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Myrtle Beach, South Carolina  
April 13-16, 1998

## Academy for Studies in Business Law

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# **Proceedings of the Academy for Studies in Business Law**

**April 13-16, 1998  
Myrtle Beach, South Carolina**

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Co-Editors  
Western Carolina University**

**The Proceedings of the  
Academy for Studies in Business Law  
are published by the  
Allied Academies, Inc., PO Box 2689, Cullowhee, NC, 28723.**

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## **CHILDREN AT RISK: ETHICAL AND PUBLIC POLICY IMPLICATIONS OF TOBACCO ACCESS AND USE**

**Bernard J. Healey, King's College**  
**Margaret Hogan, King's College**

### ABSTRACT

*Recent studies are converging on the conclusion that cigarette smoking begun early in life is harmful and addictive. The purpose of this paper is to report on a study of cigarette use by the youth of Northeastern Pennsylvania. The paper will (1) present data gathered on the prevalence of cigarette use, (2) present data on where children acquire cigarettes, (3) offer an examination of ethical considerations on the manufacture and advertising of a product with known harms and with deliberate addictive design, and (4) offer some suggestions for community, educational and public policy responses to lessen the risk for children.*

*To inaugurate the study, a letter was sent to several school superintendents in Northeastern Pennsylvania requesting permission to survey all students in grades four through twelve. Six school districts, representing 15,297 students, agreed to allow the survey to be completed in their respective school districts. A questionnaire was developed and given to the cooperating school districts for administration.*

*The 14,523 questionnaires were returned represent 94.9 percent of the sample surveyed. Preliminary results reveal that 37.3 percent of the children surveyed have experimented with cigarettes and that 54 percent of those who have tried cigarettes continue to smoke today. This represents over 20 percent of the children grades four through twelve in Northeastern Pennsylvania who are currently smoking cigarettes. Cigarette use begins by some children as early as age 5 with the mean age of beginner smokers being 11.6. The majority of the very young children are acquiring their cigarettes from vending machines or from other individuals and that most children find little difficulty purchasing tobacco products from convenience stores in Northeastern Pennsylvania. Proof of age is very rarely required, even for the very young children surveyed.*

## **AFRICAN AMERICANS IN LARGE LAW FIRMS: THE POSSIBLE COST OF EXCLUSION**

**James W. Pearce, Western Carolina University**

**JoAnn S. Hickey, Western Carolina University**

**Debra D. Burke, Western Carolina University**

### INTRODUCTION

The paucity of African American representation in the legal profession has been cited as a multifaceted symbol of the persistent social inequality that has historically marked race relations in this country. The historical relationship between African Americans and the law can be viewed in the successive stages of slavery, Jim Crow, and post Civil Rights legislation. The use of such labels to delineate historical realities provides a conceptual link between race and law, i.e., the needs and rights of those in a position to *create* the law are more likely to be *protected* by the law. For example, the general intent of the Slave Codes was to protect the rights of slave owners by explicitly denying the rights of the slaves. Although the Codes varied in their specifics from one state to the next, the commonalties in the list of activities that slaves were forbidden to pursue served to reinforce the status of slaves as mere property of their owner. John Hope Franklin & Alfred E. Moss, Jr., *From Slavery to Freedom: A History of Negro Americans* 114-15 (1988). Following Reconstruction, African Americans continued to be disenfranchised from the legal process through the imposition of poll taxes, grandfather clauses, literacy tests, and white primaries. "Political impotency bore on every aspect of African-American life. Unable to participate in the enactment or enforcement of the law, Southern blacks became increasingly vulnerable to physical assault and murder." Harvard Sitkoff, *The Struggle for Black Equality* 5 (1994). The early decades of this century were characterized by local legislation and custom that mandated segregation in most areas of public life and restrictive covenants that extended separation of the races into their place of residence. *See generally* Reynolds Farley & Walter R. Allen, *The Color Line and the Quality of Life in America* (1987). Although many challenges to the legislated subordination of nonwhites were unsuccessful, the pressure brought to bear by the increasing number of these challenges and the significance of key legal victories helped prepare the country for the changes brought about in the Civil Rights legislation of the 1960s. Randall Kennedy, *A Reply to Philip Elman*, 100 Harv. L. Rev. 1938 (1987).

