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# CAN LAW SCHOOLS AND BIG LAW FIRMS BE FRIENDS?

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## I. INTERLOCKING ACTIVITIES

I have taught courses about lawyering and the legal profession for some thirty years. Many of my students go to work at law firms, and a large percentage work at large law firms. While that statement—many law students go to work at large law firms—has been true for decades, the firms to which those students are going have changed substantially—in terms of size, scale of activities, mobility of both partners and associates, and demands on lawyers' time.

Law schools have also experienced changes, but the pace of change has been far less dramatic. One change has been in relationship to the practice of law. In the wake of Watergate, law schools began to develop and later were required to teach courses on legal ethics. While the dominant focus has been and continues to be ethical rules, several academics have begun to consider the practice of law as a topic of scholarship and teaching, thus enriching the range of issues now addressed within law schools.

My recent focus has been upon current students and new associates and their expectations about and experiences in large firms. I have taught both classes and research seminars on the profession, in which students examine how their colleagues make career plans. Through these seminars, I have gained some understanding of law firm life, including the

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willingness of law firms to support pro bono projects,<sup>1</sup> the experiences of relatively new associates, and many law firms' attitudes about the work expected from young associates.<sup>2</sup> From such research and from the growing wealth of materials about law practice,<sup>3</sup> I have begun to develop an understanding of how substantial the shift has been in law firm practice, what glimpses of those practices are available to law students, the kinds of disjunction between students' experiences at law school and those of graduates just beginning law practice, and also how interdependent the activities of large law firms and law schools are.<sup>4</sup>

From outside of law schools, some criticism has emerged about the degree to which law schools are out of sync with the world of practice. The conventional story is that law schools and law firms are in different

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1. For example, Professor Steve Wizner (also of Yale Law School) and I teach a seminar called "Professionalism in the Public Interest," in which we help law students develop and implement pro bono projects to take with them to their firms. A prerequisite for taking this class is that the student plans to work for a firm (most with large law firms, but a few with consulting firms or smaller law firms), often those at which they have worked during a summer. The students must be interested in developing a pro bono practice as a part of their work from the beginning of their time at that law firm. We help students design projects based on their interests (rather than taking pro bono assignments from a stock at a given law firm), and we facilitate firm approval of these projects. Thereby, as entering associates, such students bring in clients, but nonpaying ones. In the process of working with the students, we have also gathered information about their experiences as summer associates, and about their expectations about what law practice will entail. In addition, I have developed (with Mary Clark of Yale Law School) a new clinical program, representing clients seeking redress against lawyers through Connecticut's bar grievance procedures—providing a window into a very different form of practice, solo and small practitioners—often themselves economically marginal—and into their interactions with individual clients.

2. In another seminar, for example, students interview associates who are two to four years into their practice at large law firms; these interviews are then supplemented by conversations with junior associates who come to interview law students for jobs.

3. See, e.g., MARC GALANTER & THOMAS PALAY, *TOURNAMENT OF LAWYERS: THE TRANSFORMATION OF THE BIG LAW FIRM* (1991); MARY ANN GLENDON, *A NATION UNDER LAWYERS: HOW THE CRISIS IN THE LEGAL PROFESSION IS TRANSFORMING LEGAL SOCIETY* (1994); MICHAEL J. KELLY, *LIVES OF LAWYERS: JOURNEYS IN THE ORGANIZATIONS OF PRACTICE* (1994); ANTHONY T. KRONMAN, *THE LOST LAWYER: FAILING IDEALS OF THE LEGAL PROFESSION* (1993); Robert W. Gordon, *The Independence of Lawyers*, 68 B.U. L. REV. 1 (1988); Deborah L. Rhode, *The Professionalism Problem*, 39 WM. & MARY L. REV. 283 (1998); David B. Wilkins & G. Mitu Gulati, *Reconceiving the Tournament of Lawyers: Tracking, Seeding, and Information Control in the Internal Labor Markets of Elite Law Firms*, 84 VA. L. REV. 1581 (1998).

