service.¹⁵² However, they do provide a revealing glimpse of patterns.

The *American Lawyer* survey reports four separate measures of pro bono activity by large law firms: total hours of pro bono work done by the firm, number of attorneys with twenty or more hours of pro bono activity during the year, the amount of pro bono activity per lawyer, and the percentage of attorneys at the firm reporting twenty or more hours of pro bono activity. The results are summarized in table 2-1.

As is evident from the table, pro bono activity, according to all four measures, increased between 1990 and 1993. In this set of firms, the total hours of pro bono work increased almost 45 percent, average hours per attorney increased by almost one-third (31 percent), the number of attorneys with twenty or more hours of pro bono activity increased by almost 60 percent, and the percentage of attorneys at the firm reporting twenty or more hours of pro bono activity increased by 34 percent. To be sure,

Table 2-1. *Aggregate Pro Bono Measures for Fifty-Nine Large Firms, 1990 and 1993*

	1990		1993	
	Total	Mean	Total	Mean
Number of attorneys contributing more than 20 hours	5,731.0	97.1	9,206.0	156.0
Percentage of attorneys contributing more than 20 hours	---	29.7	---	39.9
Average number of hours contributed per attorney	---	44.9	---	59.0
Total hours pro bono (thousands)	865.5	14.7	1,262.8	21.4

Source: *American Lawyer* pro bono surveys for 1990 and 1993.

the data also show that less than 40 percent of the lawyers in these firms provided twenty or more hours of pro bono activity, so most of the increases were attributable to a minority of their lawyers.

Table 2-1 depicts the aggregate trend of pro bono activity. We also tabulated the firm-by-firm changes for the fifty-nine firms for which we had data for both 1990 and 1993. The results are summarized in table 2-2. Again, the evidence indicates a general increase in pro bono activity and most firms showed increases in all four categories.

To explore why some firms provide more pro bono activity than others, we matched the *American Lawyer* pro bono survey with the *American*

Table 2-2. *Firm-by-Firm Changes in Pro Bono Measures for Fifty-Nine Large Firms, 1990 to 1993*

	Mean	Number of firms showing increase	Number of firms showing decrease
Number of attorneys contributing more than 20 hours	58.9	50	9
Percent of attorneys contributing more than 20 hours	10.2	46	13
Average number of hours contributed per attorney	14.1	46	13
Total hours contributed	6,735.0	47	12

Source: *American Lawyer* pro bono surveys for 1990 and 1993.

Lawyer reports on firm size, revenues, and estimated profits. The data do not warrant overly sophisticated analyses. Nevertheless, we can report several interesting results.

First, we examined the relationship between a firm's pro bono activity and several measures of its economic and organizational performance: total number of lawyers, total number of partners, total number of associates, gross revenue, revenue per lawyer, profits per partner, the ratio of associates to partners, and the firm's estimated profit margin. To examine the relationship between pro bono activity and performance, we treated each of the four measures of pro bono activity as a dependent variable and regressed it against various measures of performance. In general, total pro bono activity was positively related to firm performance. As seen in table 2-3, the total number of hours of pro bono activity was most strongly associated with the size of the firm, the number of associates, and the firm's gross revenues.¹⁵³ Similarly, the number of lawyers providing twenty or more hours of pro bono service was also most strongly related to the total number of lawyers at the firm, the number of associates, and gross revenues. Hours per lawyer and the percentage of lawyers providing twenty or more hours, while positively related to the performance data, are so weakly correlated as to make these positive relationships all but meaningless. In short, within this group of large firms, bigger firms did more pro bono in absolute terms, but proportionately they did not do strikingly more such work.

Next we examined the relationships between *changes* in pro bono activity from 1990 to 1993 and *changes* in the performance data over the same period. Again, all the relationships were positive, most only very weakly so. The only relationships showing any strength were those between 1) changes in the total hours of pro bono activity and changes in the total number of attorneys, the total number of partners, and—to a substantially lesser extent—the number of associates and gross revenues; and 2) changes in the number of attorneys performing twenty or more hours of pro bono service and—to a lesser extent—the size of the firm, the size of the partnership, the number of associates, and gross revenues. The results are summarized in table 2-4.

Overall, the data suggest that the larger the firm and the greater its gross revenues, the more willing it will be to encourage or permit pro bono activity. This conclusion is supported by comparing changes in pro bono activity with changes in the performance variables. These data are summarized in table 2-5. The data show that the average percent change in each of the measures of pro bono activity (rows 8-10) greatly exceeded

Table 2-3. *Relationship between Measures of Firm Pro Bono Activity and Measures of Firm Performance for Fifty-Nine Large Firms, 1990 and 1993*

	Total number of attorneys	Number of partners	Number of associates	Gross revenue	Revenue per attorney	Profits per partner	Associate- partner ratio	Estimated profit margin
Total hours pro bono								
1990	0.1920004	0.0432492	0.21703	0.2577766	0.1361535	0.1123169	0.0453675	0.0000937
1993	0.2498967	0.2203405	0.1944513	0.2027788	0.0105995	0.0124458	0.0001715	0.0004338
Number of attorneys contributing more than 20 hours								
1990	0.4096873	0.1088324	0.4500975	0.4629425	0.1226547	0.1206781	0.0693031	0.0008326
1993	0.3337237	0.2907893	0.2610776	0.2122561	0.0018772	0.001966	0.0006655	0.0015694
Number of hours contributed per attorney								
1990	0.0112989	0.0206837	0.006182	0.0023451	0.0556011	0.0289698	0.0001282	0.0034382
1993	0.0018975	0.0010333	0.0048559	0.0006575	0.0022237	0.011365	0.0196227	0.012236
Percent of attorneys contributing more than 20 hours								
1990	0.0137742	0.0274019	0.0071113	0.0015631	0.0206577	0.0109093	0.0018525	0.0013972
1993	0.0006437	0.0049437	0.0039268	0.0041988	0.0092426	0.0208273	0.0207048	0.0125143

Source: *American Lawyer* pro bono surveys for 1990 and 1993.