According to the 1990 census, white males comprised 92.5 percent of the legal profession, while only 3.3 percent of the nation's lawyers were African Americans. James Podgers, *The Journey Continues: Savoring past gains, minorities commission braces for tough work ahead*, 83 A.B.A.J. 102 (Apr. 1997). Arguably, the preservation of firm ties to elite law schools (*See* Violet Travis Ricks & Robert L. Shannon, Jr., *Recruitment and Retention of Minority Attorneys in Majority Law Firms*, Ga. B. J., Dec. 1996, at 15 (firms tend to limit recruitment to top schools and top 10-20 percent of the class); Marc Galanter, *Mega-Law and Mega-Lawyering in the Contemporary United States*, in *The Sociology of the Professions* 158 (R. Dingwall & P. Lewis, eds. 1983). ("Mega-law firms draw recruits from higher social strata, from higher status ethnic groups, and from elite educational

institutions”); Carole Juarez, *Minorities in Major Firms*, 55 Tex. B.J. 958 (1992) (minorities can only comprise limited number of top recruits from Ivy league schools)) and the ineffective efforts by large law firms in hiring and retaining minorities (See, e.g., Paul M. Barrett, *Prestigious Law Firm Courts Black Lawyers, But Diversity Is Elusive*, Wall St. J., July 8, 1997, at A1 (discussing difficulty of large New York firm to retain minority lawyers despite the initiation of a generous scholarship program for black law students); Ian Olgeirson, *Denver Law Firms Falter When Discussing Minorities*, Denver Bus. J., Aug. 2, 1996, at 24A (survey of Denver’s largest law firm reveals lack of strong minority levels); Cynthia L. Spanhel & Leah Shimatsu, *A Profile of Minority Lawyers in Texas*, 59 Tex. B.J. 885 (1996) (minorities in Texas Bar are more likely to work in small firms or practice as government attorneys)) are factors that have exacerbated the problem.

Several scholars have emphasized the critical role of law school admission policies and curriculum as factors historically affecting the ratios of minority lawyers to minority population. See, e.g., Ernest Gellhorn, *The Law Schools and the Negro*, 6 Duke L.J. 1069 (1968); Samuel C. Thompson, Jr., *A Response to Professor Haskeel’s Academic Plantation Theory*, 60 A.B.A.J. 1525 (1974); Harold R. Washington, *History and Role of Black Law Schools*, 5 N.C. Cent. L.J. 158 (1974). Although significant changes in many of the more discriminatory practices have operated to improve the ratios since 1960, inequities are still apparent. See Vance Knapp & Bonnie Kae Grover, *Can the Corporate Law Firm Achieve Diversity?* Wash. St. B. News, Aug. 1994, at 48 (despite increased representation in the profession minority attorneys are still underrepresented in private law firms). Despite the significant improvement in the ratio of African American lawyers to African American population throughout the twentieth century, under-representation persists, particularly in the large firms, (According to the ABA, Blacks held only 2.7 percent of the associate positions at the largest firms in 1991, although they represented 58 percent of total law school enrollment in 1990-91. Claudia MacLachlan & Rita Henley Jensen, *Progress Glacial for Women, Minoritiess*, Nat’l L.J., Jan. 27, 1992, at 31, 34. To exacerbate the problem, the bifurcation of the legal profession is becoming more exaggerated with larger law firms constituting an increasing proportion of law firms compared to the proportion of individual and small firms. See generally Richard L. Abel, *The Transformation of the American Legal Profession*, 20 Law & Soc’y Rev. 7 (1986); Donald D. Landon, *Structuring Law Practice*, 22 Law & Soc’y Rev. 213 (1988); Galanter, *supra* note 3.) and especially at the partnership level. See Steven Keeva, *Unequal Partners: It’s Tough at the Top for Minority Lawyers*, 79 A.B.A.J. 50 (Feb. 1993) (black partners in major Chicago firms decreased by one third between 1991-1993); Barrett, *id.*, at A9 (only ten of the twenty-five largest New York firms have one or more black partners). A 1989 survey of minorities in the nation’s 250 largest firms indicated that only two percent of the 23,000 partners and five percent of their associates were members of a minority class. Frederick H. Bates & Gregory C. Whitehead, *Do Something Difficult: Making a Commitment to Minority Lawyers*, 76 A.B.A.J. 78, 78 (Oct. 1990).