4. A few caveats are in order. While I teach courses about "the profession" and practice law with students in clinical programs, I am not a sociologist. Second, the data—both in terms of that gathered directly through the seminars I have done and that which is generally available—is not as comprehensive as is desirable. Third, my current focus is on work on the East Coast, and many of the research projects involve students who attend or have graduated from Yale Law School, and hence are not representative of law students in general, although in my experience they are very much like law students at other schools. Further, as I will develop below, their responses and information mirror generally held impressions of contemporary practices and issues.

worlds; law schools are enamored with “law and” theory and law firms are engaged in the “real world.”<sup>5</sup> My story here is how the growth of large law firms has affected law schools by altering the market for their graduates, and how law school tuition levels affect students’ decisions to work at such firms. A wider array of law schools are now feeding big firms. Further, the high costs of attending these law schools make law students dependent on the existence and success of such firms to employ them and thereby to fund the repayment of education debt. Institutional interaction—law firm, law school—works pretty well, not only in this circle of debt repayment and employment but further in the production of disposable income for alumni giving.

Yet, despite this symbiotic relationship, unhappiness is pervasive. Law firm partners describe themselves working in a painfully aggressive world and involved in fragile and fragmented partnerships. Associates dislike much of the content of their work and the constraining time demands placed upon them. Law students anxiously contemplate their futures. Law professors are conscious of a world changing around them and are not quite sure how and whether to reflect such changes in their curricula.

As a law teacher, I am concerned about the distress of the individual students and graduates whom I encounter. As a professor of professional responsibility, I wonder about the ethical implications of helping to perpetuate a system that seems so unrelenting and disquieting. Hence, my questions are about what structural changes might be possible that could at least disrupt, if not diminish, the personal angst sparked by the current inter-relationships. To invoke the possibility of a better world, I use the term “friends” to suggest a hope of coventuring between the institutions of law schools and firms.

## II. UNHAPPY PRACTICES

My understanding of the degree to which tenured law faculty enjoy a stability distinct from the experiences of our counterparts (and former classmates) at law firms emerged from an experience I had a few years ago. I went to a dinner with my then law school dean, another senior faculty member, and the managing partners of four very large, established law firms in a major United States city. The purpose was to have a general discussion about issues relating to “professionalism” with the people who

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5. See, e.g., Harry T. Edwards, *The Growing Disjunction Between Legal Education and the Legal Profession*, 91 MICH. L. REV. 34 (1992).

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were hiring our graduates. We hoped to find out how the firms were training new associates, what they were doing to instill ethical norms and to monitor ethical performance by their partners and associates, and what they were doing to make life in the law attractive for their newly hired associates.

The conversation turned quickly to what was bothering these very senior partners about law practice. I was not prepared for the gloomy forecasts about the future of law practice embraced by each one of these lawyers. I know that many lawyers' view of the golden age of law practice coincides with the years shortly after passing the bar or after making partner. But the managing partners' complaints were more than laments for halcyon days. Instead of hearing about their authority, we learned about their insecurity. One of them commented, and the others agreed, that the job of a managing partner was simply to make sure that the firm survived, at least until someone else took over that thankless task.

Their personal distress focused my attention, but their complaints were along lines one would expect, if a regular reader of *The American Lawyer* or other such legal periodical. Clients had gained a tremendous amount of power; they ceaselessly shopped the market for firms. Firms had to actively pursue business. Clients knew what firms could do and were not shy about asking for answers with short timetables, sometimes even putting a cap on research time. Clients exercised control over costs to a degree unimaginable only a few years earlier. Clients questioned whether associate time was necessary, whether paralegals had put in too much time, and whether Westlaw, Lexis, photocopy, fax and telephone charges were excessive. (Further, one of these partners described his former partner, who upon exiting the firm to become in-house counsel, immediately asked the firm to reduce fees by ten percent across the board.) While I had heard similar complaints, I was more than a little surprised at the degree to which these (ostensibly) powerful lawyers were concerned about the instability of their law firms.

As I listened to this conversation, I began to wonder both about the brooding outlook of senior lawyers, fearful of the demise of the profession that they cherished, and about my students who also worried anxiously about the future. What must it be like to join such large firms as newly hired associates? Since that evening, I have made it a practice to find out what I can about the experiences of partners, of associates in large firms (primarily in large cities such as New York, Boston, and Los Angeles), and about law students' expectations upon accepting offers from large firms.