Table 2-4. *Relationship between Changes in Measures of Firm Pro Bono Activity and Changes in Measures of Firm Performance for Fifty-Nine Large Firms, 1990 and 1993*

	<i>Number of attorneys</i>	<i>Number of partners</i>	<i>Number of associates</i>	<i>Gross revenue</i>	<i>Revenue per attorney</i>	<i>Profits per partner</i>	<i>Associate: partner ratio</i>	<i>Estimated profit margin</i>
Total hours pro bono	0.235814213	0.244897625	0.124012469	0.145213447	0.032149979	0.02817857	0.006677652	0.006768832
Number of attorneys contributing more than 20 hours	0.205272307	0.121932467	0.140420547	0.159238943	0.013269732	0.013340287	0.022284906	0.000216907
Number of hours contributed per attorney	0.043720723	0.087761184	0.013808943	0.022856754	0.014404592	0.008009705	0.0018238	0.000474955
Percent of attorneys contributing more than 20 hours	0.025734363	0.040173836	0.010235601	0.007015243	0.002991629	0.006037805	0.000927754	0.000130321

Source: *American Lawyer* pro bono surveys for 1990 and 1993.

Table 2-5. *Mean Percent Change in Measures of Performance and of Pro Bono Activity for Fifty-Eight Large Firms*

<i>Measure</i>	<i>Mean percent change</i>
Total lawyers	0.083469
Partners	0.132527
Gross revenue	0.168785
Revenue per attorney	0.202547
Profit per partner	-0.05486
Associate: partner ratio	-0.35207
Estimated profit margin	-0.10735
Total hours pro bono	0.97687
Number of attorneys contributing more than 20 hours	0.899028
Average number of hours contributed per attorney	0.732044
Percent of attorneys contributing more than 20 hours	0.607291

Source: *American Lawyer* pro bono surveys for 1990 and 1993.

the percent changes in any of the firm performance measures (rows 1-7). More important, when we compared the data firm-by-firm (as presented in table 2-6), pro bono activity at most firms (as measured by column variables) grew faster than performance (as measured by row variables).

Conclusion

The data presented in Part II offer confirmation of the widespread impression that large firms can readily institutionalize a commitment to systematic provision of pro bono legal services. We do not argue that such service is a necessary and inevitable feature of the large business law firm—a claim that its history surely falsifies. But current developments suggest that it is not incompatible with the flourishing of the large firm.

As the other chapters in this book suggest, large firms can adapt to pro bono commitments advantageously. They can appoint partners (or outside specialists) to manage a program and assign staff to deal with the logistical problems of finding and screening suitable cases. A high volume of pro bono work may offer an inducement for recruiting talented associates and may enable the firm to facilitate development of its lawyers' professional skills while projecting a coveted image of public service. Large firms have demonstrated their capability to provide significant amounts of pro bono work.¹⁵⁴

Table 2-6. Number of Firms (of Fifty-Eight Surveyed) where the Column Measure of Change in Pro Bono Activity is Greater than the Corresponding Row Measure of Change in Performance Percent change

<i>Measure of performance</i>	<i>Total hours pro bono</i>	<i>Number of attorneys contributing more than 20 hours</i>	<i>Average hours per attorney</i>	<i>Percent of attorneys contributing more than 20 hours</i>
Total attorneys	45	49	38	46
Partners	44	46	36	41
Gross revenue	41	47	36	37
Revenue per attorney	41	44	32	38
Profit per partner	50	50	47	50
Associate: partner ratio	56	57	55	56
Estimated profit margin	51	53	50	51

Source: *American Lawyer* pro bono surveys for 1990 and 1993.

Notes

1. Marc Galanter and Thomas M. Palay, *Tournament of Lawyers: The Transformation of the Large Law Firm* (University of Chicago Press, 1991); Marc Galanter and Thomas M. Palay, "Why the Big Get Bigger: The Promotion-to-Partner Tournament and the Growth of Large Law Firms," *Virginia Law Review*, vol. 76 (1990), pp. 747, 755.
2. This section is based on Galanter and Paley, *Tournament of Lawyers*.
3. Galanter and Palay, "Why the Big Get Bigger."
4. Robert T. Swaine, *The Cravath Firm and its Predecessors, 1819-1947*, vol. 1 (New York: Ad Press, 1946), p. 371.
5. Swaine, *The Cravath Firm and its Predecessors*, pp. 2-12. Wayne K. Hobson, *The American Legal Profession and the Organizational Society 1890-1930* (New York: Garland Publishing, 1986), pp. 195-203.
6. The term "Cravath system" was originated by Cravath's partner, Robert T. Swaine, whose history of the firm, published in 1946, is the classic of the genre.
7. Hobson, *The American Legal Profession and the Organizational Society 1890-1930*, p. 186.
8. Ibid.
9. Thomas Pinansky, "The Emergence of Law Firms in the American Legal Profession," *University of Arkansas at Little Rock Law Review*, vol. 9 (1986-87), p. 593.
10. Ibid., p. 610. On the Jay Gould litigation, see Walter K. Earle, *Mr. Shearman and Mr. Sterling and How They Grew* (Yale University Press, 1963), pp. 30-31, 69-87.
11. Letter written by William H. Dunbar to Louis D. Brandeis, Aug. 17, 1896, reprinted in Alpheus Mason, *Brandeis: A Free Man's Life* (New York: Viking Press, 1946), p. 83.
12. Hobson, *The American Legal Profession*, p. 161.

