

THE NEW SCHOOL
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Research and 'selling it' matter
You and your Research
Introduction to Transfer Pricing

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Doing great Research

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Why do so few scientists make significant contributions, and why are so many forgotten in the long run?

This is the question that the mathematician, computer scientist and theorist Richard Hamming addresses in this inspirational talk, aimed at helping us all do great work, and sharing his own insights and experience. (P. 5)

Transfer Pricing has become a major issue as multinational companies flourish and tax men try to keep

up, while theorists try to work out the implications for supply chain models, profit motives and domestic policy space. But what is transfer pricing really? An expert in the industry offers an introduction to the subject. (P. 27)

GOOD RESEARCH AND ‘SELLING IT’ MATTERS

I believe that if you want to change your local situation take personal action, but if you want to change the world create ideas – and see others take the majority of the action. This notion that ideas and thus theory – not necessarily good theory – can have a profound impact can be seen in the work-life of most economists – and social scientists – who chose academia over activism. Academic theorising, we assure ourselves, matters as the direction of activism will inevitably be shaped by some theoretical notion (I include herein notions of morality). So is activism a waste of time for the ‘serious’ academic?

Recent events across the world indicate that this is not the case: From the financial bail-out packages and the successful U.S. Presidential campaign to this winter’s student occupation at the New School itself, activism matters. But in common for all these instances of activism there are two things I want to draw out.

First, there is an underlying idea which underpinned the actions. The financial bail-outs have been shaped by a mixture of belief in free market efficiency and the (rekindled) idea that government should have a hands-on fiscal approach to the market. The U.S. president elect had a campaign run on a notion of social justice through active government involvement, while the New School occupants believed that a university should be run for students and academics first and foremost.

Secondly, the action taken has been led by people who may not necessarily have invented the theory or idea in question, but those who have actively contributed to them in public and in academic life. The financial bail-out in the UK was shaped by a prime minister who had been Chancellor of the Exchequer for ten years and the U.S. package eventually fell to established academics and policy makers, after a brief half-life in congress as a seven page document. The U.S. president elect has been a constitutional lawyer and has run a campaign based on sharing his ideas and allowing independent campaigners open access to their election databases – probably a first in the U.S. The New Schoolers at the front of the protests were students who are active in student governance and in social rights movements.

The parallel of the ‘activist academic’ continues if we consider the influential economists of recent history. Two of those big names are John Maynard Keynes and Milton Friedman. Keynes worked in the UK Treasury guiding war-time policy and published frequent articles in the popular press and his own academic journal. Friedman published books and produced TV programs and acted as economic advisor / mentor to a range of government heads (including Augustus Pinochet in Chile) so activism has a role to play, but one type of activism instigates local change, a different type can change the world.

Friedman was part of abolishing conscription in the US and Keynes affected UK policy directly, through their actions, but they changed the world by spreading their ideas far and wide. The lesson is you need outlets for your thoughts. This includes academic journals, but if we are trying to create knowledge and affect change, we need to share our ideas with as wide an audience as possible. This means we have to

‘sell’ our research to the reader, and make sure we have as wide a readership as possible.

Before there is a backlash against the notion of ‘selling’ research, let me explain myself. First off, it can’t be that bad a thing, as we are all *already* doing it. Whenever we submit an article for a journal, the first aim is a catchy title, the second is to write an abstract which will interest the reader – we are selling our story so to speak. Similarly when we give job talks and present in hour long university seminars, or twenty minute conference slots, we are selling our research. Ultimately one cannot cover all the technical detail of 6 months research and 40 pages of material in a 20 minute conference presentation – and one shouldn’t – but we try to convince and interest the audience in our work. We are already ‘selling’ our research; I am just suggesting you aim for a bigger audience...

Take a page out of Keynes and Friedman’s book and use newspapers, books and media to put your ideas out there. This is important as not every social scientists work will change the world – sorry to say so – but you can make an impact if you are able to put your thoughts to a large number of people. Ultimately social change is affected by attitudes and notions across society, and not through the shouting of single voices. Joe Stiglitz in recalling his first visit to China confronted this issue head on. In China his publisher had no distribution agreement, but his books were on every book-store shelf. In wondering whether he should report this plagiarism, he asked himself if it was “better to be paid and ignored, or pirated and widely read?” He never filed any complaints, and why should he? He suddenly had 1.2 billion extra listeners.

Of course not every idea is brilliant and not every theory warrants academic publication or public disbursement. This is where good research comes in. If the theoretical contribution is not novel and thoroughly explored, it will not be published in academic journals, and will not be interesting for future generations of social scientists. Similarly if the core of your work does not coincide with the *zeitgeist*, it is unlikely to capture the public imagination or influence policy. Almost every social scientist will agree with the first statement and some will balk at the latter proposition. For those who balk I recommend a look at Milton Friedman’s first 20 year academic track record. Friedman published widely with little real policy effect. It was only in the 60’s and late 70’s as the economy changed and he actively promoted his views through the media that Friedman’s monetarist revolution came about. That revolution is no testament to the validity or sustainability of his ideas, but is a definitive indicator of how important it is to publicly promote your ideas, a lesson Friedman retained till the end. It is also an indicator of how important it is to capture the mood of the times and understand current events. We are taking this onboard in launching a blog on our site, to follow events and new research.

On research however, I must close with the sign that Deirdre McCloskey has on her wall: “Indente alte in gubernando” or ‘aim high in steering’. Be ambitious; aim for the highest possible standard of scholarship and never be afraid to think big and ask big questions. Remember: What you do is important, but you have to convince everyone else of this too.

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YOU AND YOUR RESEARCH

Richard Hamming

Transcript by J.F. Kaiser*

ABSTRACT

At a seminar in the Bell Communications Research Colloquia Series, Dr. Richard W. Hamming, a Professor at the Naval Postgraduate School in Monterey, California and a retired Bell Labs scientist, gave a very interesting and stimulating talk, ‘You and Your Research’, to an overflow audience of some 200 Bellcore staff members and visitors at the Morris Research and Engineering Center on March 7, 1986. This talk centered on Hamming’s observations and research on the question: “Why do so few scientists make significant contributions and so many are forgotten in the long run?” From his more than forty years of experience, thirty of which were at Bell Laboratories, he has made a number of direct observations, asked very pointed questions of scientists about what, how, and why they did things, studied the lives of great scientists and great contributions, and has done introspection and studied theories of creativity. The talk is about what he has learned in terms of the properties of the individual scientists, their abilities, traits, working habits, attitudes, and philosophy.

I. INTRODUCTION, by Alan G. Chynoweth

Greetings colleagues, and also to many of our former colleagues from Bell Labs who, I understand, are here to be with us today on what I regard as a particularly felicitous occasion. It gives me very great pleasure indeed to introduce to you my old friend and colleague from many many years back, Richard Hamming, or Dick Hamming as he has always been know to all of us.

Dick is one of the all time greats in the mathematics and computer science arenas, as I’m sure the audience here does not need reminding. He received his early education at the Universities of Chicago and Nebraska, and got his Ph.D. at Illinois; he then joined the Los Alamos project during the war. Afterwards, in 1946, he joined Bell Labs. And that is, of course, where I met Dick – when I joined Bell Labs in their

* I would like to acknowledge the professional efforts of Donna Paradise of the Word Processing Center who did the initial transcription of the talk from the tape recording. She made my job of editing much easier. The errors of sentence parsing and punctuation are mine and mine alone. Finally I would like to express my sincere appreciation to Richard Hamming and Alan Chynoweth for all of their help in bringing this transcription to its present readable state.

physics research organization. In those days, we were in the habit of lunching together as a physics group, and for some reason this strange fellow from mathematics was always pleased to join us. We were always happy to have him with us because he brought so many unorthodox ideas and views. Those lunches were stimulating, I can assure you. While our professional paths have not been very close over the years, nevertheless I've always recognized Dick in the halls of Bell Labs and have always had tremendous admiration for what he was doing. I think the record speaks for itself. It is too long to go through all the details, but let me point out, for example, that he has written seven books and of those seven books which tell of various areas of mathematics and computers and coding and information theory, three are already well into their second edition. That is testimony indeed to the prolific output and the stature of Dick Hamming.

I think I last met him – it must have been about ten years ago – at a rather curious little conference in Dublin, Ireland where we were both speakers. As always, he was tremendously entertaining. Just one more example of the provocative thoughts that he comes up with: I remember him saying, “There are wavelengths that people cannot see, there are sounds that people cannot hear, and maybe computers have thoughts that people cannot think.” Well, with Dick Hamming around, we don't need a computer. I think that we are in for an extremely entertaining talk.

II. THE TALK

It's a pleasure to be here. I doubt if I can live up to the Introduction. The title of my talk is, “You and Your Research.” It is not about managing research, it is about how you individually do your research. I could give a talk on the other subject – but it's not, it's about you. I'm not talking about ordinary run-of-the-mill research; I'm talking about great research. And for the sake of describing great research I'll occasionally say Nobel Prize type of work. It doesn't have to gain the Nobel Prize, but I mean those kinds of things which we perceive are significant things. Relativity, if you want, Shannon's information theory, any number of outstanding theories – that's the kind of thing I'm talking about.

Now, how did I come to do this study? At Los Alamos I was brought in to run the computing machines which other people had got going, so those scientists and physicists could get back to business. I saw I was a stooge. I saw that although physically I was the same, they were different. And to put the thing bluntly, I was envious. I wanted to know why they were so different from me. I saw Feynman up close. I saw Fermi and Teller. I saw Oppenheimer. I saw Hans Bethe; he was my boss. I saw quite a few very capable people. I became very interested in the difference between those who do and those who might have done.

When I came to Bell Labs, I came into a very productive department. Bode was the department head at the time; Shannon was there, and there were other people. I continued examining the questions, “Why?” and “What is the difference?” I continued subsequently by reading biographies, autobiographies, asking people questions such as: “How did you come to do this?” I tried to find out what are the differences. And that's what this talk is about.

