Recent Changes in Law Practice

The practice of law has changed dramatically in the past decade. As you prepare to enter the profession, it is critical to be aware of the changes within and outside the legal field and how lawyers and firms are responding to these new developments.

Demographics

Although there is surprisingly little empirical research on lawyers and the legal profession, a number of studies provide insights into what the profession is like today. The most significant of these is the decennial Lawyer Statistical Report prepared by the American Bar Foundation (ABF).

The most recent Statistical Report is a 1982 census identifying 649,000 lawyers in the United States. Extrapolating from that figure, it is estimated that there were over 750,000 lawyers in 1990, and that the number will grow to one million by the year 2000.

Other developments are having an impact on the profession. The percentage of lawyers who are solo practitioners has decreased from nearly 60% in 1950 to less than 40% in 1982. Interestingly, the number of solo practitioners has remained fairly stable, pointing to an increase in the number of lawyers practicing in firms with other lawyers as a cause for the change in percentage.

The number of lawyers practicing in large firms is also increasing, although only 5% of all lawyers practiced in firms over 50 lawyers in 1982. That percentage may have doubled by now, but the typical lawyer still practices in a small firm or alone. Legal periodicals, such as the American Lawyer, often give a skewed picture of the profession, suggesting that large firms make up a larger portion of the profession than they do.

Over the years, the percentage of lawyers engaged in the private practice of law has remained fairly stable. About 30% of all lawyers practice outside of law firms. This includes 10% in corporations, 9% in government service, 4% in the judiciary, and 9% in a variety of other positions, including military law offices, public interest law offices, and related activities.

These figures do not reflect many of the large number of lawyers who have "defected" from the profession. The ABF surveys rely upon data supplied by the Martindale-Hubbell Legal Directory, which is primarily a directory of private practitioners. There is probably some under-reporting for those lawyers not engaged in private practice, especially those who work in jobs outside the legal profession.

The lawyers in these non-legal jobs include those who never practiced law after law school as well as those who left the practice of law after some period of time, frequently to go to work for clients. Some lawyers move in and out of the legal profession periodically.

Work and Lifestyle

Given the complexity and diversity in the legal profession, is it possible to make any generalizations about the work and lifestyles of lawyers? It is likely.

For one thing, a high concentration of lawyers lives and works in urban areas. In rural areas, they may be fewer than one lawyer for every 1,000 people, but the ratio is one lawyer for every 100 people in many of the largest cities. Perhaps it was this ratio that prompted a cartoon showing one person saying to another at a cocktail party, "How did I know you're a lawyer? Everybody's a lawyer!"

The odds are two to three that you will live and work in a metropolitan area of one million people or more when you graduate, according to the National Association for Law Placement Employment Report and Salary Survey for 1990.

Another observation about the legal profession is that the majority of lawyers are relatively young. Because the number of law school graduates increased significantly in the 1970s and 1980s compared to earlier years, two-thirds of all lawyers have less than 20 years of experience.
The median age of all lawyers is less than 40, reflecting this youthfulness. Demographers project a “graying” of the profession over the next 30-40 years as the baby boom generation grows older.

Various surveys have pegged average lawyer income at anywhere between $50,000 to over $100,000 per year. Such wide differences imply different sampling and collection methods. Surveys that focus on smaller towns are likely to indicate lower salaries. Surveys that include lawyers in government and public interest legal work produce lower figures than surveys of private practitioners alone. Surveys reflecting the relative youth of the profession also indicate lower levels of income.

The range of starting salaries for law graduates is from $15,000 to over $80,000. Ironically, the highest starting salaries may be higher than the median for lawyers generally. The overall salary range for lawyers is much greater, from less than $15,000 to over $1 million per year. The average small law firm partner can expect an annual income of slightly more than $100,000.

In recent years, the advent of the two-career family has resulted in a doubling of income for many couples. Two 1990 law school graduates conceivably could earn combined salaries of over $160,000 per year. The pressures and the burdens on a relationship from such a commitment may be staggering. The lifestyle considerations facing two-career couples impose additional career planning problems for both the short- and long-term.

Young women, whether their partners are lawyers or not, must make difficult decisions about career and family. Do you wait to have children until after you win the partnership sweepstakes? Do you take time out before starting work? Can you schedule your work on a part time basis?

Despite the fact that the percentage of women in the legal profession has increased dramatically, the profession as a whole has done little to make these choices easy. And although men and women graduating from law school in the 1990's consider lifestyle issues important, sensitivity to these issues remains embryonic among the practicing bar.

For example, very few firms provide day care facilities for employees although an increasing number of business enterprises outside of law do. And many firms do not have formal parental leave policies-until someone actually requests such leave.