A central part of my inquiry is to understand more about not only the economic forces operating *on* these firms but also the economics *within* these firms. At a general level, a wealth of knowledge is available; much is written about mergers of law firms, the growth of global law practices, and the large sums of money now being made. Below, I detail how the miseries of practice are ascribed to such economic forces. But, and somewhat surprising to me, thick descriptions of firms' economics are less plentiful than I expected or than would be useful. Relatively little is known about where all the money is actually going and how it is allocated, about the profitability of lateral hires, about economies of scale, and about allocation of resources as between new graduates and laterally-shifting associates and partners. How much is made and how much is wasted through inefficient turnover (derived in part from a lack of appreciation of other forms of valuation of firms' success, such as quality of life), are not so clear.<sup>6</sup>

Turn then to what is known (or claimed) about the economics of practice. From recent graduates and popular culture, a somber view emerges, in which the economics of firm practice create a focus on the "bottom line" leading to relaxation of ethical standards, requirements for increased billable hours, erosion of loyalty toward both associates and partners, impersonal workplace relationships, and a reduction of the time and effort that was once devoted to training associates to be competent lawyers.<sup>7</sup> The idea of a client having a longstanding relationship with one firm has lessened, if not altogether disappeared. The relationship between lawyer and client has become a series of business dealings. Single transactions with a variety of law firms allow clients to compare expertise, shop and bargain for lower rates, and demand immediate response. As one lawyer ruefully told me, "clients know what we can do and how fast we can do it, and think nothing of imposing deadlines that make us worry about whether we're providing the best service to them." The sense of being exploited by clients is mirrored by a willingness to exploit; the prevalence

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6. Although much work has gone into the investigation of the economics of law firms, reliable internal data is hard to come by. General information comes from several sources, including Ronald J. Gilson & Robert H. Mnookin, *Coming of Age in a Corporate Law Firm: The Economics of Associate Career Patterns*, 41 STAN. L. REV. 567 (1989); Ronald J. Gilson & Robert H. Mnookin, *Sharing among the Human Capitalists: An Economic Inquiry into the Corporate Law Firms and How Partners Split Profits*, 37 STAN. L. REV. 313 (1985); and S.S. Samuelson & L.J. Jaffe, *A Statistical Analysis of Law Firm Profitability*, 70 B.U. L. REV. 185 (1990).

7. For a recent description of the private law firm environment and an analysis of the economic forces driving the growth and dynamics of law firm, see TASK FORCE ON PROF'L CHALLENGES AND FAMILY NEEDS, BOSTON BAR ASS'N, *FACING THE GRAIL: CONFRONTING THE COST OF WORK-FAMILY IMBALANCE* (1999) [hereinafter *FACING THE GRAIL*].

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of single-transaction relationships also encourages lawyers to view clients as short-term revenue sources.

These changes have caused lawyers to focus increasingly on the business aspects of their practice. For many firms, billable hours, partner profits, and market share in a practice area or in a city—in other words, the “bottom line”—have become the only way that success is measured. Dropping out are other forms of what used to be the basis of lawyers’ prestige, such as peer recognition, participation in bar association activities and projects, especially those designed to provide access to justice for those unable to afford it, and leadership of non-law-related civic groups such as symphonies, libraries, and museums.

Technology has not been a panacea; in fact, it appears to increase pressures. Lawyers can do more than they used to in the same amount of time—revise a document more times, search for information in more areas, respond to one matter while working on another matter away from the office. Technology means that people can work and be accessible around the clock and that revisions are almost always possible, thereby increasing the work to be done.

The media exposure of law firms is yet another source of pressure for those within them. *The American Lawyer*, the *National Law Journal*, and *Court TV* are relatively recent additions to the legal landscape. I am surprised at the close attention paid by lawyers to what appears in *The American Lawyer*, and the animus displayed toward that magazine by the managing partners with whom I speak. They are resentful of its power even while admitting that it serves some useful purposes; they just wish that its focus was not so much on money. Legal magazines read by many, if not most, powerful lawyers exacerbate the competition between them. Many media sources provide lists, ranking firms according to revenues, firm profits, and profits per partner.<sup>8</sup> In addition, the legal community knows when a lawyer has left one firm for another. Legal mergers are reported and dissected. Big cases, big verdicts, and migration of clients, make the front pages. Lawyers who might have been significant participants within the legal profession but who would have labored in relative anonymity twenty years ago are now increasingly well known, getting the attention that had been paid to the flamboyant tort and divorce lawyers of yesteryear.

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8. The *US News & World Report* ranking of law schools is the academic parallel. Both sets of ratings serve as measures of values and are given at least some credence by those affected.