Given the complex bureaucratic structure of large firms as well as that of their clients, (See generally John P. Heinz & E.O. Laumann, *Chicago Lawyers* (1982) (contrasting the operating styles of large and small firms)) one might expect increasing minority representation as more objective criteria are employed in the recruitment and the hiring process. That is, the complexity of the larger law firms should favor a de-emphasis on subjective concerns regarding an individual’s “fit” with a homogeneous demographic profile and place greater emphasis on more objective concerns regarding the individual’s area of specialization and/or expertise. John Hagan, Marie Huxter & Patricia Parker,

*Class Structure and Legal Practice: Inequality and Mobility Among Toronto Lawyers*, 22 *Law & Soc'y Rev.* 9 (1988); Robert L. Nelson, *The Changing Structure of Opportunity: Recruitment and Careers in Large Law Firms*, 1983 *Am. B. Found. Res. J.* 109. However, that does not seem to be the case. Even if minorities are hired, the perception of opportunities for advancement are frequently discouraging.

The three issues for any new associate . . . are mentoring, work assignment, and client interaction. Minorities at the big firms frequently complain that once hired they feel abandoned, and are not given meaningful work or allowed to interact with clients . . . That problem is exacerbated at firms with only one or two minorities and at firms where partners handpick the associates they want to work with. MacLachlan, *supra* note 6, at 32.

The potential for recruiting and maintaining minorities within the largest law firms may be initially problematic if the minority candidate perceives that she will become the standard bearer for their race or that the firm lacks a commitment to equitable mentoring of associates, as well. Further, often minorities do not have the business connections necessary to maintain a profitable client base at the partnership level. As one minority attorney observed, "We're just not naturally networked—because of the history of our country, quite frankly—into the kinds of business opportunities or avenues that our white counterparts are networked into." Keeva, *supra* note 7, at 51.

That reality, however, may be changing in the near future as more minorities enter the workforce and become business owners as well. By the year 2000, 80 percent of the people entering the work force will be minorities, women, or immigrants. Nancy Blodgett, *Room for Minorities: Firms Advised that a Diverse Work Force Is Good for Business*, 78 *A.B.A.J.* 35, 35 (Aug. 1992). Law firms which become racially inclusive and can leverage diversity will become more competitive in a more ethnically pluralistic society. See Don J. DeBenedictis, *Changing Faces*, 77 *A.B.A.J.* 54 (Apr. 1991) (corporations have begun to persuade their law firms to become ethnically diverse); Thelma Elizalde & Jennifer Joyce, *Diversity as a Management Issue: A Call to Action*, 57 *Tex. B.J.* 987 (1994) (diversity is a business strategy designed to make a law firm more competitive); Suzanne Baer, *The Value of Ethnic Diversity*, 30 *Trial* 28 (Jan. 1994) (including minority members enriches the firm and can boost business given the recent growth trends in minority owned businesses). See also Nicholas Von Hoffman *Crossing the White-Shoe Line Corridor of Power*, *New Yorker*, May 10, 1993, at 54 (chronicling the success of one of the first minority owned national corporate law firms). But perhaps even now it is possible that law firms which are racially diverse exhibit a competitive edge, or alternatively, firms which do not exhibit such a mix are less competitive. This paper will analyze primary data to assess the economic cost associated with disproportionate African American representation in large U.S. firms.