Now, why is this talk important? I think it is important because, as far as I know, each of you has one life to live. Even if you believe in reincarnation it doesn't do you any good from one life to the next! Why shouldn't you do significant things in this one life, however you define significant? I'm not going to define it – you know what I mean. I will talk mainly about science because that is what I have studied. But so far as I know, and I've been told by others, much of what I say applies to many fields. Outstanding work is characterized very much the same way in most fields, but I will confine myself to science.

In order to get at you individually, I must talk in the first person. I have to get you to drop modesty and say to yourself, "Yes, I would like to do first-class work." Our society frowns on people who set out to do really good work. You're not supposed to; luck is supposed to descend on you and you do great things by chance. Well, that's a kind of dumb thing to say. I say, why shouldn't you set out to do something significant. You don't have to tell other people, but shouldn't you say to yourself, "Yes, I would like to do something significant."

In order to get to the second stage, I have to drop modesty and talk in the first person about what I've seen, what I've done, and what I've heard. I'm going to talk about people, some of whom you know, and I trust that when we leave, you won't quote me as saying some of the things I said.

Let me start not logically, but psychologically. I find that the major objection is that people think great science is done by luck. It's all a matter of luck. Well, consider Einstein. Note how many different things he did that were good. Was it all luck? Wasn't it a little too repetitive? Consider Shannon. He didn't do just information theory. Several years before, he did some other good things and some which are still locked up in the security of cryptography. He did many good things.

You see again and again, that it is more than one thing from a good person. Once in a while a person does only one thing in his whole life, and we'll talk about that later, but a lot of times there is repetition. I claim that luck will not cover everything. And I will cite Pasteur who said, "Luck favors the prepared mind." And I think that says it the way I believe it. There is indeed an element of luck, and no, there isn't. The prepared mind sooner or later finds something important and does it. So yes, it is luck. The particular thing you do is luck, but that you do something is not.

For example, when I came to Bell Labs, I shared an office for a while with Shannon. At the same time he was doing information theory, I was doing coding theory. It is suspicious that the two of us did it at the same place and at the same time – it was in the atmosphere. And you can say, "Yes, it was luck." On the other hand you can say, "But why of all the people in Bell Labs then were those the two who did it?" Yes, it is partly luck, and partly it is the prepared mind; but 'partly' is the other thing I'm going to talk about. So, although I'll come back several more times to luck, I want to dispose of this matter of luck as being the sole criterion whether you do great work or not. I claim you have some, but not total, control over it. And I will quote, finally, Newton on the matter. Newton said, "If others would think as hard as I did, then they would get similar results."

One of the characteristics you see, and many people have it including great scientists, is that usually when they were young they had independent thoughts and had the courage to pursue them. For example, Einstein, somewhere around 12 or 14, asked himself the question, “What would a light wave look like if I went with the velocity of light to look at it?” Now he knew that electromagnetic theory says you cannot have a stationary local maximum. But if he moved along with the velocity of light, he would see a local maximum. He could see a contradiction at the age of 12, 14, or somewhere around there, that everything was not right and that the velocity of light had something peculiar. Is it luck that he finally created special relativity? Early on, he had laid down some of the pieces by thinking of the fragments. Now that’s the necessary but not sufficient condition. All of these items I will talk about are both luck and not luck.

How about having lots of ‘brains?’ It sounds good. Most of you in this room probably have more than enough brains to do first-class work. But great work is something else than mere brains. Brains are measured in various ways. In mathematics, theoretical physics, astrophysics, typically brains correlates to a great extent with the ability to manipulate symbols. And so the typical IQ test is apt to score them fairly high. On the other hand, in other fields it is something different. For example, Bill Pfann, the fellow who did zone melting, came into my office one day. He had this idea dimly in his mind about what he wanted and he had some equations. It was pretty clear to me that this man didn’t know much mathematics and he wasn’t really articulate. His problem seemed interesting so I took it home and did a little work. I finally showed him how to run computers so he could compute his own answers. I gave him the power to compute. He went ahead, with negligible recognition from his own department, but ultimately he has collected all the prizes in the field. Once he got well started, his shyness, his awkwardness, his inarticulateness, fell away and he became much more productive in many other ways. Certainly he became much more articulate.

And I can cite another person in the same way. I trust he isn’t in the audience, i.e. a fellow named Clogston. I met him when I was working on a problem with John Pierce’s group and I didn’t think he had much. I asked my friends who had been with him at school, “Was he like that in graduate school?” “Yes,” they replied. Well I would have fired the fellow, but J. R. Pierce was smart and kept him on. Clogston finally did the Clogston cable. After that there was a steady stream of good ideas. One success brought him confidence and courage.

One of the characteristics of successful scientists is having courage. Once you get your courage up and believe that you can do important problems, then you can. If you think you can’t, almost surely you are not going to. Courage is one of the things that Shannon had supremely. You have only to think of his major theorem. He wants to create a method of coding, but he doesn’t know what to do so he makes a random code. Then he is stuck. And then he asks the impossible question, “What would the average random code do?” He then proves that the average code is arbitrarily good, and that therefore there must be at least one good code. Who but a man of infinite courage could have dared to think those thoughts? That is the characteristic of great scientists; they have courage. They will go forward under incredible circumstances; they think and continue to think.

Age is another factor which the physicists particularly worry about. They always are saying that you have got to do it when you are young or you will never do it. Einstein did things very early, and all the quantum mechanic fellows were disgustingly young when they did their best work. Most mathematicians, theoretical physicists, and astrophysicists do what we consider their best work when they are young. It is not that they don't do good work in their old age but what we value most is often what they did early. On the other hand, in music, politics and literature, often what we consider their best work was done late. I don't know how whatever field you are in fits this scale, but age has some effect.

But let me say why age seems to have the effect it does. In the first place if you do some good work you will find yourself on all kinds of committees and unable to do any more work. You may find yourself as I saw Brattain when he got a Nobel Prize. The day the prize was announced we all assembled in Arnold Auditorium; all three winners got up and made speeches. The third one, Brattain, practically with tears in his eyes, said, "I know about this Nobel Prize effect and I am not going to let it affect me; I am going to remain good old Walter Brattain." Well I said to myself, "That is nice." But in a few weeks I saw it was affecting him. Now he could only work on great problems.

When you are famous it is hard to work on small problems. This is what did Shannon in. After information theory, what do you do for an encore? The great scientists often make this error. They fail to continue to plant the little acorns from which the mighty oak trees grow. They try to get the big thing right off. And that isn't the way things go. So that is another reason why you find that when you get early recognition it seems to sterilize you. In fact I will give you my favorite quotation of many years. The Institute for Advanced Study in Princeton, in my opinion, has ruined more good scientists than any institution has created, judged by what they did before they came and judged by what they did after. Not that they weren't good afterwards, but they were superb before they got there and were only good afterwards.

This brings up the subject, out of order perhaps, of working conditions. What most people think are the best working conditions, are not. Very clearly they are not because people are often most productive when working conditions are bad. One of the better times of the Cambridge Physical Laboratories was when they had practically shacks – they did some of the best physics ever.

I give you a story from my own private life. Early on it became evident to me that Bell Laboratories was not going to give me the conventional acre of programming people to program computing machines in absolute binary. It was clear they weren't going to. But that was the way everybody did it. I could go to the West Coast and get a job with the airplane companies without any trouble, but the exciting people were at Bell Labs and the fellows out there in the airplane companies were not. I thought for a long while about, "Did I want to go or not?" and I wondered how I could get the best of two possible worlds. I finally said to myself, "Hamming, you think the machines can do practically everything. Why can't you make them write programs?" What appeared at first to me as a defect forced me into automatic programming very early. What appears to be a fault, often, by a change of viewpoint, turns out to be one of the greatest assets you can have. But you are not likely to think that when you first look at

the thing and say, “Gee, I’m never going to get enough programmers, so how can I ever do any great programming?”

And there are many other stories of the same kind; Grace Hopper has similar ones. I think that if you look carefully you will see that often the great scientists, by turning the problem around a bit, changed a defect to an asset. For example, many scientists when they found they couldn’t do a problem finally began to study why not. They then turned it around the other way and said, “But of course, this is what it is” and got an important result. So ideal working conditions are very strange. The ones you want aren’t always the best ones for you.

Now for the matter of drive. You observe that most great scientists have tremendous drive. I worked for ten years with John Tukey at Bell Labs. He had tremendous drive. One day about three or four years after I joined, I discovered that John Tukey was slightly younger than I was. John was a genius and I clearly was not. Well I went storming into Bode’s office and said, “How can anybody my age know as much as John Tukey does?” He leaned back in his chair, put his hands behind his head, grinned slightly, and said, “You would be surprised Hamming, how much you would know if you worked as hard as he did that many years.” I simply slunk out of the office!

What Bode was saying was this: “Knowledge and productivity are like compound interest.” Given two people of approximately the same ability and one person who works ten percent more than the other, the latter will more than twice out-produce the former. The more you know, the more you learn; the more you learn, the more you can do; the more you can do, the more the opportunity – it is very much like compound interest. I don’t want to give you a rate, but it is a very high rate. Given two people with exactly the same ability, the one person who manages day in and day out to get in one more hour of thinking will be tremendously more productive over a lifetime. I took Bode’s remark to heart; I spent a good deal more of my time for some years trying to work a bit harder and I found, in fact, I could get more work done. I don’t like to say it in front of my wife, but I did sort of neglect her sometimes; I needed to study. You have to neglect things if you intend to get what you want done. There’s no question about this.

On this matter of drive Edison says, “Genius is 99% perspiration and 1% inspiration.” He may have been exaggerating, but the idea is that solid work, steadily applied, gets you surprisingly far. The steady application of effort with a little bit more work, intelligently applied is what does it. That’s the trouble; drive, misapplied, doesn’t get you anywhere. I’ve often wondered why so many of my good friends at Bell Labs who worked as hard or harder than I did, didn’t have so much to show for it. The misapplication of effort is a very serious matter. Just hard work is not enough – it must be applied sensibly.