This pattern has also made plain the ongoing pressure on law firms to grow. Why are firms getting bigger? The literature stresses that providing a range of services is key—one-stop shopping is a way to get business. Big, these days, means big enough to offer a very wide array of expertise in order to attract big, well-paying clients. A senior partner in a big New York law firm alluded to the Darwinian nature of current practice by describing to me how hard it is to stay even with previous years in income and profit. To fall behind is a show of weakness—not a good sign to clients, prospective associates, and lawyers within the firm. And staying even means matching salaries paid by leading firms for new associates, and keeping up with advances in technology. But when salaries are raised for new hires, as happened recently (prompted by a new locus of power, Silicon Valley), everyone's salary up the line must increase also. So, everybody in the firm has to work harder (and perhaps charge more per hour) simply to stay even. And, of course, when everybody works harder, they expect to be compensated accordingly, so the spiral continues.

But what is curious, from an economic point of view, is that being a big firm does not seem to create efficiencies of scale. Expenses per partner or per attorney seem to rise rather than fall as the size of the firm increases, primarily because expenses related to associates tend to be higher at larger law firms.<sup>9</sup> Hence, the question is why big firms are so costly.

Overhead in terms of offices and staff provide a part of an answer, along with demands to appear perhaps even more prosperous than the firm really is. But another significant source of expense is reliance on the hiring of laterals in order to get business. Itinerant rainmakers have become familiar ornaments of the legal scene—"Have client book, will travel." It is tempting for a firm to expand a client base in this way, doing away with the costs associated with wooing and securing clients directly.

How does a firm attract and reward rainmakers? To keep them happy usually means taking on a package of people or providing sufficient associate and support staff to service the rainmaker's clients. This strategy works if the new staff generates a profit, but there is some evidence that it takes more than a year, and perhaps even about two or three years, for an associate in a large firm to bill enough to cover his or her salary and benefits, and associated overhead and recruiting expenses.<sup>10</sup> Further, law

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9. See *FACING THE GRAIL*, *supra* note 7, at 12.

10. A senior partner in a large New York law firm told me that it was easier to assume that associates were profitable than actually to cost out profitability. Because partners in that firm are compensated partly in proportion to what they bill out, a partner who has inefficient associates working

firm partners report that it is the fifth- to eighth-year associates who are the real geese that lay the golden partner profits. Note also that in many firms there is a dearth of third- to fifth-year associates; reports are that more than fifty percent of associates—and disproportionately women—leave by the third year.<sup>11</sup> (By the way, a serious disjunction exists between students' and associates' beliefs about how firms make money and about these reports. Law students and young associates take as an article of faith that new associates bill enough to bring significant profits to partners. They believe that associates—whatever their rank—are “profit centers.”)

Another question is the degree to which lateral partners generate profits. Allocation of profits in many firms depends upon the ability to bring in and keep business; rewards are tied to the billings generated.<sup>12</sup> This system does not necessarily internalize costs but instead often spreads them across partners. This means that lawyers who require less associate support are at a salary disadvantage because they are allocated expenses on a per capita basis, but paid on a revenue-generating basis. In other words, instead of internalizing the costs of associates to the partners who bring them in and use them, in many firms profits are distributed according to revenue generation rather than *profit* generation. Laterals may look like revenue centers, but they may also be able to shift some of their costs onto other partners.

The treadmill of collecting enough revenue to pay rising salaries and overhead, plus attempting to increase per-partner compensation, can affect how many new partners a firm is willing to add each year. Severely limiting access to the partnership ranks has risks, of course. Making the grail less attainable might mean that more associates leave the firm earlier, before they become profitable. And new associates, or lateral associates, might become harder to attract because they know making partner might not be in the cards. We do know that the mobility of associates has increased substantially over recent years, as has the hiring of laterals, leading to increased costs both in recruiting and in integrating new lawyers into firms.

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for him (i.e., whose costs are higher than the dollars that he brings into the firm) may be paid more than a partner whose benefit/cost ratio is higher.

11. See NAT'L ASS'N OF LAW PLACEMENT FOUND. FOR RESEARCH AND EDUC., KEEPING THE KEEPERS: STRATEGIES FOR ASSOCIATE RETENTION IN TIMES OF ATTRITION 53, 58–59 (1998); ROBERT L. NELSON, PARTNERS WITH POWER: THE SOCIAL TRANSFORMATION OF THE LARGE LAW FIRM 137–40 (1988).