13. Erwin O. Smigel, *The Wall Street Lawyer: Professional Organization Man?* (Indiana University Press, 1969), p. 43. The roster of New York Firms based upon a count conducted by Spencer Klaw in December 1957 can be found in Smigel, *The Wall Street Lawyer*, pp. 34-35.
14. Spencer Klaw, "The Wall Street Lawyers," *Fortune*, vol. 57, no. 2 (February 1958), p. 194; Smigel, *The Wall Street Lawyer*, pp. 34-35.
15. The two data sets and the shortcomings of the sources used are described in Appendixes A and B of Galanter and Palay, *Tournament of Lawyers*, pp. 143-44.
16. All calculations are based on the firms for which data were available in both years in question.
17. Our figures on growth are a little higher than those reported by Smigel. He reports that from 1957 to 1962, the number of partners in twenty large New York City firms increased by 16 percent, and that the total number of lawyers in the seventeen large firms outside New York had grown by 37 percent from 1951 to 1961. Smigel, *The Wall Street Lawyer*, p. 351. Since we were looking at firms that succeeded in becoming very large two decades later, it is not unlikely that our sample is biased toward greater growth.
18. Smigel, *The Wall Street Lawyer*, p. 207.
19. Beryl Harold Levy, *Corporation Lawyer: Saint or Sinner* (Philadelphia: Chilton Co., 1961), p. 20. The arrangement in question was the association of Adlai Stevenson and his three partners with Paul Weiss, which then had twenty-one lawyers. Richard J. H. Johnston, "Stevenson Joins a Law Firm Here," *New York Times*, April 20, 1957, p. 1, col. 3. The bar association approval (by a divided vote) is reported in "Bar Groups Back Bid by Stevenson," *New York Times*, May 7, 1957, p. 38. The arrangement lasted until 1961. John Brooks, "Advocate," *New Yorker*, vol. 59, no. 14 (May 23, 1983), pp.46, 74.
20. The forty-two firms that responded to Roger Siddall's inquiry had been in existence an average of fifty-eight years. He asked them to detail the "number of splits in the line of succession": this was answered by forty of the offices, of which twenty-nine respondents had none; the other eleven had undergone a total of thirty splits. Roger B. Siddall, *Survey of Large Law Firms in the United States* (New York: Vantage Press, 1956), p. 33.
21. Smigel, *The Wall Street Lawyer*, p. 58.
22. Smigel, *The Wall Street Lawyer*, p. 58; Martin Mayer, *The Lawyers* (New York: Harper and Row, 1966), p. 332.
23. Some women and Jews were hired during World War II, when the supply of so-called "desirable" candidates had evaporated. Nevertheless, a *Yale Law Journal* survey found that Jewish students from the Yale classes of 1951-62, especially those below the top one-third of their class, were less successful in obtaining work in the larger, higher-paying firms. During the 1950s and early 1960s, Jews graduating from Yale went to firms roughly one-half the size of their gentile classmates and earned the equivalent of classmates ranking an average of one-third of a class lower in law school ranking. "The Jewish Law Student and New York Jobs—Discriminatory Effects in Law Firm Hiring Practices," *Yale Law Journal*, vol. 73, no. 4 (March 1964), p. 625. This study was based on interviews with Yale students and hiring partners and on a survey of Yale graduates of 1951-62 who worked in New York. The exclusion of Jews and others from the big firms (and from the bar) is chronicled by Jerold S. Auerbach, *Unequal Justice: Lawyers and Social Change in Modern America* (New York: Oxford University Press, 1976), chapter 4 and passim.
24. Cynthia Fuchs Epstein, *Women in Law* (New York: Basic Books, 1981), p. 176. Epstein reports that "of the thirty-four women partners on Wall Street in 1979, only three achieved partnership before 1970" (p. 180).

25. Smigel, *The Wall Street Lawyer*, p. 116.
26. Martin Mayer, "The Wall Street Lawyers, Part II: Keepers of the Business Conscience," *Harper's Magazine*, vol. 212, no. 1269 (February 1956), p. 52.
27. Klaw, "The Wall Street Lawyers," p. 142.
28. In a one-hundred-lawyer firm with twenty-six partners studied in 1956, partners had taken an average of 9.1 years to partnership. Smigel, *The Wall Street Lawyer*, p. 137. In Simpson Thacher, those who became partners between 1945 and the late 1950s had spent an average of 10.6 years with the firm. Smigel, *The Wall Street Lawyer*, p. 79. In a firm that Smigel identifies as a "social" firm, the average time to partnership was 11.7 years. Smigel, *The Wall Street Lawyer*, p. 92. A respondent at Sullivan and Cromwell reported that "it now takes longer than ten years to become a partner." Smigel, *The Wall Street Lawyer*, p. 84; compare Mayor's report that most partners felt that "ten is about right." See Mayer, "The Wall Street Lawyers, Part II," p. 53.
29. Robert L. Nelson, *Partners with Power: The Social Transformation of the Large Law Firm* (University of California Press, 1988), p. 141.
30. At a 1965 Practising Law Institute forum on Managing Law Offices, a Davis Polk partner observed: "In our firm ... [time to partnership] used to be a little more than ten years, except in the rarest cases. More recently, it has been five, six, or seven years, though in some cases it may still take ten years or more. The time varies with the individual, his department and the need of the firm for another partner from a particular department." Practising Law Institute, "Managing Law Offices," edited transcript prepared for a forum held at the Statler Hilton Hotel, New York City, May 20-21, 1965, p.156.
31. Smigel, *The Wall Street Lawyer*, p. 64. In our circa 1960 period, corporate legal work in many cases paid better than law firms. Siddall, *A Survey of Large Law Firms*, p. 107.
32. Smigel, *The Wall Street Lawyer*, p. 97.
33. Mayer, *The Lawyers*, p. 334.
34. Nancy Lisagor and Frank Lipsius, *A Law Unto Itself: The Untold Story of the Law Firm Sullivan and Cromwell* (New York: W. W. Morrow, 1988), p. 190.
35. Smigel, *The Wall Street Lawyer*, pp. 259, 302.
36. Mark Stevens, *Power of Attorney: The Rise of the Giant Law Firms* (New York: McGraw-Hill, 1987), p. 8.
37. Compare Ronald J. Gilson and Robert H. Mnookin, "Sharing Among the Human Capitalists: An Economic Inquiry into the Corporate Law Firm and How Fanners Split Profits," *Stanford Law Review*, vol. 37, no. 2 (February 1985), p. 313,340. They refer to "traditional methods" of apportionment. The persistent reports about the secrecy of these matters suggest that there was more to keep secret than an equal shares formula.
38. Siddall reports a great variety of compensation schemes among his forty-two firms. Siddall, *A Survey of Large Firms in the United States*, pp. 48-49. The data here do not tell us how much of the variation may be accounted for by seniority. But they cast some doubt on the notion that many or most law firms were equal shares partnerships. At least some of these firms attempted to apportion rewards according to the contribution of each partner to income.
39. Levy, *Corporation Lawyer*, p. 35.
40. Martin Mayer, "The Wall Street Lawyers, Part I: The Elite Corps of American Business," *Harper's Magazine*, vol. 212, no. 1268 (January 1956), p. 36.
41. Mayer, *The Lawyers*, p. 320.
42. Klaw, "The Wall Street Lawyers," p. 144.
43. Stewart Macaulay, "Non-Contractual Relations in Business: A Preliminary Study," *American Sociological Review*, vol. 28, no. 1 (February 1963), pp. 55-67.