There’s another trait on the side which I want to talk about; that trait is ambiguity. It took me a while to discover its importance. Most people like to believe something is or is not true. Great scientists tolerate ambiguity very well. They believe the theory enough to go ahead; they doubt it enough to notice the errors and faults so they can step forward and create the new replacement theory. If you believe too much you’ll never notice the flaws; if you doubt too much you won’t get started. It requires a lovely balance. But most great scientists are well aware of why their theories are true

and they are also well aware of some slight misfits which don't quite fit and they don't forget it. Darwin writes in his autobiography that he found it necessary to write down every piece of evidence which appeared to contradict his beliefs because otherwise they would disappear from his mind. When you find apparent flaws you've got to be sensitive and keep track of those things, and keep an eye out for how they can be explained or how the theory can be changed to fit them. Those are often the great contributions. Great contributions are rarely done by adding another decimal place. It comes down to an emotional commitment. Most great scientists are completely committed to their problem. Those who don't become committed, seldom produce outstanding, first-class work.

Now again, emotional commitment is not enough. It is a necessary condition apparently. And I think I can tell you the reason why. Everybody who has studied creativity is driven finally to saying, "creativity comes out of your subconscious." Somehow, suddenly, there it is. It just appears. Well, we know very little about the subconscious; but one thing you are pretty well aware of is that your dreams also come out of your subconscious. And you're aware your dreams are, to a fair extent, a reworking of the experiences of the day. If you are deeply immersed and committed to a topic, day after day after day, your subconscious has nothing to do but work on your problem. And so you wake up one morning, or on some afternoon, and there's the answer. For those who don't get committed to their current problem, the subconscious goofs off on other things and doesn't produce the big result. So the way to manage yourself is that when you have a real important problem you don't let anything else get the center of your attention – you keep your thoughts on the problem. Keep your subconscious starved so it has to work on your problem, so you can sleep peacefully and get the answer in the morning, free.

Now Alan Chynoweth mentioned that I used to eat at the physics table. I had been eating with the mathematicians and I found out that I already knew a fair amount of mathematics; in fact, I wasn't learning much. The physics table was, as he said, an exciting place, but I think he exaggerated on how much I contributed. It was very interesting to listen to Shockley, Brattain, Bardeen, J. B. Johnson, Ken McKay and other people, and I was learning a lot. But unfortunately a Nobel Prize came, and a promotion came, and what was left was the dregs. Nobody wanted what was left. Well, there was no use eating with them!

Over on the other side of the dining hall was a chemistry table. I had worked with one of the fellows, Dave McCall; furthermore he was courting our secretary at the time. I went over and said, "Do you mind if I join you?" They can't say no, so I started eating with them for a while. And I started asking, "What are the important problems of your field?" And after a week or so, "What important problems are you working on?" And after some more time I came in one day and said, "If what you are doing is not important, and if you don't think it is going to lead to something important, why are you at Bell Labs working on it?" I wasn't welcomed after that; I had to find somebody else to eat with! That was in the spring.

In the fall, Dave McCall stopped me in the hall and said, "Hamming, that remark of yours got underneath my skin. I thought about it all summer, i.e. what were the important problems in my field. I haven't changed my research," he says, "but I think it was well worthwhile." And I said, "Thank you Dave," and went on. I noticed a

couple of months later he was made the head of the department. I noticed the other day he was a Member of the National Academy of Engineering. I noticed he has succeeded. I have never heard the names of any of the other fellows at that table mentioned in science and scientific circles. They were unable to ask themselves, “What are the important problems in my field?”

If you do not work on an important problem, it’s unlikely you’ll do important work. It’s perfectly obvious. Great scientists have thought through, in a careful way, a number of important problems in their field, and they keep an eye on wondering how to attack them. Let me warn you, ‘important problem’ must be phrased carefully. The three outstanding problems in physics, in a certain sense, were never worked on while I was at Bell Labs. By important I mean guaranteed a Nobel Prize and any sum of money you want to mention. We didn’t work on (1) time travel, (2) teleportation, and (3) antigravity. They are not important problems because we do not have an attack. It’s not the consequence that makes a problem important; it is that you have a reasonable attack. That is what makes a problem important. When I say that most scientists don’t work on important problems, I mean it in that sense. The average scientist, so far as I can make out, spends almost all his time working on problems which he believes will not be important and he also doesn’t believe that they will lead to important problems.

I spoke earlier about planting acorns so that oaks will grow. You can’t always know exactly where to be, but you can keep active in places where something might happen. And even if you believe that great science is a matter of luck, you can stand on a mountain top where lightning strikes; you don’t have to hide in the valley where you’re safe. But the average scientist does routine safe work almost all the time and so he (or she) doesn’t produce much. It’s that simple. If you want to do great work, you clearly must work on important problems, and you should have an idea.

Along those lines at some urging from John Tukey and others, I finally adopted what I called “Great Thoughts Time.” When I went to lunch Friday noon, I would only discuss great thoughts after that. By great thoughts I mean ones like: “What will be the role of computers in all of AT&T?”, “How will computers change science?” For example, I came up with the observation at that time that nine out of ten experiments were done in the lab and one in ten on the computer. I made a remark to the vice presidents one time that it would be reversed, i.e. nine out of ten experiments would be done on the computer and one in ten in the lab. They knew I was a crazy mathematician and had no sense of reality. I knew they were wrong and they’ve been proved wrong while I have been proved right. They built laboratories when they didn’t need them. I saw that computers were transforming science because I spent a lot of time asking “What will be the impact of computers on science and how can I change it?” I asked myself, “How is it going to change Bell Labs?” I remarked one time, in the same address, that more than one-half of the people at Bell Labs will be interacting closely with computing machines before I leave. Well, you all have terminals now. I thought hard about where was my field going, where were the opportunities, and what were the important things to do. Let me go there so there is a chance I can do important things.

Most great scientists know many important problems. They have something between 10 and 20 important problems for which they are looking for an attack. And when

they see a new idea come up, one hears them say “Well that bears on this problem.” They drop all the other things and get after it. Now I can tell you a horror story that was told to me but I can’t vouch for the truth of it. I was sitting in an airport talking to a friend of mine from Los Alamos about how it was lucky that the fission experiment occurred over in Europe when it did because that got us working on the atomic bomb here in the US. He said “No; at Berkeley we had gathered a bunch of data; we didn’t get around to reducing it because we were building some more equipment, but if we had reduced that data we would have found fission.” They had it in their hands and they didn’t pursue it. They came in second!

The great scientists, when an opportunity opens up, get after it and they pursue it. They drop all other things. They get rid of other things and they get after an idea because they had already thought the thing through. Their minds are prepared; they see the opportunity and they go after it. Now of course lots of times it doesn’t work out, but you don’t have to hit many of them to do some great science. It’s kind of easy. One of the chief tricks is to live a long time!

Another trait, it took me a while to notice. I noticed the following facts about people who work with the door open or the door closed. I notice that if you have the door to your office closed, you get more work done today and tomorrow, and you are more productive than most. But 10 years later somehow you don’t know quite know what problems are worth working on; all the hard work you do is sort of tangential in importance. He who works with the door open gets all kinds of interruptions, but he also occasionally gets clues as to what the world is and what might be important. Now I cannot prove the cause and effect sequence because you might say, “The closed door is symbolic of a closed mind.” I don’t know. But I can say there is a pretty good correlation between those who work with the doors open and those who ultimately do important things, although people who work with doors closed often work harder. Somehow they seem to work on slightly the wrong thing – not much, but enough that they miss fame.

I want to talk on another topic. It is based on the song which I think many of you know, “It ain’t what you do, it’s the way that you do it.” I’ll start with an example of my own. I was conned into doing on a digital computer, in the absolute binary days, a problem which the best analog computers couldn’t do. And I was getting an answer. When I thought carefully and said to myself, “You know, Hamming, you’re going to have to file a report on this military job; after you spend a lot of money you’re going to have to account for it and every analog installation is going to want the report to see if they can’t find flaws in it.” I was doing the required integration by a rather crummy method, to say the least, but I was getting the answer. And I realized that in truth the problem was not just to get the answer; it was to demonstrate for the first time and beyond question, that I could beat the analog computer on its own ground with a digital machine. I reworked the method of solution, created a theory which was nice and elegant, and changed the way we computed the answer; the results were no different. The published report had an elegant method which was later known for years as “Hamming’s Method of Integrating Differential Equations.” It is somewhat obsolete now, but for a while it was a very good method. By changing the problem slightly, I did important work rather than trivial work.

In the same way, when using the machine up in the attic in the early days, I was solving one problem after another after another; a fair number were successful and there were a few failures. I went home one Friday after finishing a problem, and curiously enough I wasn't happy; I was depressed. I could see life being a long sequence of one problem after another after another. After quite a while of thinking I decided, "No, I should be in the mass production of a variable product. I should be concerned with all of next year's problems, not just the one in front of my face." By changing the question I still got the same kind of results or better, but I changed things and did important work. I attacked the major problem – How do I conquer machines and do all of next year's problems when I don't know what they are going to be? How do I prepare for it? How do I do this one so I'll be on top of it? How do I obey Newton's rule? He said, "If I have seen further than others, it is because I've stood on the shoulders of giants." These days we stand on each other's feet!

You should do your job in such a fashion that others can build on top of it, so they will indeed say, "Yes, I've stood on so and so's shoulders and I saw further." The essence of science is cumulative. By changing a problem slightly you can often do great work rather than merely good work. Instead of attacking isolated problems, I made the resolution that I would never again solve an isolated problem except as characteristic of a class. Now if you are much of a mathematician you know that the effort to generalize often means that the solution is simple. Often by stopping and saying, "This is the problem he wants but this is characteristic of so and so. Yes, I can attack the whole class with a far superior method than the particular one because I was earlier embedded in needless detail." The business of abstraction frequently makes things simple. Furthermore, I filed away the methods and prepared for the future problems.

To end this part, I'll remind you, "It is a poor workman who blames his tools – the good man gets on with the job, given what he's got, and gets the best answer he can." And I suggest that by altering the problem, by looking at the thing differently, you can make a great deal of difference in your final productivity because you can either do it in such a fashion that people can indeed build on what you've done, or you can do it in such a fashion that the next person has to essentially duplicate again what you've done. It isn't just a matter of the job, it's the way you write the report, the way you write the paper, the whole attitude. It's just as easy to do a broad, general job as one very special case. And it's much more satisfying and rewarding!