12. See FACING THE GRAIL, *supra* note 7, at 12.

Even the near future is hard to predict in the rapidly changing world of large firm practice. Looking at the partnership decision from a strictly “bottom line” perspective, and discounting firm morale and reputation among prospective associates, law firms might well decide that their best chance to increase the “bottom line” in this new world of practice might be: 1) to increase the partnership primarily by hiring laterals who can bring in significant new (and ostensibly profitable) business as partners, 2) to promote only those associates who have demonstrated that they can bring in new business or that they can take current business away from the firm, and 3) to hire fewer new associates and rely on long-term-nonpartnership-track lawyers to do the work now done by the expensive and peripatetic new associates. Whether this strategy would work depends upon a number of factors, including finding competent lawyers who will do the grunt work, be satisfied with lower salaries, have no partnership ambitions, and be willing to work enough hours to be profitable for the firm. (Such a job description might be called “women’s work,” and anecdotal reports of “mommy tracks” support such a perception.)

Having sketched a brief overview of what law firms look like through the lens of academic and popular writing, and senior partners of major firms, let me turn to what junior associates describe law firm life to be. A first difference from when I began practice is the stunning amount of information now extant about the money paid to lawyers. Unlike my experience (35 years ago), prospective associates today not only know law firms’ starting salaries, but also their bonuses, salary increases by steps for associates, perks, and partners’ earnings.<sup>13</sup>

A second distinction is the degree to which certain kinds of work undertaken by associates is dreaded. The biggest fear for an associate is being trapped on a big case and doing document production or other boring and time-consuming work for long periods of time. One recent graduate said that several associates left his firm because they had been locked into the discovery process. Another said that he had spent ninety-eight percent of his time in low-level work on one case in his first year and had despaired of ever getting significant client contact. Some associates did report satisfaction with their work; in big firms these tended to be corporate associates. In small firms, associates tend to report more satisfaction with the nature of their work.

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13. See, e.g., *Greedy Associates: Fat Salaries*, at <http://www.greedyassociates.com> (last visited Nov. 1, 2000).

Third, hours always seemed demanding, but the time demands are now out of scale to what was common only a few years ago. Even among those happier with the content of their work, a universal complaint is hours.<sup>14</sup> Associates at small firms complained least, but all felt burdened by the requirement of putting in what they considered excessive amounts of billable time. Nearly all billed 2000 hours or more, and most surveys indicate that working late at night plus at least one day on weekends is common. Complaints about time relate to the pressure to give “face time”—to stay at the office late to make sure that they were not seen as shirkers.

Of the group of associates that we surveyed in one of my research seminars, all but one had no children, and were either single or had a significant other who also worked. Several thought that their practice was absolutely incompatible with having time for family responsibilities, and noted that “people with families” (translated, poignantly, mostly as women) often worked part time. One associate reported leaving his (large New York firm’s) office at “9 pm on a good day, 7 am on a bad day, most days between 11 pm and 1 am, and working 2 out of 3 weekends.” His comment: “a pleasant place to work as firms go.” Associates also complained about the impossibility of planning—the inability to arrange dinners, to buy theater tickets—because they never know when these plans will be aborted by client demands that require immediate response. One associate said that he spoke to his friends mostly by email because all of them were “locked up all day and well into the evening.”<sup>15</sup>

A fourth aspect of associates’ practices today is their attention to firm culture. Talking with law students and young associates, one learns that some had avoided firms after summer internships during which they found morale among associates to be poor. Some firms were described as impersonal, with no mentoring, no feedback, and no help with questions.

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14. See Patrick J. Schiltz, *On Being a Happy, Healthy, and Ethical Member of an Unhappy, Unhealthy, and Unethical Profession*, 52 VAND. L. REV. 871, 891 (1999). Schiltz cites data showing that a few decades ago, “lawyers could not reasonably expect to charge for more than 1200 to 1500 hours per year,” and that “[a]s late as the mid-1980s, even associates in large New York firms were often not expected to bill more than [sic] 1800 hours annually.” *Id.* (citations omitted).

Today, such numbers seem quaint. At the biggest firms in the biggest cities, associates and partners commonly bill 2000 to 2500 hours per year. At one firm in Los Angeles, not regarded as especially driven, associates are expected to bill at least 2000 hours per year, plus 300 hours more for “firm development.” The “nut” of 2300 hours minimum causes some distress among associates, especially those who have children or others to care for, but by and large is accepted as an inescapable attribute of large firm life.

15. One third-year associate reported that when he did comment about the hours, he was told, “You’re making big bucks, suck it up.”