44. Paul Hoffman, *Lions in the Street: The Inside Story of the Great Wall Street Firms* (New York: Saturday Review Press, 1973), p. 72.
45. Mayer noted that "lawyers want to sit on boards because... it sews up the client's legal business." Mayer, "The Wall Street Lawyers, Part II," p. 56.
46. Michael Gartner, in "Guest Opinion: Are Outside Directors Taking Outside Chances?" *Juris Doctor*, vol. 3, no. 3 (March 1973), pp. 4-5, 37, reported that liability and conflict-of-interest concerns were leading law firms to reappraise the desirability of directorships.
47. See "Monthly Survey of Business Opinion and Experience: Organization for Legal Work," *The Conference Board Business Record*, vol. 16, no. 10 (October 1959), pp.463-64.
48. Smigel, *The Wall Street Lawyer*, p. 220.
49. Smigel, *The Wall Street Lawyer*, pp. 43,104; compare Klaw, "The Wall Street Lawyers," p.194.
50. Smigel, *The Wall Street Lawyer*, pp. 182-83, 186, 190.
51. Smigel, *The Wall Street Lawyer*, pp. 183-84. In late 1957 the twenty largest Wall Street firms (ranging in size from 46 to 125 associates and partners) had 2.28 associates for each partner. Calculated from data in Klaw, "The Wall Street Lawyers," p. 194.
52. Smigel, *The Wall Street Lawyer*, pp. 181, 183.
53. *Ibid.*, p. 203.
54. On the "declension thesis," see Robert N. Gordon, "The Independence of Lawyers," *Boston University Law Review*, vol. 68, no. 1 (January 1988), p. 48.
55. Smigel, *The Wall Street Lawyer*, pp. 303-05.
56. Mayer, "The Wall Street Lawyers, Part II," p. 56.
57. In 1948 more than six of out of ten lawyers practiced alone; in 1980 only one-third of a much-swollen number of lawyers was in sole practice. Richard Abel, *American Lawyers* (New York: Oxford University Press, 1989), p. 179; Barbara A. Curran, *The Lawyer Statistical Report: A Statistical Profile of the U.S. Legal Profession in the 1980s* (Chicago: American Bar Foundation, 1985), pp. 8 (table 1.2.3), 10 (table 1.3.1), 14.
58. In 1980 there were almost 50,000 lawyers in firms of twenty-one or more—they made up 9.2 percent of all lawyers, 13.4 percent of lawyers in private practice, and 26.1 percent of all lawyers practicing in firms. Curran, *The Lawyer Statistical Report*, pp.13-14.
59. Steven Brill, "The Law Business in the Year 2000," pull-out supplement to *American Lawyer*, vol. 11, no. 5 (June 1989), p. 10.
60. Smigel, *The Wall Street Lawyer*, pp. 43, 178.
61. Barbara A. Curran, *Supplement to the Lawyer Statistical Report: The U.S. Legal Profession in 1985* (Chicago: American Bar Foundation, 1986), p. 5.
62. The range was from 50 to 198 lawyers in 1975 and from 142 to 419 lawyers in 1985. These figures are somewhat lower than those in the last paragraph because they are drawn from our data set, based on *Martindale-Hubbell* rather than *National Law Journal* surveys. Our data is used here because, unlike that from the *National Law Journal*, it permits comparisons with earlier periods. See Galanter and Palay, *Tournament of Lawyers*, pp. 140-42 and cites therein.
63. The range was from 21 to 68 in 1975 and from 54 to 121 in 1985; "The NLJ 250," *National Law Journal*, supplement, September 26, 1988, pp. S1-S28.
64. These ranges are confirmed by annual purveys of the five hundred largest firms conducted by *Of Counsel* since 1986. The reported rate of growth for all of these firms was over 9 percent for each of the three years. "Of Counsel 500," *Of Counsel*, vol. 8, no. 8 (April 17, 1989), p. 1.
65. For the calculations for 1955 to 1965, see notes 16 and 17.
66. The occasional Washington or foreign branch office was anomalous. Smigel, *The Wall*

Street Lawyer, p. 207. Attempts at multicity firms were rare, suspect, and unstable, as displayed in the Adiai Stevenson/Paul Weiss arrangement (see note 19).

67. Curran, *The Lawyer Statistical Report*, p. 53.
68. Abel, *American Lawyers*, p. 188.
69. Tamar Lewin, "The New National Law Firms: Mergers Play Bigger Role," *New York Times*, October 4, 1984, p. 31. The true pioneer is Baker & McKenzie, which in the 1950s established four foreign offices, staffed largely by local lawyers, and a Washington office. Thirteen more foreign offices were added in the 1960s, and in 1988 the firm consisted of forty-one offices in twenty-five countries. "The NLJ 250," p. S-4; James Lyons, "Baker & McKenzie: The Belittled Giant," *American Lawyer*, vol. 7, no. 8 (October 1985), pp. 115-16. On their organizational strategy, see also Stevens, *Power of Attorney*, pp. 153-66. Another pioneer in the design of the multicity firm was the late Robert Kutak, whose Omaha-based Kutak, Rock and Huie, founded in 1965, was established in six regional centers by 1980. Joseph R. Tybor, "End of the Go-Go Years at Big Firms? Bad Day at Kutak Rock," *National Law Journal*, vol. 4, no. 8 (November 2, 1981), p. 1. In the late 1970s the firm planned to open an office in one new city each year, and by the end of the 1980s to have seventeen offices around the country. Walter Kiechel III, "Growing Up at Kutak, Rock and Huie," *Fortune*, vol. 98, no. 8 (October 23, 1978), pp. 112-13. The firm was unable to keep up this pace and experienced a severe contraction in late 1980.
70. This comparison is based on our *National Law/Journal* "Two Twenties" data set. For convenience, we refer to "branches," but we use that term to mean an office other than the office of the firm that contains the largest number of lawyers. In 1987 only one of our forty firms (Akin, Gump) had an office larger than its home office. See Galanter and Palay, *Tournament of Lawyers*, pp. 144-45.
71. The number of overseas offices ranges from one to thirty-two; eight firms had five or more overseas offices.
72. This reflects the dispersion of corporate headquarters and financial markets. In 1960, 128 of the Fortune 500 industrial corporations had headquarters in New York City; in 1988, only 50 were headquartered there. There were comparable shifts in other categories of corporations. "The Fortune Directory: The 500 Largest U.S. Industrial Corporations," *Fortune*, vol. 62, no. 7 (July 1960), pp. 131-50; "The Fortune Directory Part II," *Fortune*, vol. 62, no. 8 (August 1960), pp. 135-44; "The Fortune 500; Largest U.S. Industrial Corporations," *Fortune*, vol. 117, no. 9 (April 25, 1988), p. D-II; "The 500 Largest Service Corporations," *Fortune*, vol. 117, no. 12 (June 6, 1988), p. D-7.
73. Smigel, *The Wall Street Lawyer*, p. 43.
74. Curran, *The Lawyer Statistical Report*, pp. 51, 166.
75. Abel, *American Lawyers*, table 47. A 1989 survey found that thirty-three of the one hundred firms with the largest gross revenues were based in New York. Steven Brill, "The Am Law 100: A Boom in Premium Deal Work," pull-out supplement to *American Lawyer*, vol. 11, no. 6 (July-August 1989), pp. 6-58.
76. The decline in the predominance of New York-based firms points to, but overstates, the decline of New York City as a locus of legal activity. A significant portion of the branching activity discussed in the preceding paragraphs consists of the establishment of New York branches by ONY firms. In 1980 only three of our ONY firms had offices in New York (average size seventeen). By 1987 ten of the twenty ONY firms had New York offices (average size thirty-nine).
77. For a preliminary report on this see Marc Galanter and others. *Corporations in Court: Recent Trends in American Business Litigation*, unpublished report prepared for the 1990 annual meeting of the Law & Society Association, Berkeley/Oakland, May 31-June 3, 1990. There is some indication that there are more large corporations that have corporate law departments. A 1959 survey of manufacturers found that 134 of the 286

