



**Kimberly Kirkland:** *Professor of Law*

## Investigating Ethics Policies at the Nation's Largest Law Firms

“My job is to help students develop and gain confidence in their lawyering skills and judgment. I love seeing students who were full of trepidation on their first day of law school, leave here capable and excited about their futures as client counselors and advocates and as representatives of the profession.”

– Professor Kimberly Kirkland

**Q: What is the focus of your newest project?**

**KK:** I am currently in the early stages of my first collaborative empirical research project. I've done a fair amount of empirical research myself, but I've never worked with a team of scholars on a project before. It's a wonderful opportunity. I am working with Deborah Rhode at Stanford University, Susan Saab Fortney at Texas Tech and Peter Joy at Washington University at St. Louis.

Our goal is to learn how law firms can effectively promote ethical conduct among lawyers. We are asking whether the ethical infrastructures firms are employing — the formal policies and the systems that firms put into place to promote ethics compliance — actually work. We are also looking at the less formal means by which firms communicate ethical norms and asking whether those informal mechanisms are effective in promoting ethical conduct.

**Q: Would you please describe the norms and policies you will be studying?**

**KK:** We are still in the process of narrowing our focus. We want to identify several central policies and norms we will investigate in depth. At present we are considering studying norms relating to billing practices and the norms communicated through firms' formal ethics training — what sort of training do firms implement and does it stick. We are also talking about investigating whether and how firms attempt to ensure lawyers don't lose their professional independence in their effort to please clients.

We hope to identify the full range of systems and informal mechanisms firms are putting into place to address the norms we identify. Step one will be to figure out how firms are trying to manage these norms from the top. Step two will be to ask, are those formal systems or informal mechanisms working?



**Q: How will you report on systems that don't work?**

**KK:** The firms and lawyers we study will be guaranteed anonymity. We will report our findings and draw conclusions from those findings about what types of ethics infrastructures seem to be most effective. We hope this information will help all firms. It may also give firms a metric to point to as they make their case to their malpractice insurers for lower rates.

**Q: What size firms will you be researching?**

**KK:** We will be looking at large firms with more than 200 lawyers throughout the United States. There are currently groups studying large firms in Australia and in the U.K. We hope to come together with those researchers some time in 2010 or 2011 to compare our results. There are some significant differences in how aggressive firms are about ethics infrastructures in Australia, the U.K. and the U.S.

**Q: Is one more aggressive?**

**KK:** From what I know thus far, the Australians appear to be more proactive. Much of this has been prompted by regulatory bodies in Australia. We have similar regulatory bodies in the U. S. — lawyer discipline and oversight bodies — but they are not as aggressive.

Regulators in Australia recently allowed Australian law firms to go public, meaning firms can now incorporate and sell stock to non-lawyers. (U.S. firms are not currently permitted to do this.) Having permitted non-lawyer ownership, regulators and academics in Australia are concerned that non-lawyer shareholders may put pressure on lawyers to do things that while profitable, may be unethical. As a result, the regulatory authorities in Australia are auditing firms to make sure they are complying with ethical rules and that firms have systems in place that will help them do that. The regulators have developed an auditing mechanism for any firm that takes on the public structure.

The first firms to go public have been plaintiff's firms. They've used it as a way to capitalize their large-scale litigation. They use the infusion of capital to pay the up-front costs of large tort cases. It is expected that other types of firms will go public as well. It's viewed as a way to incentivize associates, it would allow associates to have a vested interest in the firm before they become partners.

**Q: What will the ABA think about this project?**

**KK:** I imagine the ABA will be enthusiastic.

**Q: Where has your ethics expertise taken you most recently on your speaking schedule?**

**KK:** I spoke at the Law & Society meeting in Denver, CO, at the end of May on the "Moral Consciousness of Large Firm Ethics Counsel." But one of the most interesting things I've done this year was not a speaking engagement. In April, I was invited to act as a judge at a conference, really a competition, at the University of Indiana Law School. Bill Henderson who teaches at the University of Indiana and Anthony Kearns from Australia put together a competition called "Future Firm" at the University of Indiana. The competition was designed to encourage lawyers to rethink the traditional large law firm business model. Over the course of the weekend, teams made up of senior partners at large law firms, lawyers from several new-model breakaway boutique firms, general counsel from Fortune 500 companies, junior lawyers from large firms and law students competed to create a model for the large law firm of the future. Firms are under increasing pressure from clients

who are pushing for lower fees and 24/7 access, partners who want to make top dollar and are willing to change firms to increase their incomes, and associates who are unhappy with large billable hour requirements, fewer training opportunities and diminishing chances of making partner. These pressures are enormous and the traditional corporate law firm business model does not appear to be able to adapt to meet these challenges. The model has to change and the question is how to change it.

All of the teams came up with models that offered clients alternatives to the billable hour and increased training and security for junior lawyers in exchange for cuts in current large first-, second- and third-year salaries.

**Q: How does your research and this competition relate to the ethics classes you currently teach?**

**KK:** I teach an ethics seminar, "Ethics, Morals and the Law," and I'm now teaching Professional Responsibility and the Legal Profession as well. In both classes students think and talk about the ways in which the context in which you practice influences your ethical decision-making. The "business" of practice affects how lawyers interact with the rules and with their own sense of ethics and morality. My research and this competition reinforce to me the importance of exposing students to the business and organization of the practice of law before they begin practicing. Students need to understand the real pressures they will face as they try to navigate successful careers with integrity.

*Kirkland teaches Civil Procedure, Employment Law, Pre-trial Practice, Ethics, Morals and the Law, and Professional Responsibility and the Legal Profession. Before joining the faculty, Kirkland worked for ten years litigating employment, commercial and professional liability cases. The primary focus of Kirkland's research is the legal profession and lawyers' ethics in practice. She is the author of "Ethical Infrastructures and De Facto Ethical Norms in Large US Law Firms: The Role of Ethics Counsel," 11 Legal Ethics 181 (2008), "Confessions of a Whistleblower: A Law Professor's Reflections on the Experience of Reporting a Colleague," 20 Geo. J. Legal Ethics 1105 (2007) and "Ethics in Large Law Firms: the Principle of Pragmatism," 35 U. Memphis Law Rev. 631 (2005). Kirkland speaks about her research at conferences nationally and internationally.*