Some complained that they were given no direction about document production and were left on their own to fashion responses. One associate, who complained that he had no one to go to when he had a question, remarked favorably about a firm that had set up a hotline for “stupid questions that people are afraid to ask.” Associates who were hungry for trial work and litigation experience chafed at the long wait to get such assignments. While seeking direction and personal exchanges, they complained about being asked to give “face time,” which might have provided opportunities for interaction, but instead was experienced as demanding a certain kind of compliant presence.

A fifth distinction from earlier decades, and I think under-appreciated for its significance, is the emergence of the market in associates and the resultant mobility of junior lawyers. Not so many years ago, associates came and stayed, leaving only upon being signaled or told that they would not make partner. The partnerships were themselves relatively stable. The first shift was the mobility of partners, once a newsworthy event and now expected behavior. Increasingly, the same is true for associates, who have a mobility that is an important factor in the changing culture. Junior associates perceive themselves as loosely connected with institutions and unlike senior laterals, these younger associates have never been anchored to a law firm.

Every one of the associates interviewed in my research seminars reported receiving frequent calls from headhunters. Some associates reported that some of those calls came from headhunters who knew nothing about them except where they worked and had gone to law school. All but a few associates were actively looking at other job prospects.

These calls generate another form of pressure on young associates, who become acculturated to an expectation of dissatisfaction, mobility, and search for “greener” (in the monetary sense) pastures. Associates continually worry about “doors closing,” and that worry feeds into the restlessness that many of them feel. Even those who were satisfied with their firms and their work have kept at least a toe in the water. One associate in a large Los Angeles firm (with a reputation for being a relatively less stressful place to work) said that although her superiors would be surprised to know it, she interviewed for another job every so often:

I kind of know what’s out there. I’m marketable, and I recently came close to taking another job, but I didn’t. I think that after the whole decisionmaking process, it made me feel more positive about being here,

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because you choose to be here, and I think I do that because I constantly have doubts about being here.

What does the world of large firm practice look like from the perspective of law students, who often, in the status of student, are unclear about what professional interests they have? Here, peer culture has as big a role to play. When they get to law school, students are quick to learn the attributes of prestige. Word percolates about power structures and power levers both inside and outside of the law school. Students, many of whom have competed all of their lives for entry into the next chamber, do not stop competing when they reach law school. At the same time, students are filled with anxiety about their ability to deal with the new environment of law. Many first-year students worry that they have been wrongly admitted to law school, that the school made a mistake by letting them in.

Security and some degree of self-confidence (or at least a facade) come from learning the ropes, getting the law school “vibes” about whether to clerk and which judges to apply to clerk for, which law firms are seen as most prestigious, and which professors can provide help in jumping these new hurdles. By the time the third year rolls around, nearly all have worked for one or two summers in law firms, or in government offices or public interest organizations, some have secured clerkships, and nearly all have decided upon which firm to work for afterwards. Students learn from those summers and from their friends that loyalty among lawyers in big firms is eroding, and that loyalty to associates is fading fast. On the other hand, there remains the sense that prestigious firm jobs are good for the resume. (Students with already wonderful resumes still worry about “degrading the resume.”)

When we ask our students why they chose their (mostly large, big-city) firms, the answers are that the firm is prestigious, will provide good training, will pay lots of money, and will allow them to pay off their debts in the shortest time. Rare is the student who says that he or she is going to a firm with the intention of making partner. The more common response is for a student to state an intention to “stay for two or three years, pay off my debts and then decide what to do.” Maybe the reluctance to state the aspiration to be a partner comes from a recognition of the obvious—only one in ten of big-firm associates actually makes partner. Maybe it is only being suitably modest. But maybe it is a recognition that they might well not like the work, the hours, and the atmosphere in big firms, yet feel compelled both by economic reasons and peer pressure to join the crowd at the big firms.