companies surveyed had legal departments. A 1985 survey found that 74 of the 126 manufacturing companies replying had in-house counsel. This is an increase from 47 to 59 percent. However, the degree to which the numbers are comparable is unclear. See "Monthly Survey of Business Opinion and Experience," pp. 463-68; Arthur Andersen & Co., "The Corporate Market for Legal Services: A Marketing Study" (Arthur Andersen & Co., 1985), p. 4, exhibit 3.

78. Frances Flaharty, "Comparison Shopping Hits the Law: Companies Cut Costs," *National Law Journal*, October 31, 1983, pp. 1, 9; Rita Henley Jensen, "Banking Clients More Willing to Shop for Firms," *National Law Journal*, January 18, 1988, p. 1; Emily Couric, "New Relationships, New Rules," *National Law Journal* supplement, August 1, 1988, pp.S2-S27.
79. Nelson, *Partners with Power*, p. 171.
80. Abram Chayes and Antonia Chayes, "Corporate Counsel and the Elite Law Firm," *Stanford Law Review*, vol. 37, no. 1 (January 1985), pp. 277, 295, report that major corporations responding to a small survey reported one-half of all legal fees paid to outside lawyers were for litigation. Compare Nelson, *Partners with Power*, p. 8.
81. It should be recalled that similar observations have been echoed periodically since the early days of big law firms.
82. Bruce D. Heiniz, "New Trends in Partner Profit Distribution," *Wisconsin Bar Bulletin*, vol. 55 (October 1982), pp. 24-26; Gilson and Mnookin, "Sharing Among the Human Capitalists," p. 313; but compare Nelson, *Partners with Power*, pp. 202-04.
83. Reflecting on Smigel's contention that law firms lack the hierarchy, rules, and levels of conflict characteristic of other organizations because they are organized around professional norms, Nelson concedes that if this was so in "the stable professional community of New York law firms in the late 1950s ... [i]t is clearly not accurate today. Large firms are the regimes of client-producers, and this stratum of partners dictates the policies of the firm and projects the ideology of professionalism that justifies the structure of the firm and the client-producers' role in it." Nelson, *Partners with Power*, p. 276.
84. A survey by Altman and Well of median earnings of partners in 700 large (75 + lawyers) firms found 1986 earnings increased by 78 percent over ten years earlier, but inflation was up 93 percent. Average hours billed were up 8 percent to 1,685 hours annually. Rita Henley Jensen, "Partners Work Harder to Stay Even," *National Law Journal*, August 10, 1987, p. 12. A Price Waterhouse survey of medium and large firms found that from 1978 to 1988 partner earnings rose only 1 percent after accounting for inflation. Brill, "The Law Business in the Year 2000," p. 6.
85. Mary Ann Galante, "Firms Finding More Value in Marketing," *National Law Journal*, November 18, 1985, pp. 1, 28. The next year it was reported that "more than 60 law firms, ranging in size from 14 lawyers to nearly 600 ... [in] about 25 cities ... had hired a marketing administrator." A National Association of Law Firm Marketing Administrators was established in the same year. Sally J. Schmidt, "Firm Development Mobilized By a 'New Breed' of Resource," *National Law Journal*, August 25, 1986, p. 15.
86. Merrilyn Astin Tarlton, former president of the National Association of Law Firm Marketing Administrators, quoted in "New Partner in the Firm: The Marketing Director," *New York Times*, June 2, 1989, p. B-19.
87. Phyllis Weiss Haserot, "How to Get Associates into the Act," *National Law Journal*, August 25, 1986, p. 15; Rita Henley Jensen, "The Rainmakers," *National Law Journal*, October 5, 1987, pp. 1, 28, 30.
88. Lee Ann Bellon, "Southeast Boasts an Expanding Legal Community," *National Law Journal*, January 18, 1988, pp. 19-20.
89. Diane Netter Weklar, "System is Key: Strategies for Legal Marketing," *National Law*