I have now come down to a topic which is very distasteful; it is not sufficient to do a job, you have to sell it. 'Selling' to a scientist is an awkward thing to do. It's very ugly; you shouldn't have to do it. The world is supposed to be waiting, and when you do something great, they should rush out and welcome it. But the fact is everyone is busy with their own work. You must present it so well that they will set aside what they are doing, look at what you've done, read it, and come back and say, "Yes, that was good." I suggest that when you open a journal, as you turn the pages, you ask why you read some articles and not others. You had better write your report so when it is published in the *Physical Review*, or wherever else you want it, as the readers are turning the pages they won't just turn your pages but they will stop and read yours. If they don't stop and read it, you won't get credit.

There are three things you have to do in selling. You have to learn to write clearly and well so that people will read it, you must learn to give reasonably formal talks, and you also must learn to give informal talks. We had a lot of so-called ‘back room scientists.’ In a conference, they would keep quiet. Three weeks later after a decision was made they filed a report saying why you should do so and so. Well, it was too late. They would not stand up right in the middle of a hot conference, in the middle of activity, and say, “We should do this for these reasons.” You need to master that form of communication as well as prepared speeches.

When I first started, I got practically physically ill while giving a speech, and I was very, very nervous. I realized I either had to learn to give speeches smoothly or I would essentially partially cripple my whole career. The first time IBM asked me to give a speech in New York one evening, I decided I was going to give a really good speech, a speech that was wanted, not a technical one but a broad one, and at the end if they liked it, I’d quietly say, “Any time you want one I’ll come in and give you one.” As a result, I got a great deal of practice giving speeches to a limited audience and I got over being afraid. Furthermore, I could also then study what methods were effective and what were ineffective.

While going to meetings I had already been studying why some papers are remembered and most are not. The technical person wants to give a highly limited technical talk. Most of the time the audience wants a broad general talk and wants much more survey and background than the speaker is willing to give. As a result, many talks are ineffective. The speaker names a topic and suddenly plunges into the details he’s solved. Few people in the audience may follow. You should paint a general picture to say why it’s important, and then slowly give a sketch of what was done. Then a larger number of people will say, “Yes, Joe has done that,” or “Mary has done that; I really see where it is; yes, Mary really gave a good talk; I understand what Mary has done.” The tendency is to give a highly restricted, safe talk; this is usually ineffective. Furthermore, many talks are filled with far too much information. So I say this idea of selling is obvious.

Let me summarize. You’ve got to work on important problems. I deny that it is all luck, but I admit there is a fair element of luck. I subscribe to Pasteur’s “Luck favors the prepared mind.” I favor heavily what I did. Friday afternoons for years – great thoughts only – means that I committed 10% of my time trying to understand the bigger problems in the field, i.e. what was and what was not important. I found in the early days I had believed ‘this’ and yet had spent all week marching in ‘that’ direction. It was kind of foolish. If I really believe the action is over there, why do I march in this direction? I either had to change my goal or change what I did. So I changed something I did and I marched in the direction I thought was important. It’s that easy.

Now you might tell me you haven’t got control over what you have to work on. Well, when you first begin, you may not. But once you’re moderately successful, there are more people asking for results than you can deliver and you have some power of choice, but not completely. I’ll tell you a story about that, and it bears on the subject of educating your boss. I had a boss named Schelkunoff; he was, and still is, a very good friend of mine. Some military person came to me and demanded some answers by Friday. Well, I had already dedicated my computing resources to reducing data on

the fly for a group of scientists; I was knee deep in short, small, important problems. This military person wanted me to solve his problem by the end of the day on Friday. I said, “No, I’ll give it to you Monday. I can work on it over the weekend. I’m not going to do it now.” He goes down to my boss, Schelkunoff, and Schelkunoff says, “You must run this for him; he’s got to have it by Friday.” I tell him, “Why do I?”; he says, “You have to.” I said, “Fine, Sergei, but you’re sitting in your office Friday afternoon catching the late bus home to watch as this fellow walks out that door.” I gave the military person the answers late Friday afternoon. I then went to Schelkunoff’s office and sat down; as the man goes out I say, “You see Schelkunoff, this fellow has nothing under his arm; but I gave him the answers.” On Monday morning Schelkunoff called him up and said, “Did you come in to work over the weekend?” I could hear, as it were, a pause as the fellow ran through his mind of what was going to happen; but he knew he would have had to sign in, and he’d better not say he had when he hadn’t, so he said he hadn’t. Ever after that Schelkunoff said, “You set your deadlines; you can change them.”

One lesson was sufficient to educate my boss as to why I didn’t want to do big jobs that displaced exploratory research and why I was justified in not doing crash jobs which absorb all the research computing facilities. I wanted instead to use the facilities to compute a large number of small problems. Again, in the early days, I was limited in computing capacity and it was clear, in my area, that a “mathematician had no use for machines.” But I needed more machine capacity. Every time I had to tell some scientist in some other area, “No I can’t; I haven’t the machine capacity,” he complained. I said “Go tell your Vice President that Hamming needs more computing capacity.” After a while I could see what was happening up there at the top; many people said to my Vice President, “Your man needs more computing capacity.” I got it!

I also did a second thing. When I loaned what little programming power we had to help in the early days of computing, I said, “We are not getting the recognition for our programmers that they deserve. When you publish a paper you will thank that programmer or you aren’t getting any more help from me. That programmer is going to be thanked by name; she’s worked hard.” I waited a couple of years. I then went through a year of BSTJ articles and counted what fraction thanked some programmer. I took it into the boss and said, “That’s the central role computing is playing in Bell Labs; if the BSTJ is important, that’s how important computing is.” He had to give in. You can educate your bosses. It’s a hard job. In this talk I’m only viewing from the bottom up; I’m not viewing from the top down. But I am telling you how you can get what you want in spite of top management. You have to sell your ideas there also.

Well I now come down to the topic, “Is the effort to be a great scientist worth it?” To answer this, you must ask people. When you get beyond their modesty, most people will say, “Yes, doing really first-class work, and knowing it, is as good as wine, women and song put together,” or if it’s a woman she says, “It is as good as wine, men and song put together.” And if you look at the bosses, they tend to come back or ask for reports, trying to participate in those moments of discovery. They’re always in the way. So evidently those who have done it, want to do it again. But it is a limited survey. I have never dared to go out and ask those who didn’t do great work how they felt about the matter. It’s a biased sample, but I still think it is worth the struggle. I think it is very definitely worth the struggle to try and do first-class work because the

truth is, the value is in the struggle more than it is in the result. The struggle to make something of yourself seems to be worthwhile in itself. The success and fame are sort of dividends, in my opinion.

I've told you how to do it. It is so easy, so why do so many people, with all their talents, fail? For example, my opinion, to this day, is that there are in the mathematics department at Bell Labs quite a few people far more able and far better endowed than I, but they didn't produce as much. Some of them did produce more than I did; Shannon produced more than I did, and some others produced a lot, but I was highly productive against a lot of other fellows who were better equipped. Why is it so? What happened to them? Why do so many of the people, who have great promise, fail?

Well, one of the reasons is drive and commitment. The people who do great work with less ability but who are committed to it, get more done than those who have great skill and dabble in it, who work during the day and go home and do other things and come back and work the next day. They don't have the deep commitment that is apparently necessary for really first-class work. They turn out lots of good work, but we were talking, remember, about first-class work. There is a difference. Good people, very talented people, almost always turn out good work. We're talking about the outstanding work, the type of work that gets the Nobel Prize and gets recognition.

The second thing is, I think, the problem of personality defects. Now I'll cite a fellow whom I met out in Irvine. He had been the head of a computing center and he was temporarily on assignment as a special assistant to the president of the university. It was obvious he had a job with a great future. He took me into his office one time and showed me his method of getting letters done and how he took care of his correspondence. He pointed out how inefficient the secretary was. He kept all his letters stacked around there; he knew where everything was. And he would, on his word processor, get the letter out. He was bragging how marvelous it was and how he could get so much more work done without the secretary's interference. Well, behind his back, I talked to the secretary. The secretary said, "Of course I can't help him; I don't get his mail. He won't give me the stuff to log in; I don't know where he puts it on the floor. Of course I can't help him." So I went to him and said, "Look, if you adopt the present method and do what you can do single-handedly, you can go just that far and no farther than you can do single-handedly. If you will learn to work with the system, you can go as far as the system will support you." And, he never went any further. He had his personality defect of wanting total control and was not willing to recognize that you need the support of the system.

You find this happening again and again; good scientists will fight the system rather than learn to work with the system and take advantage of all the system has to offer. It has a lot, if you learn how to use it. It takes patience, but you can learn how to use the system pretty well, and you can learn how to get around it. After all, if you want a decision 'No', you just go to your boss and get a 'No' easy. If you want to do something, don't ask, do it. Present him with an accomplished fact. Don't give him a chance to tell you 'No'. But if you want a 'No', it's easy to get a 'No'.

Another personality defect is ego assertion and I'll speak in this case of my own experience. I came from Los Alamos and in the early days I was using a machine in

New York at 590 Madison Avenue where we merely rented time. I was still dressing in western clothes, big slash pockets, a bolo and all those things. I vaguely noticed that I was not getting as good service as other people. So I set out to measure. You came in and you waited for your turn; I felt I was not getting a fair deal. I said to myself, “Why? No Vice President at IBM said, ‘Give Hamming a bad time’. It is the secretaries at the bottom who are doing this. When a slot appears, they’ll rush to find someone to slip in, but they go out and find somebody else. Now, why? I haven’t mistreated them.” Answer, I wasn’t dressing the way they felt somebody in that situation should. It came down to just that – I wasn’t dressing properly. I had to make the decision – was I going to assert my ego and dress the way I wanted to and have it steadily drain my effort from my professional life, or was I going to appear to conform better? I decided I would make an effort to appear to conform properly. The moment I did, I got much better service. And now, as an old colorful character, I get better service than other people.