#### RESEARCH QUESTION AND METHODOLOGY: FOCUS OF THE STUDY

Law firms have, in general, experienced a steady growth over the past fifty years. As in many organizations, the prevailing belief is that larger law firms are more efficient at revenue generation and cost minimization. However, there is a lack of empirical research that addresses these returns to scale and economies of scale issues; even less is reported regarding size, growth and performance of law firms. See, e.g., Ward Bowers, *Strategies for Profitability*, 13 *Legal Economics* 44, 50 (Oct. 1987) (discussing increased competition among law firms and concluding that compensation per

partner has not risen as fast as overhead costs, total revenue or associates' salaries); David Maister, *Profitability: Beating the Downward Trend*, Am. Law., July/Aug. 1984, at 6 (providing a profitability formula which shows relationship among various measures of law firm performance and suggesting that firm size is not relevant in assessing profitability, i.e., that firm size and marginal profits are unrelated). Most articles which address the relationship between law firm size and performance are essentially anecdotal in nature. The reasons for the lack of research are varied and complex. Law firms are not public corporations, and audited financial reports are therefore not publicly available. More importantly, law firms tend to guard firm performance information in the same fashion that they keep the confidences of their clients.

The primary research question explored in this study is "What is the nature of the relationship between and among representation of African American lawyers in large law firms, the law firm structure, and firm performance?" That is, are there any significant relationships between (1) representation and structure, or (2) structure and performance, or (3) representation and performance, that support or explain the significant under representation of African Americans in large U.S. law firms? The supporting data were derived from two sources: *The American Lawyer* and the annual directories published by the National Association of Law Placement, Incorporated.

Since 1984 *The American Lawyer* has published a yearly synopsis of the highest revenue-producing law firms in the United States, which firms are, by definition, large in numbers of attorneys as well. The surveys by *The American Lawyer* initially considered only the fifty (50) largest firms, and now report results for the one hundred (100) largest firms. The data are obtained through personal and telephone interviews with managing partners, other partners, and various inside sources. Several methods of cross validation then are used to confirm accuracy. Finally, prior to publication, managing partners at each firm surveyed are asked to confirm or correct the tabulated performance and size data. Additionally, because the study is conducted on an annual basis, the firms can review the results in a timely manner and correct any erroneous information before the next study. Such continuity, thus, tends to increase the accuracy of the results.

The other source, the yearly directories of NALP, provided the demographic information used in this study. Each year NALP solicits and then publishes information about law firms which might be of interest to graduating law school students seeking employment. While the questionnaire employed contains no firm performance data, it does request information such as staffing levels, primary practice areas, employment and partnership data, as well as demographic information, such as the race and sex of the attorneys. This information for 1984 and 1992 was matched on a firm by firm basis with the 1984 and 1992 data in *The American Lawyer*. See Steven Brill, *America's Fifty Highest-Growing Firms*, Am. Law., July-Aug. 1985, at 89; Steven Brill, *America's One Hundred Highest—Growing Firms*, Am. Law., July-Aug. 1993, at 50A. Brill concluded in analyzing this data that law firm size (total lawyers), revenue per firm and average revenue per lawyer increased between 1984-1992, although he offered no empirical evidence regarding the relationship between firm size and key performance measures.

The 1992 survey by *The American Lawyer* used in this analysis included a variety of traditional firm performance data. The quantitative nature of the three criteria explored in this study (law firm performance, organizational structure, and minority representation) suggested a correlation analysis approach which measured the extent to which the variables were related to each other.

## AFRICAN AMERICAN LAWYER REPRESENTATION

The following specific measures of minority representation, and the associated variable, (with the acronym shown in parentheses) were used in this study: (1) the absolute number of African American lawyers in the firm, including both partners and associates (AFAM); and (2) the ratio of African American lawyers to total lawyers in the firm (RATIO).