- Journal*, August 1, 1988, pp. 22, 26; Suzanne O'Neill, "Firm Marketing Responsibilities: Associates Can Attract Clients, Too," *National Law Journal*, January 16, 1989, p. 17.
90. Legal headhunter firms emerged in New York in the late 1960s in response to the constriction in the supply of lawyers. At first such activity was regarded as a discreditable departure from professional decorum. "In 1967, when Lois R. Weiner ... decided to specialize in finding jobs for lawyers, the publishers of Martindale-Hubbell refused to sell her a copy." Tom Stevenson, "The Talent Peddlers," *Juris Doctor*, vol. 3, no. 2 (February 1975), pp. 12-13.
 91. Abel, *American Lawyers*, p. 188; "Legal Search Profession Annual Survey," *National Law Journal*, June 12, 1989, p. S-3.
 92. Galanter and Palay, *Tournament of Lawyers*, p. 54, n 115.
 93. *Of Counsel* survey, reported in Larry Smith, "National Study: Lateral Hiring Continues Unabated," *Lawyer Hiring and Training Report*, vol. 9, no. 13 (June 1989), p. 6. Approximately four hundred firms provided information on lateral hiring. The figures in this survey were close to those in a 1986 survey.
 94. Edward Adams, "Longer Partnership Odds at N.Y. Firms," *New York Law Journal*, July 17, 1989, pp.1,6.
 95. According to Hildebrandt and Co., about one hundred law firms dissolved in 1987, including about a dozen with more than thirty lawyers. Jill Abramson, Stephen J. Adier, and Laurie P. Cohen, "The Strange Case of the Vanishing Firms," *Wall Street Journal*, July 29, 1988, p. 17; Abel, *American Lawyers*, pp. 186-87. Although there have been some spectacular breakups of large firms, such as the notable dissolution of Finley Kumble in 1987, the pressure to merge or dissolve was thought to be most severe for midsized firms. In 1988 a Hildebrandt consultant reported that "in the past two years, more than 60 midsize firms—more than 10% of the total nationwide—have either dissolved or merged... . Though midsize firms make up 10% of all law firms they accounted for 25% of the field's mergers and closing in the past two years." Amy Dockser, "Midsize Law Firms Struggle to Survive," *Wall Street Journal*, October 19, 1988, p. B-1.
 96. This has transformed the law school scene by linking law students early and tightly to the world of law practice, a development that has been described to one of the authors of this chapter by Roger Cramton, former dean of Cornell Law School, as "the new apprenticeship."
 97. "From 1964 through 1968 ... the number of Harvard Law School Graduates entering private law practice declined from 54 to 41 percent." Yale graduates entering private practice dropped from 41 percent in 1968 to 31 percent in 1969; the percentage of Virginia graduates entering private practice dropped from 63 percent to 54 percent from 1968 to 1969. Jerry J. Berman and Edgar S. Cahn, "Bargaining for Justice: The Law Students' Challenge to Law Firms," *Harvard Civil Rights-Civil Liberties Law Review*, vol. 5, no. 1 (January 1970), pp. 16, 22-23. "In 1970, none of the thirty-nine law review editors graduating from Harvard expects to enter private practice." Mark Green, "Law Graduates: The New Breed," *The Nation*, vol. 210, no. 6 (June 1, 1970), pp. 658-60. A similar drop among Michigan graduates is documented by David Chambers, who found that those entering private practice dropped from 74 percent in the classes of 1965 and 1966 to about 60 percent for the years from 1967 to 1970. Chambers shows that most of the decrease was due to diversion into teaching and graduate work to secure draft deferments. David Chambers, a presentation to the annual meeting of the Law and Society Association, Madison, Wisconsin, June 8-11, 1989.
 98. Berman and Cahn, "Bargaining for Justice," pp. 16-22.
 99. Smigel, *The Wall Street Lawyer*, p. 43.
 100. Tamar Lewin, "At Cravath, \$65,000 to Start," *New York Times*, April 18, 1986, P. B-33.

101. But even absent deliberate exclusion, selection on the basis of educational credentials and the candidates' social affiliations, personal preferences, and career expectations will maintain some degree of association between legal roles and the social origins of lawyers. Compare John P. Heinz and Edward O. Laumann, *Chicago Lawyers: The Social Structure of the Bar* (New York: Russell Sage Foundation; Chicago: American Bar Foundation, 1982), p. 332; Abel, *American Lawyers*, pp. 109-10 argues that the inclusion of women and the erection of higher educational hurdles have worked to "narrow the class background of lawyers, whose origins have grown even more privileged." See also Abel, *American Lawyers*, p. 228.
102. Rita Henley Jensen, "Minorities Didn't Share in Firm Growth," *National Law Journal*, February 19, 1990, pp. 1, 28-31, 35.
103. Doreen Weisenhaus, "Still a Long Way to Go For Women, Minorities," *National Law Journal*, February 8, 1988, pp. 1, 48.
104. Judy Klemesrud, "Women in the Law: Many Are Getting Out," *New York Times*, August 9, 1985, p. B-14; Patricia A. Mairs, "Bringing Up Baby," *National Law Journal*, March 14, 1988, p. 1; Jennifer A. Kingson, "Women in the Law Say Path is Limited by 'Mommy Track,'" *New York Times*, August 8, 1988, p. B-1. Compare Deborah Holmes, "Structural Causes of Dissatisfaction Among Large-Firm Attorneys: A Feminist Perspective," Working Paper 3:3 (Madison: Institute for Legal Studies, University of Wisconsin Law School, 1988).
105. Barbara Kate Repa, "Is There Life After Partnership?" *American Bar Association Journal*, vol. 74, no. 6 (June 1, 1988), pp. 70-75; Marilyn Tucker, Laurie A. Albright, and Patricia L. Busk, "Whatever Happened to the Class of 1983?" *Georgetown Law Journal*, vol. 78, no. 153 (1989), pp. 153-95; Ronald L. Hirsch "Are You on Target?" *Barrister Magazine*, vol. 12, no. 1 (Winter 1985), pp. 17-20, 49-50; Robert Nelson, "Analysis of Hirsch Data by Robert L. Nelson," in Geoffrey C. Hazard, Jr. and Susan P. Koniak, eds., *The Law and Ethics of Lawyering* (Westbury, NY: Foundation Press, 1990), p. 1033. The contours of dissatisfaction remain to be mapped. A study of Michigan graduates of 1976-79 five years after graduation revealed that both men and women found the balance of family and work obligations the least satisfactory aspect of their professional lives. But, surprisingly, full-time women lawyers with children reported higher overall career satisfaction and higher satisfaction with the balance of their family and professional lives than did their male counterparts. David L. Chambers, "Accommodation and Satisfaction: Women and Men Lawyers and the Balance of Work and Family," *Law and Social Inquiry*, vol. 14, no. 1 (Winter 1989), pp. 251, 273, 275.
106. Weisenhaus, "Still a Long Way to Go for Women, Minorities," p. 50. The percentage of black associates had fallen slightly since 1981, while the percentages of other minorities rose.
107. See Galanter and Palay, *Tournament of Lawyers*, table 3, pp. 60-61.
108. These calculations are reported in Galanter and Palay, *Tournament of Lawyers*, pp. 59-61. For reasons noted there we regard these as an accurate representation of trends rather than a depiction of the absolute levels of leverage in any given firm at any specific point in time.
109. At least part of the difference between New York firms and firms elsewhere probably lies in the different meaning attributed to the term "partner" by the NY and ONY firms. If firms designate as partners those lawyers who have been given that title (and a promise of permanent tenure) but not a share of the firm profits, then they would display lower associate to partner ratios than if the partner designation were reserved to lawyers who had a share of the profits. There is reason to think that in at least some cities outside New York the designation partner is used more expansively. Daniel Wise, "Psst! Wanna Make Partner?" *National Law Journal*, October 26, 1987, pp. 1, 32-33. Since this practice simultaneously reduces the number of associates and increases