You should dress according to the expectations of the audience spoken to. If I am going to give an address at the MIT computer center, I dress with a bolo and an old corduroy jacket or something else. I know enough not to let my clothes, my appearance, my manners get in the way of what I care about. An enormous number of scientists feel they must assert their ego and do their thing their way. They have got to be able to do this, that, or the other thing, and they pay a steady price. John Tukey almost always dressed very casually. He would go into an important office and it would take a long time before the other fellow realized that this is a first-class man and he had better listen. For a long time John has had to overcome this kind of hostility. It’s wasted effort! I didn’t say you should conform; I said “The appearance of conforming gets you a long way.” If you chose to assert your ego in any number of ways, “I am going to do it my way,” you pay a small steady price throughout the whole of your professional career. And this, over a whole lifetime, adds up to an enormous amount of needless trouble.

By taking the trouble to tell jokes to the secretaries and being a little friendly, I got superb secretarial help. For instance, one time for some idiot reason all the reproducing services at Murray Hill were tied up. Don’t ask me how, but they were. I wanted something done. My secretary called up somebody at Holmdel, hopped the company car, made the hour-long trip down and got it reproduced, and then came back. It was a payoff for the times I had made an effort to cheer her up, tell her jokes and be friendly; it was that little extra work that later paid off for me. By realizing you have to use the system and studying how to get the system to do your work, you learn how to adapt the system to your desires. Or you can fight it steadily, as a small undeclared war, for the whole of your life.

And I think John Tukey paid a terrible price needlessly. He was a genius anyhow, but I think it would have been far better, and far simpler, had he been willing to conform a little bit instead of ego asserting. He is going to dress the way he wants all of the time. It applies not only to dress but to a thousand other things; people will continue to fight the system. Not that you shouldn’t occasionally!

When they moved the library from the middle of Murray Hill to the far end, a friend of mine put in a request for a bicycle. Well, the organization was not dumb. They waited awhile and sent back a map of the grounds saying, “Will you please indicate

on this map what paths you are going to take so we can get an insurance policy covering you.” A few more weeks went by. They then asked, “Where are you going to store the bicycle and how will it be locked so we can do so and so.” He finally realized that of course he was going to be red taped to death so he gave in. He rose to be the President of Bell Laboratories.

Barney Oliver was a good man. He wrote a letter one time to the IEEE. At that time the official shelf space at Bell Labs was so much and the height of the IEEE Proceedings at that time was larger; and since you couldn't change the size of the official shelf space he wrote this letter to the IEEE Publication person saying, “Since so many IEEE members were at Bell Labs and since the official space was so high the journal size should be changed.” He sent it for his boss's signature. Back came a carbon with his signature, but he still doesn't know whether the original was sent or not. I am not saying you shouldn't make gestures of reform. I am saying that my study of able people is that they don't get themselves committed to that kind of warfare. They play it a little bit and drop it and get on with their work.

Many a second-rate fellow gets caught up in some little twitting of the system, and carries it through to warfare. He expends his energy in a foolish project. Now you are going to tell me that somebody has to change the system. I agree; somebody's has to. Which do you want to be? The person who changes the system or the person who does first-class science? Which person is it that you want to be? Be clear, when you fight the system and struggle with it, what you are doing, how far to go out of amusement, and how much to waste your effort fighting the system. My advice is to let somebody else do it and you get on with becoming a first-class scientist. Very few of you have the ability to both reform the system and become a first-class scientist.

On the other hand, we can't always give in. There are times when a certain amount of rebellion is sensible. I have observed almost all scientists enjoy a certain amount of twitting the system for the sheer love of it. What it comes down to basically is that you cannot be original in one area without having originality in others. Originality is being different. You can't be an original scientist without having some other original characteristics. But many a scientist has let his quirks in other places make him pay a far higher price than is necessary for the ego satisfaction he or she gets. I'm not against all ego assertion; I'm against some.

Another fault is anger. Often a scientist becomes angry, and this is no way to handle things. Amusement, yes, anger, no. Anger is misdirected. You should follow and cooperate rather than struggle against the system all the time.

Another thing you should look for is the positive side of things instead of the negative. I have already given you several examples, and there are many, many more; how, given the situation, by changing the way I looked at it, I converted what was apparently a defect to an asset. I'll give you another example. I am an egotistical person; there is no doubt about it. I knew that most people, who took a sabbatical to write a book, didn't finish it on time. So before I left, I told all my friends that when I come back, that book was going to be done! Yes, I would have it done – I'd have been ashamed to come back without it! I used my ego to make myself behave the way I wanted to. I bragged about something so I'd have to perform. I found out many times, like a cornered rat in a real trap, I was surprisingly capable. I have found that it

paid to say, “Oh yes, I’ll get the answer for you Tuesday,” not having any idea how to do it. By Sunday night I was really hard thinking on how I was going to deliver by Tuesday. I often put my pride on the line and sometimes I failed, but as I said, like a cornered rat I’m surprised how often I did a good job. I think you need to learn to use yourself. I think you need to know how to convert a situation from one view to another which would increase the chance of success.

Now self-delusion in humans is very, very common. There are enumerable ways of you changing a thing and kidding yourself and making it look some other way. When you ask, “Why didn’t you do such and such,” the person has a thousand alibis. If you look at the history of science, usually these days there are 10 people right there ready, and we pay off for the person who is there first. The other nine fellows say, “Well, I had the idea but I didn’t do it and so on and so on.” There are so many alibis. Why weren’t you first? Why didn’t you do it right? Don’t try an alibi. Don’t try and kid yourself. You can tell other people all the alibis you want. I don’t mind. But to yourself try to be honest. If you really want to be a first-class scientist you need to know yourself, your weaknesses, your strengths, and your bad faults, like my egotism. How can you convert a fault to an asset? How can you convert a situation where you haven’t got enough manpower to move into a direction when that’s exactly what you need to do? I say again that I have seen, as I studied the history, the successful scientist changed the viewpoint and what was a defect became an asset.

In summary, I claim that some of the reasons why so many people who have greatness within their grasp don’t succeed are: they don’t work on important problems, they don’t become emotionally involved, they don’t try and change what is difficult to some other situation which is easily done but is still important, and they keep giving themselves alibis why they don’t. They keep saying that it is a matter of luck. I’ve told you how easy it is; furthermore I’ve told you how to reform. Therefore, go forth and become great scientists!

III. DISCUSSION – QUESTIONS AND ANSWERS

What about personal stress? Does that seem to make a difference?

Yes, it does. If you don’t get emotionally involved, it doesn’t. I had incipient ulcers most of the years that I was at Bell Labs. I have since gone off to the Naval Postgraduate School and laid back somewhat, and now my health is much better. But if you want to be a great scientist you’re going to have to put up with stress. You can lead a nice life; you can be a nice guy or you can be a great scientist. But nice guys end last, is what Leo Durocher said. If you want to lead a nice happy life with a lot of recreation and everything else, you’ll lead a nice life.

The remarks about having courage, no one could argue with; but those of us who have gray hairs or who are well established don’t have to worry too much. But what I sense among the young people these days is a real concern over the risk taking in a highly competitive environment. Do you have any words of wisdom on this?

I’ll quote Ed David more. Ed David was concerned about the general loss of nerve in our society. It does seem to me that we’ve gone through various periods. Coming out

of the war, coming out of Los Alamos where we built the bomb, coming out of building the radars and so on, there came into the mathematics department, and the research area, a group of people with a lot of guts. They've just seen things done; they've just won a war which was fantastic. We had reasons for having courage and therefore we did a great deal. I can't arrange that situation to do it again. I cannot blame the present generation for not having it, but I agree with what you say; I just cannot attach blame to it. It doesn't seem to me they have the desire for greatness; they lack the courage to do it. But we had, because we were in a favorable circumstance to have it; we just came through a tremendously successful war. In the war we were looking very, very bad for a long while; it was a very desperate struggle as you well know. And our success, I think, gave us courage and self confidence; that's why you see, beginning in the late forties through the fifties, a tremendous productivity at the labs which was stimulated from the earlier times. Because many of us were earlier forced to learn other things – we were forced to learn the things we didn't want to learn, we were forced to have an open door – and then we could exploit those things we learned. It is true, and I can't do anything about it; I cannot blame the present generation either. It's just a fact.

Is there something management could or should do?

Management can do very little. If you want to talk about managing research, that's a totally different talk. I'd take another hour doing that. This talk is about how the individual gets very successful research done in spite of anything the management does or in spite of any other opposition. And how do you do it? Just as I observe people doing it. It's just that simple and that hard!

Is brainstorming a daily process?

Once that was a very popular thing, but it seems not to have paid off. For myself I find it desirable to talk to other people; but a session of brainstorming is seldom worthwhile. I do go in to strictly talk to somebody and say, "Look, I think there has to be something here. Here's what I think I see ..." and then begin talking back and forth. But you want to pick capable people. To use another analogy, you know the idea called the 'critical mass.' If you have enough stuff you have critical mass. There is also the idea I used to call 'sound absorbers'. When you get too many sound absorbers, you give out an idea and they merely say, "Yes, yes, yes." What you want to do is get that critical mass in action; "Yes, that reminds me of so and so," or, "Have you thought about that or this?" When you talk to other people, you want to get rid of those sound absorbers who are nice people but merely say, "Oh yes," and to find those who will stimulate you right back.

For example, you couldn't talk to John Pierce without being stimulated very quickly. There was a group of other people I used to talk with. For example there was Ed Gilbert; I used to go down to his office regularly and ask him questions and listen and come back stimulated. I picked my people carefully with whom I did or whom I didn't brainstorm because the sound absorbers are a curse. They are just nice guys; they fill the whole space and they contribute nothing except they absorb ideas and the new ideas just die away instead of echoing on. Yes, I find it necessary to talk to

people. I think people with closed doors fail to do this so they fail to get their ideas sharpened, such as “Did you ever notice something over here?” I never knew anything about it – I can go over and look. Somebody points the way. On my visit here, I have already found several books that I must read when I get home. I talk to people and ask questions when I think they can answer me and give me clues that I do not know about. I go out and look!