The students' "bottom line" is that they enter big, prestigious firms expecting to be exploited, expecting to work long hours, with the first year or two devoted to unexciting work, and expecting to leave long before being considered for partnership. The interesting part to me is that in talking to students, I learn that they are quite aware of all of the shortcomings of the job they have chosen. But for many it is simply a continuation of doing things that they might not have preferred to do in order to excel at whatever they were doing, wherever they found themselves. They seem to be used to competition and accept it as the norm. Despite all of our efforts to make Yale (and other law schools in which I have taught) student-friendly, noncompetitive places, students continue to report pressure and angst. Poignantly, a second-year associate said it best: "Living an autobiography that somebody else wrote."<sup>16</sup>

A new development, from the law schools' perspective, is that investment banking, accounting, and consulting firms now routinely interview at the law school. In one of my seminars last year, three of the fourteen students were going to work at consulting firms. "I-bankers" are similarly knocking on the door, and the word is that they want new recruits right out of law school before they have been exposed to law practice. The consulting firms view lawyers as "narrow" and lacking in creativity—and therefore want to rely on law school selection processes to employ our students before they are "contaminated" by legal practice.

Consider also the experiences of law school in hindsight. What do recent graduates, once they are working in these firms, think about their law school experiences? The recent graduates that we interviewed, who were two and four years out, were almost unanimous in reporting that very little of what they had learned in law school had prepared them for a day of work in a law firm.<sup>17</sup> On the other hand, most thought that their law school education had been interesting and valuable—learning to work hard, to focus, and to analyze difficult issues, rubbing shoulders with interesting

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16. Some students, of course, opt out of the big-firm world. Some take advantage of loan forgiveness programs to go into public interest work; others, though not too many, opt for small firms. But for some, small firms may not be a realistic option, at first anyhow. One practitioner in Salt Lake City recalls advising a job candidate that, though the student would be receiving an offer from the Utah firm, he would be well advised to go to a better paying job, because the small firm salary would not allow him to pay off his debts and still have a comfortable life.

17. Complaints were often mixed with rueful acknowledgements—"You didn't teach me to do the stuff that I hate doing, like document production and due diligence." Clinical programs—with radically different client bases and resources—were sometimes mentioned as giving a headstart into some areas of lawyering.

peers and professors, and having the freedom to engage in issues that interested them.

### III. UNEASY ETHICS AND PROFESSIONAL RESPONSIBILITIES

In sum, a rather unpleasant story emerges. Law practice has changed, with firms and partners focused ever more on the “bottom line.” Students and new associates, burdened by massive debts, are also attentive to the economics of practicing law; a prime consideration is how to make the most money in the least amount of time. The interest in money by law firms and lawyers diminishes loyalty both ways. Lawyers—at all levels—are mobile, raising recruitment and retention costs; competition from consulting firms, new technology firms, and investment banks drives these costs even higher.

What are the implications of this narrative for the law school/law firm relationship? Let me begin with the ways in which the current relationship “works” and may be mutually advantageous, at an institutional level. First, law schools are able to charge tuition at a level that students would not otherwise be able to afford. Through employment at firms, graduates pay for their legal (and in many cases undergraduate) education. But, given the substantial debt load, the degree to which law graduates’ professional affiliations are driven by debt burden may have intensified.<sup>18</sup> The sense of security in the law firm affiliation to pay that debt may also have lessened, in that given the potential for law firm demise and/or transformation through mergers, and given partner and associate mobility, young graduates have increased anxiety about which firm will provide the source of income to pay their debts.

Second, at least in the current market, many law schools enjoy the high employment rates of their graduates. And, again under current market conditions, successful graduates are in the position to make significant contributions to their law schools’ development campaigns. A large number of law schools boast of higher-than-ever giving and larger-than-ever endowments.

Third, law schools may benefit from the unhappiness of some practicing lawyers, who, seeking to exit practice, are eager to teach law. The law-teaching market has become increasingly competitive, as the numbers of applicants from law practice (as well as graduates of other

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18. The degree to which debt drives job choices has been examined and questioned in Lewis A. Kornhauser & Richard L. Revesz, *Legal Education and Entry into the Legal Profession: The Role of Race, Gender, and Educational Debt*, 70 N.Y.U. L. REV. 829 (1995).

disciplines seeking teaching positions) seek a finite number of jobs. Law firms also now offer law professors lucrative consulting opportunities, as the market for “experts” to testify on the law (of ethics, class actions, lawyers’ fees and the like) has expanded.

Law firms (and now consulting firms) in turn rely on law schools to sort potential employees—using law schools’ admission in lieu of their own search costs to find individuals whom they believe will fill their needs for competitive, high-achieving, hard-working, and arguably compliant workers. Further, given the debt load, the firms can rely on workers needing to earn high incomes and thereby not challenging the terms and conditions of employment. Moreover, with relatively little education based on joint projects or collaborative work, law schools continue to proffer an image of law as a highly individualized activity; the “star system” of law professors also underscores the individualized activity of law, further diminishing the likelihood of inspiring collective acts by junior associates to alter systems that they find abusive.