- the number of partners used in calculating these ratios, our comparisons overstate the difference in leverage.
110. In Galanter and Palay, *Tournament of Lawyers*, pp. 61-62, we examine several other data sets and conclude that the trends are basically consistent, though the absolute numbers differ.
 111. Nelson, *Partners with Power*, p. 141.
 112. Eve Spangler, *Lawyers for Hire: Salaried Professionals at Work* (Yale University Press, 1986), p. 55.
 113. Wise, "Psst! Wanna Make Partner?" A survey of 150 medium-sized firms found that the median time to achieve partnership had lengthened between 1975 to 1985 from five years to six years. Telephone interview with D. Weston Darby, Jr., of Cantor and Co., August 4, 1989. The survey was reported in D. Weston Darby, Jr., "Are You Keeping Up Financially?" *American Bar Association Journal*, vol. 71, no. 12 (December 1985), pp. 66, 68.
 114. Nelson, *Partners with Power*, p. 140.
 115. Wise, "Psst! Wanna Make Partner?" p. 32; Nelson, *Partners with Power*, pp. 138-39.
 116. Bellon, "Southeast Boasts an Expanding Legal Community," pp. 19-20.
 117. Adams, "Longer Partnership Odds at N.Y. Firms." These figures should not be overinterpreted. Not only is the time interval for the more recent group one year shorter than for the older group, but the findings are equally consistent with lengthening of time to partnership.
 118. As reported by Mayer, "The Wall Street Lawyers, Part II," p. 52, and Klaw, "The Wall Street Lawyers," p. 142. Compare Smigel's analysis of Cravath in *The Wall Street Lawyer*, p. 116. Contemporary associates have their own golden age myth of a time when young lawyers were trained as generalists rather than being pushed early into a specialty, received intensive mentoring, and "could expect to make partner after a certain number of years" if they "performed well and committed no egregious blunders." Holmes, "Structural Causes of Dissatisfaction Among Large-Firm Attorneys," p. 20.
 119. Hoffman, *Lions in the Street*, p. 44.
 120. Larry Bodine, "Law Firm Ladder Gets a New Rung," *National Law Journal*, March 12, 1979, pp. 1, 17.
 121. Deborah Graham, "New 'Senior Attorney' Program Draws Attention at Davis Polk," *Legal Times*, February 28, 1983, pp. 3, 7; Kirk Hallam, "Big Firms Search for Alternatives to Traditional Form," *Los Angeles Daily Journal*, March 18, 1983, p. 1; Mary Ann Galante, "Firms Look Closer At How to Create Lawyer Categories," *Los Angeles Daily Journal*, August 22, 1983, p. 1; Mary Ann Galante, "Meet this Permanent Associate," *National Law Journal*, October 24, 1983, pp. 1, 28; Amy Singer, "Senior Attorney Programs: Half A Loaf," *American Lawyer*, vol. 9, no. 1 (January/February 1987), p. 12; Martha Freeman, "Alternatives to the Old Up or Out," *California Lawyer*, vol. 7, no. 12 (December 1987), pp. 44-45, 104-5; Bill Blum and Gina Lobaco, "When Associates Don't Make Partner," *California Lawyer*, vol. 8, no. 1 (January/February 1988), pp. 51-54. As noted above, the up-or-out norm had rarely been applied with absolute rigor. A Davis Polk partner observed that the new senior attorney program "just regularizes what's been the fact for sometime in the past." Graham, "New 'Senior Attorney' Program Draws Attention at Davis Polk," p. 3.
 122. Peter Griggs and Daviryne McNeill, "Upper Ranks Add Heft at Most Big D.C. Firms," *Legal Times*, December 28, 1987/January 4, 1988, p. 4.
 123. Steven Susman, "Eighties Shakeout," transcript from presentation at American Lawyer symposium, June 1-2, 1987, in New York City.
 124. Michael Orey, "Staff Attorneys: Basic Work at Bargain Prices," *American Lawyer*, vol. 9, no. 7 (September 1987), p. 20.

125. Steve Nelson, "Law Firms Adopt Staff Attorney Option at 'Revolutionary' Pace," *Of Counsel*, vol. 7, no. 8 (April 18, 1989), p. 14.
126. Stephen Labaton, "Lawyers Debate Temporary Work," *New York Times*, April 18, 1988, p. 26; Barbara Berkman, "Temporarily Yours: Associates for Hire," *American Lawyer*, vol. 10, no. 2 (March 1988), pp. 24, 26-27; Laura Mansnerus, "Law Firms, Too, Hire Lawyers by the Hour," *New York Times*, March 4, 1988, p. B-10. The New York City Bar Association's reproach of these agencies' percentage fees as offending the ban on fee-splitting chilled the business there, engendered heated protest, and was withdrawn. Laura Mansnerus, "Rule on Temporary Lawyers Changes Again," *New York Times*, June 2, 1989, p. 19.
127. Phyllis Haserot, "How To Get Associates Into the Act," *National Law Journal*, August 25, 1986, pp.15,21.
128. Alexander Stille, "When Law Firms Start Their Own Businesses," *National Law Journal*, October 21, 1985, pp.1,20-22.
129. *Ibid.*, p. 20. The shift in perspective is succinctly put by one general counsel reflecting on the change in the nature of professionalism: "Most lawyers think of themselves first and foremost as lawyers, when in reality, they are a very small part of a much larger profession or industry. That industry is the industry of information management." Carl D. Liggio, "Conference Proceedings," Federal Bar Council, 1984 Bench and Bar Conference, Dorado, Puerto Rico, January 29-Feb. 5, 1984 (New York: Goldner Press, Inc., 1984), pp. 105-14.
130. Margaret Fisk, "What Does the Future Have in Store?" *National Law Journal*, September 26, 1988, pp.49-50.
131. Bruce D. Heintz, "Elements of Law Firm Competition," *National Law Journal*, December 26, 1983, pp.15,17-19, 42.
132. "Mass Firing in Seattle," *National Law Journal*, July 24, 1989, p. 2. Compare the report that in the early 1980s "[dissatisfied with the performance of some of its partners, Willkie Farr & Gallagher of New York has asked about a half dozen to leave...." Peter W. Bernstein, "Profit Pressures on the Big Law Firms," *Fortune*, vol. 105, no. 8 (April 19, 1982), pp. 84-87, 90, 94, 98, 100.
133. Bernstein, "Profit Pressures on the Big Law Firms," p. 100.
134. See, for example, American Bar Association Commission on Professionalism, *In the Spirit of Public Service: A Blueprint for the Rekindling of Lawyer Professionalism* (Chicago: Commission on Professionalism, American Bar Association, 1986).
135. Smigel reports that in the early 1960s most lawyers in firms of one hundred or more lawyers "feel they have reached or passed their optimum size." Smigel, *The Wall Street Lawyer*, p. 350.
136. Apparently the big firm enjoyed some comparative advantage over internal law departments within corporations. See Pinansky, "The Emergence of Law Firms in the American Legal Profession," p. 610.
137. "The Commercializing of the Profession," *The American Lawyer* (March 1895), pp. 84-85. (This is not the intense monthly that has since 1979 chronicled—and cheered on—rapid change in the world of large law firms, but a long-extinct legal newspaper of the same name, published in New York from 1893 to 1908.) "Bar" is used here not in the English sense, but in the American sense of the entire body of legal professionals. 138.
138. John R. Dos Passos, *The American Lawyer: As He Was—As He Is—As He Can Be* (New York: The Banks Law Publishing Co., 1907), p. 46.
139. Dos Passos, *The American Lawyer*, pp. 130-31.
140. Hobson, *The American Legal Professional and the Organizational Society 1890-1930*, pp. 88-103.
141. This term is used by Karl Llewellyn in a 1931 book review, *Columbia Law Review*, vol. 31, no. 7 (November 1931), p. 1218. In a 1932 *New Yorker* profile of Paul Cravath,