**Practice Concentration**

Another trend that is having a wide-ranging impact on the legal profession is specialization. Increasingly, lawyers are utilizing their legal skills in combination with the skills they have acquired in other disciplines. Specialization includes not only formal recognition as a specialist under a jurisdiction's Code of Professional Responsibility or Rules of Professional Conduct, but also de facto specialization in the form of practice concentration or limitation.

As society has become increasingly complex, the number of areas where legal representation is needed have increased. In many cases, lawyers have developed expertise in a single area (e.g., tax, EEO). An increase in the willingness of clients to sue their lawyers if they are not satisfied with the outcome of a case has made many lawyers reluctant to take cases if they lack experience in the area. In short, the renaissance lawyer is dead. The demise of the lawyer as generalist and the evolution of the lawyer as specialist have profound implications for those who are entering the practice of law today.

The concept of specialization has become a term of art within the professional responsibility context. The Model Rules of Professional Conduct define the circumstances under which a lawyer may hold himself or herself out as a specialist. Traditionally, only patent lawyers and admiralty lawyers, due to the uniqueness of those practice areas, were allowed to call themselves specialists.

In recent years various state bars have promulgated rules governing the certification of specialists. Those jurisdictions now allow lawyers certified under procedures established in their jurisdictions call themselves specialists. The original comments to Model Rule 7.4 suggested that it would be improper to use of the terms “concentrated” or “limited to” when referring to uncertified specialization. In
February, 1988, however, the ABA House of Delegates amended Rule 7.4 by eliminating reference to the terms "concentrated" or "limited to", an action confirmed by the U.S. Supreme Court in Peel v. Attorney Registration and Discipline Commission of Illinois, 495 U.S., 110 S. Ct. 2281, 110 L. Ed. 2d 83 (1990), invalidating an Illinois disciplinary rule restricting communication of specialty. Thus, presently, a lawyer may utilize such expressions without implying specialist status. This discussion will use the term "practice concentration" to denote expertise in a substantive area of law.

Although it may be clear that patterns of de facto specialization have emerged in the legal profession, such practice concentration should not be confused with officially sanctioned legal specialization. Many jurisdictions provide for the certification of specialists in certain areas of practice, but no state has taken the next step of restricting certain areas of practice to specialists in those areas. It is not clear at this time what the future holds for specialization in the legal profession. Will we move closer to a medical model where practice areas are carved up and reserved for particular subgroups within the profession and where advanced specialized training becomes a barrier to entrance into the specialty practice? Or will lawyers adopt a free market approach to the designation of specialization?

The potential for malpractice drives many lawyers to avoid cases outside their particular field of expertise. There is also some evidence that lawyers who hold themselves out as possessing greater expertise than the average lawyer can charge and collect higher fees for their services. The prospect of greater income may offset the risk of greater liability for malpractice resulting from a higher standard of care.

What does this trend toward practice concentration mean for you, the law student? Just as the generic lawyer is giving way to the specialist, the generic law student is finding it increasingly difficult to compete with classmates who possess special skills and abilities. There are increased pressures to make longer term career decisions at an earlier stage in your legal career. The consequences of poor career decisions can have more impact on the direction of a legal career than in simpler times. The trend towards specialization means students must recognize that they cannot keep all of their options open forever. When you cross a particular bridge, you frequently burn other bridges behind you.

When there were generic law graduates, factors such as class rank, law review status, and law school attended were often the only distinguishing characteristics among candidates for jobs. The trend toward practice concentration tends to impel employers to consider more diverse criteria than in the past. Thus, there is greater emphasis on credentials related to many areas of practice concentration, including not only practical experience in the field during law school, but also educational and pre-law work experience. Law graduates today are simply not fungible.

The corollary of this movement towards specialization has been the development of a cottage industry in legal consulting and support services. An increasing number of organizations provide expertise, specialized technical services, and other assistance to law firms.

Usually, these services have grown up in areas where the firm either lacks expertise (e.g., computers) or cannot provide the service in-house as cheaply as it can buy it outside (e.g., legal research services). The service companies tend to be small entrepreneurial ventures doing highly specialized work. Many of the practitioners in these support services are lawyers, frequently individuals with training in both law and some other discipline.

**Competition**

A final trend that affects everyone getting out of law school and entering the profession today is competition. The large number of law school graduates has increased competition for jobs. The large number of lawyers has increased competition for legal work. The large number of large law firms has increased the competition for institutional clients that hire such firms. This competition is all within the legal profession.