But the system, as I have outlined, is also pretty dysfunctional, in that sophisticated players (ranging from law partners and professors through law students) develop strategies to take advantage of each other, in increasingly (mutually) exploitative but unhappy fashion. Given that I am a law professor and this essay is written on the occasion of the celebration of the 100th year of a law school, I worry about the ethical implications—for law schools—of participating in this system. I conclude by exploring the professional responsibilities of law schools. What might law schools, even as they benefit economically, do to affect the world into which they send their students?

A first suggestion comes from my questions (unanswered thus far) about the real economies and costs of the current system. I mentioned that the high turnover rate of associates may build in unnecessary costs and the issue of the degree to which partnership payments are keyed to costs incurred by those partners. Given law schools’ interest and expertise in law and economics, the time has come to investigate seriously the actual costs of the current practices. To do so, the relationship between law firms and law schools would need to take a new turn—toward a willingness of law firms to permit access (if need be, confidentially) to inside data about billing, expenses, and overhead, to enable a cross-firm comparison of the effects of rates of turnover of employees, at all levels, and to alternative forms of compensation packages. Included as variables will need to be some measure of the costs of training for certain kinds of legal practice, the

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costs of recruitment, the morale effects, and the costs to clients of change, and the degree to which the mobility of lawyers affect client bases.

Another set of questions relates to whether the client market is fixed in the work style it demands or whether clients' preferences can be shifted. As more in-house counsel are refugees from law firms, perhaps some of them might be convinced to select firms to represent their companies because their more reasonable workloads produce better work product (i.e. questioning the quality of worker productivity over seventeen-hour days). Such inquiries would be aimed at learning whether some of the aspects of the miseries experienced individually (fragile alliances, undue pressures to move, too many hours, etc.) are actually also costs, in the dollar sense, to the institutions so that the institutions would have an economic interest in diminishing these costs. Serious investigation into the real world of practice might well yield incentives for change.

A second suggestion relates to the degree to which law schools, which help to create market value for law firms in the sense of being desirable placements for their students, might alter the measures of value. Students shop firms when in law schools. Whether advice from either law professors or placement offices has significant impact is open to question; peer information has great purchase. Nevertheless, law schools could try to implement an evaluative system of firms—a ranking or rating—that includes quality of life measures as determined by interviews from that school's graduates and if possible from a wider resource base. Rather than cede such evaluative processes to *The American Lawyer* and other publications, law schools could try to proffer alternative assessments. To do so, of course, requires a law school to invest in knowledge and also to risk alienation of some potential donors, and hence requires both empirical sophistication and moral consciousness.

Yet another (possibly unpopular from a law school's point of view) response would be for law schools to lower tuition by using their endowment funds, thereby significantly lowering students' debt load. Another option is law firms and law schools working together to consider the ways to develop new packages for compensation—such as the possibility of law firm payment of student loan debt for their associates, who would then be paid a lower starting salary and who would agree to work at the firm for a specified period of time.<sup>19</sup> Related is the degree to

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19. Informal interviews with lawyers and students about this idea suggest interest on both sides; some of my students are exploring drafting a proposal to bring to law firms.

which national debt-relief programs and tax code changes could be implemented.

Fourth, law firms have a lot to teach law schools. Thus far, continuing legal education programs (some of which may be profit centers for law schools) provide education for lawyers but they are not vehicles for mid-career lawyers to educate law professors. My suggestion is to consider how law schools can bring in all kinds of law practitioners, not only to teach their students, but to teach their teachers about the current structures of law practice and the degree to which the substantive areas of legal practice are affected by the modes of practice. Infusion from the profession should go not only toward classes on the profession but should affect the curriculum as a whole. The interaction may also be a creative outlet for both the law partner (often interested in teaching) and for the law professor (often aware of being outside the center of practice). The teaching relationship can work in both directions.

In short, I think that institutional-level reflection is what is required and that institutional-level action—of a variety of kinds—could be undertaken to begin to respond to the pervasive disquiet. While law students may see themselves as individuals without much agency to alter the structures they find, and while senior partners may have a parallel sense of inability to affect change, the institutions of which both are a part need not feel so disempowered. With varying degrees of radicalism, law schools and law firms could work together to disrupt the status quo.