the author notes that "the blasphemous youngsters just out of law school refer to [the Cavath firm]... as 'the factory,' and it does have, indeed, the efficiency and production of a first-rate industrial plant." Milton Mackaye, "Profiles: Public Man," *New Yorker*, vol. 7, no. 46 (January 2, 1932), p. 23.

142. Karl Llewellyn, "The Bar Specializes—With What Results?" *Annals of the American Academy*, 167 (1933), p. 177.
143. A. A. Berle, "Modern Legal Profession," *Encyclopedia of the Social Sciences*, vol. 9 (1933), pp.343-44.
144. Harlan Fiske Stone, "The Public Influence of the Bar," *Harvard Law Review*, vol. 48, no. 1 (November 1934), p. 6.
145. Stone, "The Public Influence of the Bar," pp. 6-7.
146. On the golden age, see Galanter and Palay, *Tournament of Lawyers*, pp. 20-36.
147. Smigel, *The Wall Street Lawyer*, pp. 303-05.
148. The latest entry is Sol M. Linowitz with Martin Mayer, *The Betrayed Profession: Lawyering at the End of the Twentieth Century* (New York: Charles Scribner's Sons, 1994). The most scholarly is A. T. Kronman, *The Lost Lawyer: Failing Ideals of the Legal Profession* (Harvard University Press, 1993). The most dyspeptic is Peter Megargee Brown, *Rascals: The Selling of the Legal Profession* (New York: Benchmark Press, 1989). The literature is vast. See, for example, Arlin M. Adams, "The Legal Profession: A Critical Evaluation," *Dickinson Law Review*, vol. 93, no. 4 (Summer 1989), p. 652. ("The most pervasive manifestation of the change in the legal climate is the decline of professionalism and its replacement with commercialism"); Norman Bowie, "The Law: From a Profession to a Business," *Vanderbilt Law Review*, vol. 41 (1988), pp. 741-59; Lincoln Caplan, "The Lawyers' Race to the Bottom," *New York Times*, August 6, 1993, p. A-29. The bar's "official" account of the danger of commercialization is the American Bar Association Commission on Professionalism, *In the Spirit of Public Service* (1986), commonly known as the Stanley Report, for Chair Justin Stanley. Kronman,
149. *The Last Lawyer*, at 378-9.
150. Marc Galanter, "Why the 'Haves' Come Out Ahead: Speculations on the Limits of Legal Change," *Law and Society Review*, vol. 9 (1974), p. 95.
151. On this "public justice" critique and other misgivings about the legal profession, see Marc Galanter, "Predators and Parasites: Lawyer Bashing and Civil Justice," *Georgia Law Review*, vol. 28, no. 3 (Spring 1994), pp. 633-81.
152. *American Lawyer* defines pro bono activity as time spent by lawyers (not paralegals or support staff) performing legal services for free. They exclude time spent on nonlegal good works such as serving on a board or fundraising. "The Am Law 100: The Retrenchment Continues," *American Lawyer*, vol. 15, no. 6 (July/August 1993), p. 17. An interesting paper that also uses the *American Lawyer* Survey of Pro Bono Activity, but which came to our attention too late to be integrated into our work, is Debra Burke, Reagan McLaurie, and James W. Pearce, "Pro Bono Publico: Issues and Implications," *Loyola University Chicago Law Review*, vol. 26 (1994), pp. 61-97.
153. Implicitly, we are testing whether there is a simple linear relationship between the dependent and independent variables. R^2 is a summary statistic showing the proportion of the total variation in the dependent variable explained by the regression of the dependent variable on the independent variables. Thus it is a measure of how closely the estimated function approximates or resembles the actual function. The higher the R^2 , the closer the relationship.
154. But smaller firms, unable to enjoy these economies of scale, find it more disruptive and burdensome to take on systematic pro bono commitments. If systematic and regular pro bono is to be generalized, it is necessary to offset this disparity of burdens. Elsewhere, with regard to smaller practices, we argue for extending the principle of

transferability to include interfirm as well as intrafirm transfers. Marc Galanter and Thomas Palay, "Let Firms Buy and Sell Credit for Pro Bono," *National Law Journal*, September 6, 1993, pp. 17-18. Other proposals for transfer of pro bono obligations and credits may be found in David Luban, *Lawyers and Justice: An Ethical Study* (Princeton University Press, 1988), pp. 277-89; Mary Coombs, "Your Money or Your Life: A Modest Proposal for Mandatory Pro Bono Services," *Boston University Public Interest Law Journal*, vol. 3, no. 2 (Fall 1993), pp. 215-38; Linowitz with Mayer, *The Betrayed Profession*, pp. 161-62.