## ORGANIZATIONAL STRUCTURE

The size of a law firm most often is measured by the total number of lawyers in the firm including both partners and associates. Thus, the total number of lawyers is actually a surrogate measure for firm capacity. The following measures of organizational structure (with the acronym shown in parentheses) were used in this study: (1) the number of equity partners in the firm (PART); (2) the number of associates in the firm (ASSOC); (3) the total number of lawyers, both partners and associates, in the firm (LWYR); and (4) leverage (LEV): the number of associates divided by the number of partners. While the absolute size of a law firm (partners and associates) is an important measure of firm capacity, the ratio of total lawyers, divided by the number of equity partners, or "leverage," is also an important indicator of a firm's organizational structure. Leverage is the means by which the legal skills and marketing ability of the partners are multiplied. By leveraging associates, partners are able to achieve returns to scale by billing the associates hours at multiples of the associates actual cost to the firm. Maister, *supra* note 16, at 6. Consider two firms, A and B, each having one hundred lawyers. Assume that firm A has fifty equity partners, and that firm B has twenty-five equity partners. Firm A's leverage of 2.0 is less than firm B's leverage of 4.0. Thus, firm B is better leveraged than firm A, which means that partners at firm B can, in general, expect higher profits per partner, assuming all other factors are equal.

## LAW FIRM PERFORMANCE

The measurement of law firm performance is complex and multi-dimensional. Any long term measure must include indices of profitability as well as the ability to attract and keep clients. However, this study focused on traditional absolute and relative measures of performance. For example, total revenue is a measure of absolute performance, which allows for a relative comparison of law firms of varying size. Profits per partners, perhaps the best indicator of firm performance from a partner's perspective, is analogous to earnings per share in corporate profitability studies. Thus, the specific firm performance measure used in this study was profits per partner (PROF): net operating income divided by the number of partners.

## RESULTS AND ANALYSIS

It can be argued that large law firms have withstood recessions perhaps better than any other industry in the United States. Not only have law firms grown in terms of average number of lawyers, but also in terms of gross revenue and profitability. For example, the average firm size for the largest law firms during the period 1984 to 1992 demonstrates the growth trend indicated previously. See

generally Abel, *supra* note 6; Gallanter, *supra* note 3; Hagan, *supra* note 10. Specifically, as seen in Table 1, the number of lawyers in these firms rose from an average of 262 in 1984 to 463 in 1992 - a 76.8 percent change. Data on organizational structure indicate that along with increases in the overall number of lawyers in the firm, the hierarchical arrangement is changing. Although both the average number of associates and partners has increased, larger percent changes are occurring at the associate level (52.4% change for partners versus 90.6% change for associates). Thus, increases in firm size have resulted in an increased concentration of power for partners between 1984 and 1992, i.e., leverage (associates/partner) has increased by twenty-five percent. The increased power for partners has apparently translated into higher profits: profits per partner increased by 71.9 percent from 1984-1992.

Firm Structure, Performance, and Minority Rep. Measures	1984 <sup>1</sup>	1992 <sup>2</sup>	% Change
Total Lawyers	261.74	462.9	76.8
# Partners	94.74	144.41	52.4
# Associates	167.00	318.27	90.6
Leverage	1.88	2.35	25.0
Profits/Partner <sup>3</sup>	306.33	526.27	71.9
# African American Lawyers	3.63	6.45	77.7
Ratio of AfricanAmer. Law.	0.014	0.015	7.1
<sup>1</sup> n=46			
<sup>2</sup> n=49-51			
<sup>3</sup> dollar figures are in thousands			

In representation, the number of African American lawyers and the ratio of African American lawyers to the total number of lawyer in the firm demonstrate trends of increasing racial diversity within the largest U.S. law firms between 1984 and 1992. The 77.7 percent change in the average number of African American lawyers in the larger firms is comparable to the 76.8 percent change in the total firm growth. However, the percent change in the ratio of African American lawyers in the larger firms is a very modest 7.1 percent for the period 1984-1992.

Correlation matrices were generated to assess the interrelationship among variables within each of the time periods of interest. Table 2 shows the Pearson correlation coefficients, (Two variables which change in a regular, predictable manner are said to be *correlated*. Correlation analysis measures the strength of the association between the two variables, but does not imply any cause and effect relationship. That is, changes in one variable do not necessarily cause the other to change. The Pearson Correlation Coefficient is a quantitative measure of the strength of the relationship. Smaller p-values indicate stronger support for the proposition, and weaker p-values indicate weaker support. See Stephen B. Jarrell, Basic Statistics 88-91 (1994)) and the associated significance levels, between and among the three variables of interest in 1984 and 1992.