What kind of tradeoffs did you make in allocating your time for reading and writing and actually doing research?

I believed, in my early days, that you should spend at least as much time in the polish and presentation as you did in the original research. Now at least 50% of the time must go for the presentation. It’s a big, big number.

How much effort should go into library work?

It depends upon the field. I will say this about it. There was a fellow at Bell Labs, a very, very, smart guy. He was always in the library; he read everything. If you wanted references, you went to him and he gave you all kinds of references. But in the middle of forming these theories, I formed a proposition: there would be no effect named after him in the long run. He is now retired from Bell Labs and is an Adjunct Professor. He was very valuable; I’m not questioning that. He wrote some very good Physical Review articles; but there’s no effect named after him because he read too much. If you read all the time what other people have done you will think the way they thought. If you want to think new thoughts that are different, then do what a lot of creative people do – get the problem reasonably clear and then refuse to look at any answers until you’ve thought the problem through carefully how you would do it, how you could slightly change the problem to be the correct one. So yes, you need to keep up. You need to keep up more to find out what the problems are than to read to find the solutions. The reading is necessary to know what is going on and what is possible. But reading to get the solutions does not seem to be the way to do great research. So I’ll give you two answers. You read; but it is not the amount, it is the way you read that counts.

How do you get your name attached to things?

By doing great work. I’ll tell you the hamming window one. I had given Tukey a hard time, quite a few times, and I got a phone call from him from Princeton to me at Murray Hill. I knew that he was writing up power spectra and he asked me if I would mind if he called a certain window a “Hamming window.” And I said to him, “Come on, John; you know perfectly well I did only a small part of the work but you also did a lot.” He said, “Yes, Hamming, but you contributed a lot of small things; you’re entitled to some credit.” So he called it the hamming window. Now, let me go on. I had twitted John frequently about true greatness. I said true greatness is when your name is like ampere, watt, and fourier – when it’s spelled with a lower case letter. That’s how the hamming window came about.

Dick, would you care to comment on the relative effectiveness between giving talks, writing papers, and writing books?

In the short haul, papers are very important if you want to stimulate someone tomorrow. If you want to get recognition long haul, it seems to me writing books is more contribution because most of us need orientation. In this day of practically infinite knowledge, we need orientation to find our way. Let me tell you what infinite knowledge is. Since from the time of Newton to now, we have come close to doubling knowledge every 17 years, more or less. And we cope with that, essentially, by specialization. In the next 340 years at that rate, there will be 20 doublings, i.e. a million, and there will be a million fields of specialty for every one field now. It isn't going to happen. The present growth of knowledge will choke itself off until we get different tools. I believe that books which try to digest, coordinate, get rid of the duplication, get rid of the less fruitful methods and present the underlying ideas clearly of what we know now, will be the things the future generations will value. Public talks are necessary; private talks are necessary; written papers are necessary. But I am inclined to believe that, in the long haul, books which leave out what's not essential are more important than books which tell you everything because you don't want to know everything. I don't want to know that much about penguins is the usual reply. You just want to know the essence.

You mentioned the problem of the Nobel Prize and the subsequent notoriety of what was done to some of the careers. Isn't that kind of a much more broad problem of fame? What can one do?

Some things you could do are the following. Somewhere around every seven years make a significant, if not complete, shift in your field. Thus, I shifted from numerical analysis, to hardware, to software, and so on, periodically, because you tend to use up your ideas. When you go to a new field, you have to start over as a baby. You are no longer the big mukity muk and you can start back there and you can start planting those acorns which will become the giant oaks. Shannon, I believe, ruined himself. In fact when he left Bell Labs, I said, "That's the end of Shannon's scientific career." I received a lot of flak from my friends who said that Shannon was just as smart as ever. I said, "Yes, he'll be just as smart, but that's the end of his scientific career," and I truly believe it was.

You have to change. You get tired after a while; you use up your originality in one field. You need to get something nearby. I'm not saying that you shift from music to theoretical physics to English literature; I mean within your field you should shift areas so that you don't go stale. You couldn't get away with forcing a change every seven years, but if you could, I would require a condition for doing research, being that you will change your field of research every seven years with a reasonable definition of what it means, or at the end of 10 years, management has the right to compel you to change. I would insist on a change because I'm serious. What happens to the old fellows is that they get a technique going; they keep on using it. They were marching in that direction which was right then, but the world changes. There's the new direction; but the old fellows are still marching in their former direction.

You need to get into a new field to get new viewpoints, and before you use up all the old ones. You can do something about this, but it takes effort and energy. It takes courage to say, “Yes, I will give up my great reputation.” For example, when error correcting codes were well launched, having these theories, I said, “Hamming, you are going to quit reading papers in the field; you are going to ignore it completely; you are going to try and do something else other than coast on that.” I deliberately refused to go on in that field. I wouldn’t even read papers to try to force myself to have a chance to do something else. I managed myself, which is what I’m preaching in this whole talk. Knowing many of my own faults, I manage myself. I have a lot of faults, so I’ve got a lot of problems, i.e. a lot of possibilities of management.

Would you compare research and management?

If you want to be a great researcher, you won’t make it being president of the company. If you want to be president of the company, that’s another thing. I’m not against being president of the company. I just don’t want to be. I think Ian Ross does a good job as President of Bell Labs. I’m not against it; but you have to be clear on what you want. Furthermore, when you’re young, you may have picked wanting to be a great scientist, but as you live longer, you may change your mind. For instance, I went to my boss, Bode, one day and said, “Why did you ever become department head? Why didn’t you just be a good scientist?” He said, “Hamming, I had a vision of what mathematics should be in Bell Laboratories. And I saw if that vision was going to be realized, I had to make it happen; I had to be department head.” When your vision of what you want to do is what you can do single-handedly, then you should pursue it. The day your vision, what you think needs to be done, is bigger than what you can do single-handedly, then you have to move toward management. And the bigger the vision is, the farther in management you have to go. If you have a vision of what the whole laboratory should be, or the whole Bell System, you have to get there to make it happen. You can’t make it happen from the bottom very easily. It depends upon what goals and what desires you have. And as they change in life, you have to be prepared to change. I chose to avoid management because I preferred to do what I could do single-handedly. But that’s the choice that I made, and it is biased. Each person is entitled to their choice. Keep an open mind. But when you do choose a path, for heaven’s sake be aware of what you have done and the choice you have made. Don’t try to do both sides.

How important is one’s own expectation or how important is it to be in a group or surrounded by people who expect great work from you?

At Bell Labs everyone expected good work from me – it was a big help. Everybody expects you to do a good job, so you do, if you’ve got pride. I think it’s very valuable to have first-class people around. I sought out the best people. The moment that physics table lost the best people, I left. The moment I saw that the same was true of the chemistry table, I left. I tried to go with people who had great ability so I could learn from them and who would expect great results out of me. By deliberately managing myself, I think I did much better than *laissez faire*.

You, at the outset of your talk, minimized or played down luck; but you seemed also to gloss over the circumstances that got you to Los Alamos, that got you to Chicago, that got you to Bell Laboratories?

There was some luck. On the other hand I don't know the alternate branches. Until you can say that the other branches would not have been equally or more successful, I can't say. Is it luck the particular thing you do? For example, when I met Feynman at Los Alamos, I knew he was going to get a Nobel Prize. I didn't know what for. But I knew darn well he was going to do great work. No matter what directions came up in the future, this man would do great work. And sure enough, he did do great work. It isn't that you only do a little great work at this circumstance and that was luck, there are many opportunities sooner or later. There are whole pails full of opportunities, of which, if you're in this situation, you seize one and you're great over there instead of over here. There is an element of luck, yes and no. Luck favors a prepared mind; luck favors a prepared person. It is not guaranteed; I don't guarantee success as being absolutely certain. I'd say luck changes the odds, but there is some definite control on the part of the individual.

Go forth, then, and do great work!

IV. BIOGRAPHICAL SKETCH OF RICHARD HAMMING

Richard W. Hamming was born February 11, 1915, in Chicago, Illinois. His formal education was marked by the following degrees (all in mathematics): B.S. 1937, University of Chicago; M.A. 1939, University of Nebraska; and Ph.D. 1942, University of Illinois. His early experience was obtained at Los Alamos 1945–1946, i.e. at the close of World War II, where he managed the computers used in building the first atomic bomb. From there he went directly to Bell Laboratories where he spent thirty years in various aspects of computing, numerical analysis, and management of computing, i.e. 1946–1976. On July 23, 1976 he 'moved his office' to the Naval Postgraduate School in Monterey, California where he taught, supervised research, and wrote books. While at Bell Laboratories, he took time to teach in Universities, sometimes locally and sometimes on a full sabbatical leave; these activities included visiting professorships at New York University, Princeton University (Statistics), City College of New York, Stanford University, 1960–61, Stevens Institute of Technology (Mathematics), and the University of California, Irvine, 1970–71.

Richard Hamming has received a number of awards which include: Fellow, IEEE, 1968; the ACM Turing Prize, 1968; the IEEE Emanuel R. Piore Award, 1979; Member, National Academy of Engineering, 1980; and the Harold Pender Award, U. Penn., 1981. In 1987 a major IEEE award was named after him, namely the Richard W. Hamming Medal, "For exceptional contributions to information sciences and systems"; fittingly, he was also the first recipient of this award, 1988. In 1996 in Munich he received the prestigious \$130,000 Eduard Rhein Award for Achievement in Technology for his work on error correcting codes. He was both a Founder and Past President of ACM, and a Vice Pres. of the AAAS Mathematics Section.