Outside the profession, many other organizations from banks to title companies to psychologists provide the same services as lawyers, frequently cheaper and sometimes better. There are fewer and fewer activities from which lawyers can exclude individuals not licensed to practice law.
This, in turn, has blurred the lines between what is the practice of law and what is not. Lawyers have reacted by expanding the scope of their professional services into areas that would have been taboo even a decade ago. In addition, as formerly non-legal work becomes "legalized," more lawyers go to work for organizations in direct competition with law firms.

The line between which services fall within the domain of the legal profession and which do not is not at all clear. As the number of institutions and individuals providing services in competition with legal services increases, the grey area between law practice and non-legal work expands.

In many states, title companies have taken most of the real estate closings from private practitioners. These companies are non-legal business entities, yet many lawyers work for title companies or own them. Are these lawyers practicing law or engaging in extra-legal business? Should work that is considered "legal" when performed by a lawyer become "non-legal" just because a non-lawyer does the very same thing?

Representing sports or entertainment figures as an agent is another good example. Both lawyers and non-lawyers may be involved in negotiating contracts representing clients' interests, and making financial decisions.

Lawyers provide advice and representation to clients concerning legal problems. Significantly, almost no problem is exclusively legal in nature; and almost every problem has a legal component. Lawyers who are licensed to practice in one or more jurisdictions may represent clients in court. Many lawyers, including a large number of private practitioners, never see the inside of a court room.

Lawyers represent both individuals and institutions (e.g., corporations, government agencies, etc.). Lawyers who work for institutions have a single client, the organization that employs them. Lawyers in private practice, on the other hand, sell their services on the open market to people and organizations who will hire them. In short, whether you accept a position in private practice or go to work for someone else, you will probably be giving legal advice to clients. In either case, you may or may not be involved in litigation as an advocate for your clients' interests.

For those embarking on a legal career, the permutations of positions are infinite. Although there may be some totally non-legal jobs, this book proceeds on the assumption that most of the jobs that lawyers accept involve some legal component.

**Economic Realities**

During the past 20 years in the legal profession, the idea that law is a business has evolved. Law firms today, more often than not, consider themselves as business organizations that provide legal services to clients for a profit. A quick look at the economic realities firms face will help the law student understand future employers better.

In a service business like law, income is limited by time. If there are 8,710 hours in a year, and a lawyer spends 3,650 of them eating, sleeping and commuting, only 4,060 hours are left to spend in the office, assuming that the lawyer does absolutely nothing else! And if that lawyer could manage to spend two-thirds of his or her time on client matters, it would be possible to charge 2,707 hours to clients for work.

In reality, it is nearly impossible to attain this level of productivity. A number of surveys have confirmed that the average number of billable hours for lawyers in the United States is around 1,600.

The surveys show that associates bill over 1,700 hours annually, slightly more than partners. A law firm that expects its associates to bill over 2,000 hours per year is actually expecting 3,000-3,500 hours of work annually, which translates into 60-70 hours per week.

Since there is a natural limit on the amount of time available to provide legal services, there is a cap on the income a lawyer can generate as well. There are basically three ways that partners, the owners of the legal business, can make more money:
1. They can charge more (e.g., $200 per hour instead of $100 per hour) or they can repackage the fee so that it does not look like an hourly bill (e.g., $2,000 for a contract that took two hours of work, thanks to automated document processing; or a one-third contingency fee that produces a $600,000 settlement for 20 hours of work). Or they can unbundle their charges, that is, bill the client for the secretary, the paralegal, the photocopying, and other charges as well as the time of the lawyer.

2. They can practice law more efficiently. With computer and management systems, lawyers can increase the bottom line by reducing the cost of the production of the legal service while keeping the cost of the service to the consumer the same. One way to accomplish this is to practice in larger organizations. Economies of scale disadvantage the small law firm just as they do the Mom and Pop grocery store, the tailor, or the home builder.

3. Finally, lawyers can make money off the work of other lawyers. The idea is simple. If lawyer A has enough clients to keep two lawyers busy, lawyer A could hire lawyer B at a salary low enough to allow A to make a profit from B's work. The alternative would be for A to refer excess business to B and let B profit directly, or to share the profit with B in which case A and B would be partners. The concept by which the A's of the world hire and make a profit from the B's is called leveraging.

To make the game more interesting, the A's usually hang out a carrot for the B's ("We'll make you one of us in seven years, if you'll let us make a profit on your work in the interim. And when you're one of us, we'll get more like you. There are plenty more where you came from.") There are ominous signs that in the decade of the 90's many lawyers will skip the carrot step, and go directly from making a profit to "there's more where you came from."

These economic realities are changing the makeup of law firms and law practices. More importantly, these changes are altering the career opportunities available to law school graduates. In this environment, some of the assumptions of yesterday must be reexamined in light of new evidence. And old answers will not necessarily be the best ones to the questions raised in tomorrow's job market.