Size and Performance Measures	# AfAm84	AfAm Ratio 84	# AfAm92	AfAm Ratio 92
<u>1984</u>				
Total Lawyers	.099	-.179	-.029	-.334*
# Partners	-.060	-.286	-.175	-.433**
# Associates	.197	-.083	.079	-.219
Leverage	.260	.242	.289	.343*
Profits/Partner	-.042	.012	.251	.321*
<u>1992</u>				
Total Lawyers			.010	-.333*
# Partners			-.135	-.442**
# Associates			.082	-.260
Leverage			.371**	.417**
Profits/Partner			.271	.348**
	** = p<.01			
	* = p<.05			

### VARIABLES REPRESENTATION AND STRUCTURE

In 1984, there are modest negative - but not significant - relationships between firm size variables and the ratio of African American lawyers in the firm, suggesting that the larger the firm, the smaller the percentage of African American lawyers within the firm. In 1992, higher leveraged firms appear to have more African American lawyers. However, the trend beginning in 1984 persists: the larger the firm, the lower the percentage of African American lawyers in the firm.

### STRUCTURE AND PERFORMANCE

In both 1984 and 1992, more partners are associated with lower profits per partner - an intuitive idea that more partners mean smaller pieces of a pie. However, highly leveraged firms (more associates per partner) are associated with higher profits per partner, suggesting that a work force structure with a larger base of employed associates enhances performance.

### REPRESENTATION AND PERFORMANCE

In 1984, there is no apparent relationship between representation and performance. Eight years later following a period of dramatic growth in the size of law firms, there is a modest positive - but not significant - relationship between the number of African American lawyers in the firm and profits per partner. However, the relationship is dramatic (and significant) when the percentage of African American lawyers is considered. That is, there is a significant positive relationship between

the ratio of African American lawyers in the firm and performance: within the firm, a higher percentage of African American lawyers is associated with higher profits per partner.

To further explore the differences between firms with high and low ratios of African American lawyers, a MANOVA analysis (Correlation analysis allows the comparison of a continuous dependent variable with a continuous independent variable. However, often data is not measured continuously, and other statistical techniques are required. For example, ANOVA is "Analysis of Variance" or the comparison of a continuous (i.e., 1,2,3 . . . ) dependent (outcome) variable with one or more independent classification (i.e., small, medium, or large) variables. MANOVA, by extension, is "Multiple Analysis of Variance" or the simultaneous comparison of multiple dependent continuous variables with one or more independent classification variables. See generally SAS User's Guide: Basics (5th ed. 1985)) was performed using the 1992 data. Using the mean value of the diversity indicator (.015) as the criterion for division, two groups of firms were created. The lower ratio group (<.015) had 27 cases and the higher ratio group ( $\geq .015$ ) had 22 firms. The purpose of the analysis was to compare profiles of the two groups. While the values for the measure are averages, these values provide a more direct comparison of group characteristics.

	Firm Size*	Number of AfAm*	Leverge*	Profits/Partner*
Lower AfAm Ratio (n = 27 firms)	535.7	3.96	2.17	442.4
Higher AfAm Ratio (n = 22 firms)	395.8	9.50	2.61	604.8
* Means for the lower and higher African American ratio groups were statistically significantly different using both Duncan and Tukey's statistics ( $p < .01$ ).				

As seen in Table 3, firms with higher proportions of African American lawyers are the smaller of the mega-firms averaging just under 400 lawyers in the firm. Firms with lower African American ratios are significantly larger, averaging over 535 lawyers in the firm. Despite the significant difference in overall firm size between the two groups, the average number of African Americans in these two types of firms is contrary to, rather than complimentary of, the total number of lawyers in the firm. That is, the higher ratio firms average nearly ten African American lawyers, compared with only four African American lawyers in lower ratio firms. Thus, the hiring of African American lawyers in the largest firm is not being accomplished in proportion to the number of lawyers in the firm.