He is probably best known for his pioneering work on error correcting codes, his work on integrating differential equations, and the spectral window which bears his name. His extensive writing has included a number of important, pioneering, and highly regarded books. These are:

- *The Art of Doing Science and Engineering: Learning to Learn*, Gordon and Breach 1997, Kindle Edition 2007.
- *The Art of Probability for Scientists and Engineers*, Addison–Wesley, 1991.
- *Numerical Methods for Scientists and Engineers*, McGraw–Hill, 1962; Second edition 1973; Reprinted by Dover 1985; Translated into Russian.
- *Calculus and the Computer Revolution*, Houghton–Mifflin, 1968.
- *Introduction to Applied Numerical Analysis*, McGraw–Hill, 1971, Hemisphere Publishing Corporation 1989.
- *Computers and Society*, McGraw–Hill, 1972.
- *Digital Filters*, Prentice–Hall, 1977; Second edition 1983; Third edition 1989; Fourth Edition 1997, translated into several European languages.
- *Coding and Information Theory*, Prentice–Hall, 1980; Second edition 1986.
- *Methods of Mathematics Applied to Calculus, Probability, and Statistics*, Dover Books 1980, Prentice Hall 1985, Dover Books on Mathematics 2004

He continued a very active life as Adjunct Professor, teaching and writing in the Mathematics and Computer Science Departments at the Naval Postgraduate School, Monterey, California for another twenty-one years before he retired to become Professor Emeritus in 1997. He was still teaching a course in the fall of 1997. He passed away unexpectedly on January 7, 1998.

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AN INTRODUCTION TO TRANSFER PRICING

Alfredo J. Urquidi

ABSTRACT

This paper provides an overview of transfer pricing as an increasingly key issue in international business and trade and examines the topic from both micro (firm level) and macro (economy wide) perspectives. On a micro level, how transfer pricing decisions are made within a firm is examined via a case study, highlighting the difficulty in solving the “corporate transfer pricing problem” and the shortcomings of recent regulations in providing a framework for a solution. On a macro level, recent literature is reviewed that demonstrates the impact that transfer pricing has on the larger economy.

I INTRODUCTION

Within the past 5 to 10 years, transfer pricing has become a significant issue to the broader business audience. The popular press often portrays transfer pricing as a practice whereby multinational firms distort profit flows and corporate tax payments. In response to these fears, governments around the world follow the lead of the United States in making transfer pricing audits a strategic priority.

Under a high level of scrutiny, establishing appropriate transfer pricing policies is a difficult task. Various economic factors must be considered, as illustrated by the recent litigation involving multinational corporations that we will review.

Perhaps the most vexing concern is the need for multinationals to solve the “corporate transfer pricing problem” by establishing transfer pricing policies and practices that: (i) satisfy the needs of the business with respect to strategy and internal incentives; (ii) result in an efficient use of resources; and (iii) provide an appropriate transfer pricing answer from a tax perspective. As illustrated by means of a case study, arriving at a solution to this problem is exacerbated in the case of financial services transactions, where recent transfer pricing legislation fails to provide adequate guidance. The impact of transfer pricing, however, is felt well beyond the confines of the individual firm, and can affect the economy at large.

II TRANSFER PRICING: A DEFINITION

“Intrafirm trade involves the sale or transfer of tangible and intangible goods between related companies in two or more countries. Multinational transfer pricing is concerned with the pricing of intrafirm trade” (Tang 1997, p.xv)

As far back as 1979, however, economists noted that the term “transfer pricing” often assumed pejorative connotations suggesting that large multinationals have leeway to manipulate the prices on intrafirm trade and service flows for business advantage.

(Plasschaert 1979, p.19) When unrelated companies transact with each other, the circumstances of their commercial and financial relations are generally driven by market forces. By contrast, when related companies transact with each other, their commercial and financial relations may not be directly affected by external market forces in the same way. As a result, the prices charged for intrafirm transfers of goods, for instance, between a foreign subsidiary of a multinational and its US based parent, may differ from those charged to independent companies for the transfer of comparable goods. Plasschaert argues that the US based parent theoretically exercises control over its subsidiaries and therefore has the power to fix the level of prices applied to intrafirm trade. If the overall profits of the multinational can be increased or if costs can be reduced, then the US based parent may have an incentive to artificially deviate from the “true” price for goods or services (Plasschaert 1979, p.17).

The decades since Plasschaert’s comments have witnessed an explosion in the global reach of business accompanied by increases in intrafirm, cross border trade flows. On its website the Bureau of Economic Analysis states that intrafirm trade in services has increased from USD 26.9 billion in 1997 to USD 57.6 billion in 2006¹ (Bureau of Economic Analysis). This increase in cross border activity has only served to wet the media’s appetite to find sinister intent in an often misunderstood aspect of international trade.

In a *New York Times* article, transfer pricing is described as “a practice meant to minimize United States taxable profits by overpaying foreign subsidiaries for product supplies.” (*The New York Times* 2006). The *Financial Times* presents a European point of view and describes transfer pricing as “the practice whereby profits of UK-based foreign multinationals are channeled through a Northern Ireland office without actually bringing any additional economic activity to the province” (Brown 2007). As *The Economist* described strategies that multinational corporations can employ to minimize or avoid taxation, they referred to transfer pricing as a “big stick in the corporate treasurer’s tax-avoidance armoury;” an issue that has become the “taxman’s nightmare” (*The Economist* 2007). Covering news from Vatican City, Richard Owen reports that Pope Benedict XVI, spiritual leader of the Roman Catholic Church, is working on a doctrinal pronouncement that will condemn the use of offshore tax havens as an immoral and ‘socially unjust’ practice (Owen 2007).

III RESPONSE OF GLOBAL TAX AUTHORITIES

To increase domestic tax revenues and prevent perceived abuses of the tax system, global taxing authorities implemented stringent documentation requirements that multinational corporations must meet in order to detail the prices that they are charging for intrafirm transfers.² In 2007, the Norwegian Ministry of Finance published draft documentation requirements concerning transfer pricing, with a view towards improving the ability of the Norwegian tax authorities to assess companies’ transfer pricing compliance (KPMG 2007-38). In India, the result of a 2007 tax court ruling highlighted the latitude being provided to local tax examiners in bringing transfer pricing issues to court, and also placed the onus on taxpayers to perform thorough benchmarking analyses (Ceteris 2007).

With an interest in harmonizing the activities of its member countries the Organisation for Economic Co-operation and Development (OECD) released

An introduction to transfer pricing

guidelines on transfer pricing in 1995 (OECD 1995). In accord with the OECD's mission to support economic growth and financial stability, the OECD guidelines were developed to provide a common framework for governing intrafirm transfer pricing. Although often vague and lacking a means of penalty enforcement, they are the closest thing currently available to a unified, multinational, playbook for establishing appropriate transfer prices.

For developing countries and taxing authorities just turning their attention to transfer pricing, the OECD guidelines often form the basis for their own directives. In July 2007, for example, Spain proposed transfer pricing regulations that are based on the OECD Guidelines (KPMG 2007-32). Through its Centre for Tax Policy and Administration, the OECD organizes regular conferences with industry representatives and tax authorities from member countries—one of the most well known outcomes being the guidance published on the attribution of profits to permanent establishments in December 2006.³ Not to be outdone, the European Union (“EU”) seeks to streamline the documentation requirements of its member states through an EU-wide approach to transfer pricing known as the “masterfile.” This would contain common background information relevant for multinational enterprises operating in EU countries, which would then be supplemented by “country-specific documentation” (PriceWaterhouseCoopers 2006).

In a *Financial Week* article on avoiding transfer pricing tax traps, Barbara Mace and Chris Faiferlick describe the growing trend by tax authorities to adopt a macro view towards transfer pricing issues by collaborating and sharing best practices and data sources. This trend seems to be beneficial from the perspective of taxpayers, providing cohesive guidance in a fragmented regulatory environment. However, these efforts at collaboration have not always translated into agreement regarding the tax treatment of intricate transactions or the resolution of conflicts because each tax authority has a vested interest in retaining tax revenues in their respective jurisdiction (*Financial Week* 2007).

a. The U.S. Internal Revenue Service Focuses on Transfer Pricing

According to Bernard et al., the United States was unable to collect an estimated USD 5.5 billion in corporate tax revenues in 2004 because of transfer pricing (Bernard et al. 2008 p.3). As a result of such statistics, the Internal Revenue Service (“IRS”) has indicated its intent to focus on transfer pricing issues during tax audits. In reference to a multibillion dollar transfer pricing settlement with a pharmaceutical company, IRS commissioner Mark Everson stated that “transfer pricing is one of the most significant challenges for [the IRS] in the area of corporate tax administration” and that “settlement of this case sends a strong message of our resolve to continue to deal with this issue going forward.” (IRS 2006 on-line)

b. U.S. Regulatory Framework

The United States codified the most comprehensive regulations on transfer pricing available (§482 of the Internal Revenue Code (“IRC”)). The IRC §482 regulations are based largely on the concept of the arm's length principle. Neighbor (2002) and Eden

and Smith (2001) discuss the arm's length principle in the context of transfer pricing, while Brem and Tucha (2006) point to its potential shortcomings in today's business environment. For our purposes, we can define the arm's length principle as the idea that intrafirm transfer prices must be consistent with third party, market results.⁴ Taxpayers must ask, "what would an independent company operating in a competitive market charge for performing comparable services"?