When leverage is considered, the means are also significantly different with higher leverage occurring in higher African American firms (2.61 associates/partner, compared to 2.17 in firms with lower ratios of African Americans). Profits per partners are also significantly different between the two groups: firms with higher ratios of African Americans have an average profit per partner of \$604.8 thousand, contrasted with \$442.4 thousand for firms with lower ratios of African American lawyers in the firm.

## INFERENCES

In general, the data indicate substantial growth (49.1% change) in overall firm size among the largest U.S. law firms in the eight years between 1984 and 1992. More specifically, the overall growth was accompanied by larger increases in the number of associates (56.1% change) compared to increases in the number of partners (36.7% change). Having established an increase in the firm size and the leverage of partners in these large law firms, the associated changes in the work environment may also be inferred. These changes include an expansion in the span of operations both temporally and geographically, and commensurately on an individual level, expectations for increased specialization, more protracted litigation, and more intensive coordination and supervision.

More importantly, these results show that large law firms are not hiring African American lawyers in the same percentage as they grow and expand. The positive relationship between the percentage of African American lawyers and profits per partner suggests that their caution may be misplaced - a higher percentage of African American lawyers is associated with higher profits for the partners, a critical factor in hiring decisions.

This research represents one of the first attempts to relate law firm performance, organizational structure, and African American lawyer representation in large law firms. Although these measures apply only to large law firms, this study is an examination on the entire population of large law firms, rather than just a sample of large firms. As such, this eight-year study has an inferential effect, although a longer and more comprehensive, although study would allow a better look at exactly how law firms are growing, as well as what the impact of different growth strategies is on long-term overall firm performance.

As the professional service sector continues to expand in the international economy, it will become increasingly important to understand the complex and changing relationships between minority representation, firm structure and performance. Large firms must determine the most effective and efficient way to meet their social responsibility to provide opportunities for all Americans, particularly when the opportunity appears to be so financially attractive. Therefore, it is increasingly important to understand the relationship between these and other variables, and their potential effect on hiring and recruitment strategies.

## CONCLUSION

Despite substantial gains in many areas of society, African Americans are still significantly under-represented in large U.S. law firms. Using multiple measures of organizational structure, firm performance, and African American representation, this paper examined some of the relationships between and among these variables in the fifty largest U.S. law firms using data collected in 1984 and 1992. Descriptive and inferential analyses suggest that law firms with higher proportions of African American lawyers experience better firm performance than those firms with lower minority representation. These results challenge persistent concerns regarding the value of human capital that minorities bring to the law firm and underscore the cost of excluding minorities in terms of a firm's bottom line, profits per partner. The failure by large law firms to attract and keep minority lawyers not only perpetuates social inequities, but apparently does so at the expense of higher firm performance.

## **DEAR FDA: HERE'S MORE AMMUNITION FOR YOUR RESTRICTIONS ON TOBACCO PRODUCT ADVERTISEMENTS**

**Bernard J. Healey, King's College**  
**Edward J. Schoen, King's College**

### ABSTRACT

*On August 28, 1996, the Food and Drug Administration (FDA) promulgated its final regulations restricting the ability of tobacco companies to promote and advertise cigarettes and smokeless tobacco products to children and adolescents. While some believe the FDA should go even further in limiting tobacco product advertising, commercial speech decisions of the Supreme Court of the United States impose limits on the authority of the FDA to regulate advertising and may handcuff the FDA from imposing greater restrictions.*

*A study was undertaken to ascertain the use of tobacco products, alcohol and marijuana by children in Northeastern Pennsylvania. A letter was sent to several school superintendents requesting permission to survey all students in grades four through twelve. Six school districts, representing 15, 543 students, agreed to allow the survey to be completed in their respective school districts. A questionnaire was developed and given to the cooperating school districts for administration.*

*This study found that 44.9% of the children tried alcohol, 37.3% experimented with cigarettes, 20.4% continue to smoke today, 8.3% have used smokeless tobacco, and 15.7% have used marijuana. The mean age for trying these products is 11.5 for cigarette use, 11.5 for smokeless tobacco, 11.6 for alcohol and 13.5 for experimentation with marijuana. There was an association between using tobacco, using alcohol and then using marijuana. Cigarettes are the first drugs used by children followed by smokeless tobacco, alcohol and finally marijuana.*

*Part I of this paper examines the constitutionality of the FDA's restrictions on tobacco product advertising and promotion in light of decisions of the Supreme Court of the United States protecting commercial speech. Part II of this paper demonstrates that cigarettes are a "Gateway Drug" and questions whether the FDA's regulations went far enough.*

## **PROCEDURAL JUSTICE AND ITS RELATIONSHIP TO CONSUMER COMPLAINT BEHAVIOR**

**Carl L. Saxby, University of Southern Indiana  
Reagan McLaurin, Western Carolina University**

### **ABSTRACT**

*Product commitment and consumer complaint behavior have been extensively researched individually. This paper presents the concept of procedural justice as a mediating situational element between the complaint and commitment as an integral part of the consumer's complaint experience. It is proposed that increased levels of perceived procedural justice is associated with increased levels of commitment.*

## **AFFIRMATIVE ACTION REVIEW: A PROPOSAL FOR EDUCATION**

**William D. LeMoult, Pace University**

### **ABSTRACT**

*The inevitable and inexorable shift in the attitude of the courts concerning affirmative action and set-aside programs, evidenced in cases such as Adarand and Hopwood, has rekindled debate about the future and desirability of government and private programs.*

*The legitimate positions of those interests that would remedy past discrimination, and those that would apply statutorily inspired notions of fairness, tend to overlook causes of modern discrimination and the importance of equal educational opportunity as a bedrock for the future obsolescence of preferences of any kind.*

*This article evaluates the arguments regarding preferences, and recommends an approach involving optimum use of educational weapons in the struggle for full participation in the nation's economic fabric.*

## **THE MENTAL HEALTH PARITY ACT: LEGAL IMPLICATIONS FOR EMPLOYERS**

**W.R. Koprowski, Texas A&M University-Corpus Christi  
Steven J. Arsenault, Mazursky & Dunaway, LLP**

### **ABSTRACT**

*The Internal Revenue Service in conjunction with the Departments of Labor and Health and Human Services has recently issued interim final regulations related to the mental health parity requirements added by the Mental Health Parity Act of 1996 (MHPA) to the Employee Retirement Income Security Act of 1974. The MHPA requires parity between dollar limits for mental health benefits and dollar limits for medical/surgical benefits in health plans. The regulations have been characterized as costly, burdensome, and confusing to employers.*

*The purpose of this paper is to clarify the legal responsibilities of employers to comply with the MHPA. Specifically, the paper will examine the history and purpose of the MHPA, the associated costs and benefits of the legislation, to “whom” the Act applies, and “what” the Act requires (to include calculations of “small employer” and “increased cost” exemption provisions of the MHPA). The paper will conclude with a discussion of the enforcement procedures and penalties contained in the legislation. An employer checklist to facilitate compliance with the MHPA will be provided and discussed.*

# **EMPLOYER STRATEGIES IN QUI TAM ACTIONS: LEGAL AND MANAGERIAL CONSIDERATIONS**

**W.R. Koprowski, Texas A&M University-Corpus Christi  
Steven J. Arsenault, Mazursky & Dunaway, LLP**

## **ABSTRACT**

*Qui Tam is an action brought under the Federal Civil False Claims Act which permits a private citizen (“the relator”) to file a lawsuit in the name of the U.S. government charging fraud by government contractors and others who receive and use government funds and share in any money recovered. Although the False Claims Act was enacted in 1863, it was not until the 1986 amendments to the Act that legal actions were forthcoming. Since 1986, qui tam recoveries have exceeded \$1 billion dollars. While most actions and recoveries in earlier years were directed at defense contractors, the provision has been used successfully and with increasing frequency in the health care field to combat Medicare and Medicaid fraud and abuse.*

*The purpose of this paper is to describe the qui tam provisions of the false claims act including the initial filing, the government (Department of Justice) role after filing, relator options and share of the award. The paper will focus on employer responsibilities to comply with the False Claims Act as well as employer strategies to mitigate potential damages and adverse outcomes.*

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