The IRC §482 regulations enumerate various economic methods that taxpayers can use to test the arm's length nature of intrafirm transfers. A separation is made between methods applicable to the transfer of tangible goods, and methods applicable to the transfer of intangible goods. The Comparable Profits Method relies on the profitability margins that third party companies earn as a benchmark for establishing transfer prices. While the more involved Residual Profit Split makes use of allocation keys to attribute an arm's length amount of revenue to the party in a transaction that performs value added services, and then allocates the remaining amount (the residual) to the party that performs routine services. A provision is also made for a bit of taxpayer creativity by way of "unspecified methods."⁵

To encourage taxpayers to comply with transfer pricing regulations, the United States instituted stiff penalties. Specifically, the IRS finalized penalty regulations under IRC §6662 on February 8, 1996.⁶ Under this regulatory scheme, if the IRS makes an adjustment to a taxpayer's tax liability pursuant to IRC §482, and this adjustment exceeds certain benchmarks, 20% or 40% penalties can be imposed on top of the valuation misstatement (for "substantial" or "gross" misstatements, respectively). Other tax administrations have followed suit, in an apparent contest to create the most damning penalty regime possible.

c. European Regulatory Framework

The OECD⁷ Guidelines for transfer pricing were approved and published in 1995⁸. The guidelines seek to reduce incidents of double taxation between member countries and provide a framework for international cooperation.⁹ The OECD guidelines do not, however, override domestic laws on transfer pricing that OECD member countries may legislate. However, when European OECD member countries have codified their own transfer pricing regulations these have generally been consistent with the principles of the OECD guidelines.¹⁰

Similar to the IRC §482 regulations, the OECD guidelines are based upon the concept of the arm's length principle. The authoritative statement of the arm's length principle is found in paragraph 1 of Article 9 of the OECD Model Tax Convention (OECD 1995, p. I-3):

[When] conditions are made or imposed between...two [associated] enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profit which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly. (OECD 1995)¹¹

To evaluate whether an intercompany transfer pricing arrangement satisfies the arm's length standard under the OECD guidelines, two issues must be addressed. One must first determine whether the activity "provides a respective group member with economic or commercial value to enhance its commercial position."¹² Once this determination has been made, the next issue is to derive the appropriate arm's length intrafirm charge. The OECD guidelines enumerate various economic methods to suit this purpose, and these methods are broadly consistent with those found under the IRC §482 regulations.¹³ Unlike the IRC §482 regulations, however, the OECD guidelines place an emphasis on "traditional transaction methods"¹⁴ and dictate the order in which potential economic methods should be considered.¹⁵ Bell (2008) reports that the OECD is keen to modernize the OECD guidelines in the way the United States has, and that any significant updates are likely to revolve around comparability issues, the application of profits methods, and a review of the domestic guidelines of all OECD member countries to ensure consistency and to benefit from best practices.

IV THE ECONOMICS OF TRANSFER PRICING

What does all of this mean in a practical sense? Multinationals who fail to comply with tax driven transfer pricing regulations can find themselves at risk both financially and in terms of their reputation. However, satisfying compliance requirements from a tax perspective addresses only one component of the intersection between economics and transfer pricing. To analyze this relationship more fully, we herein construct a working definition of the "corporate transfer pricing problem", i.e., the requirement of multinationals to establish transfer pricing policies and practices that: (i) satisfy the needs of the business with respect to strategy and internal incentives; (ii) result in an efficient use of resources; and (iii) provide an appropriate transfer pricing answer from a tax perspective. As we will review, there are a number of economic factors that multinationals must consider when establishing transfer pricing policies.

a. Optimal Corporate Strategy & Internal Incentives

One element of the corporate transfer pricing problem concerns the intersection between economics and transfer pricing with respect to optimal corporate strategy. According to Eccles, strategy and administrative process are the primary determinants of transfer pricing practices (Eccles 1985, p.8). These practices have a direct impact on economic decisions, which influence corporate performance, performance measurement, evaluation, and reward—all of which affect perceptions of fairness by individual managers. There is a difficulty in establishing transfer pricing policies that will lead to decisions that increase corporate performance while measuring, evaluating and rewarding performance in a way that managers of decentralized profit centers view as fair.

From a corporate strategy perspective, there are a variety of options for implementing a transfer pricing system, including market based, negotiated, and cost based approaches. With respect to market based transfer pricing systems, a study of 73 German companies revealed that these produce stronger perceptions of efficiency and motivation (Wolff 2007). However, it is commonly understood among transfer pricing practitioners that the third party data necessary to derive tax defensible market based and/or negotiated transfer pricing systems are not always readily available for certain

transactions, and therefore cost based systems are often used as methods of last resort (Urquidi and Ho 2006; Urquidi and Faiferlick 2005). This dichotomy of potential approaches draws our attention to the fact that “transfer pricing is not an exact science” (OECD 1995: I-19), and that the determination of what constitutes an appropriate solution will differ dramatically from case to case.

b. Corporate Efficiency

A second element of the corporate transfer pricing problem concerns the need to establish transfer pricing policies that lead to efficient decisions among employees. As described by Kuntz and Vera (2005) the underlying economic rationale is that the institution of transfer pricing mechanisms will result in individuals using resources as efficiently as possible when they are made to pay for them. Kuntz and Vera (2005) used data on approximately 57,000 operations carried out at the University Hospital Hamburg-Eppendorf in Germany over the period from 2000 to 2002 to test the results of introducing a transfer pricing mechanism between surgeons and anesthesiologists. The results indicate that when the surgery department within the hospital was forced to directly pay for the resources of the anesthesiologists on an hourly basis, the surgically controlled time of operations was significantly reduced.¹⁶

Although the study by Kuntz and Vera (2005) focuses on implications for the practice of health care management, we can extrapolate and make application to a variety of industries and business scenarios. Many firms operate in a decentralized structure whereby decision making authority is delegated to sub-units. Often, the financial results for these sub-units are calculated on a discrete basis. Without the presence of transfer prices to serve as restraints, individuals within a sub-unit may use more of a particular good than they otherwise would, which could lead to inefficient consumption of resources and a negative financial impact in the sub-unit. In the language of economics, a form of “moral hazard” can thus present itself under such circumstances. Consider, for example, an automobile manufacturer that has installed new computer systems at each of its many dealerships nationwide. To support post-training questions about functionality that may come from employees in the field, the automobile manufacturer establishes an in-house call center at its home office location. Without the financial disincentive of having to pay for calls to the center, employees in each of the decentralized locations may overuse the call service, as opposed to spending time reading the supplied user manual or engaging in an online tutorial.

As summarized by Kuntz and Vera (2005) the institution of transfer pricing policies leads to an increased awareness of the financial consequences of behavior, specifically an increased awareness of costs. The implications of this are that efficiency within organizations can be enhanced through proper application of transfer pricing policies.

c. Economic Double Taxation

Of particular concern to multinational corporations is the development of transfer pricing policies that minimize the risk of economic double taxation. In a transfer pricing context, economic double taxation is best explained by way of an illustration. Consider, for example, a transaction between a Canadian financial advisory firm and its US subsidiary, whereby the US subsidiary performs extensive advertising and marketing functions for the US marketplace in exchange for a fee paid by its

Canadian parent. If the IRS determines upon audit that the fee received by the US subsidiary is insufficient, they may make an adjustment to increase the amount of income recorded in the United States. This income, however, has already been recorded in Canada, which results in a tax payment in two different jurisdictions on the same portion of income. This in turn could lead to an increase in the global effective tax rate for the company (Chung and McAlonan 2007). Taking into consideration this potential risk, global firms may alter their behavior, such that economic double taxation may have a detrimental effect on the movements of capital, technology and persons and on the exchange of goods and services (OECD 2007).¹⁷

d. Business Economics

Often, general economic principles compound the difficulty for multinationals who seek to solve the corporate transfer pricing problem. Consider the UK based pharmaceutical giant GlaxoSmithKline (“GSK”). In September 2006 GSK settled a dispute with the IRS representing the largest settlement in IRS history. As described by Reichert *et al.* (2006) the dispute involved compensation received by the US based affiliate for marketing and advertising expenses incurred, largely in relation to the popular ulcer drug Zantac. GSK characterized these functions as “routine distribution” activities, taking the position that they were of little economic value to the overall product and therefore warranted only a modest financial return to the US affiliate (located in Research Triangle Park in North Carolina). In contrast, the IRS contended that the profits retained by the US affiliate were drastically understated as the development was for highly profitable drugs. In the final analysis, GSK agreed to pay more than \$3 billion in taxes and interest covering tax years from 1989 to 2005 (*The New York Times* 2006).

Another example concerns a case that is in litigation before the Tax Court of Canada as of August 2008. General Electric Capital (“GE US”) maintains a Canadian based subsidiary (“GE Canada”) that operates a real estate financing and leasing business. To fund the operations of its Canadian business, GE Canada issued debt securities which included a financial guarantee by GE US for all issuances after 1988 (Wright 2007). Such intrafirm guarantee arrangements are common in the financial services industry. Generally, the parent company (with a high credit rating) will provide a financial guarantee to its subsidiary (with a lower credit rating) that allows the subsidiary to: (i) secure funds from the local market at a preferable interest rate; and (ii) secure a larger total amount of funds than would otherwise be possible.

Beginning in 1995, GE Canada began paying GE US a fee for these guarantees, equal to 1% of the principal amount of debt securities outstanding per year. Appealing to Canadian tax laws, GE Canada claimed a tax deduction for these guarantee fees paid. The Canada Customs and Revenue Agency (“CRA”), however, contends that the payment of a guarantee fee was not necessary and levied a transfer pricing adjustment in the amount of CAD \$136.4 million that disallows these deductions (Wright 2007). Specifically, the CRA claims that the Standard & Poor’s credit rating that GE Canada had used was designed for rating stand-alone companies (not wholly-owned subsidiaries) and therefore assigned to GE Canada an artificially low credit rating when in reality GE Canada was just as credit worthy as its parent (therefore negating the premise of a guarantee fee). In addition, the CRA contends that the economic method selected by GE Canada to determine the 1% guarantee fee was unsuitable because differences existed between the fact pattern of the intrafirm transaction and

third party benchmarks, and reliable economic adjustments could not be made to account for these differences (Wright 2007).

As illustrated in these cases, there are many economic factors that multinationals must consider when establishing transfer pricing policies. In the GSK case, the crux of the issue rested on understanding value drivers in the corporate process flow, the economics of the pharmaceutical industry, and the relative importance of worldwide profit centers. In the GE Canada case, the primary concerns were the validity of credit rating methodologies, the comparability of third party economic benchmarks, and the underlying premise of whether explicit guarantee arrangements between affiliates should adjust for the fact that subsidiaries may receive an implicit benefit by virtue of group association.

V SOLVING THE CORPORATE TRANSFER PRICING PROBLEM: FINANCIAL SERVICES

The issue of finding a solution to the corporate transfer pricing problem is exacerbated in the case of financial services transactions as a result of both increased industry scrutiny and the unique nature of the intrafirm transactions in question.

a. Increased Scrutiny

With respect to increased scrutiny, Mace *et al.* (2007) noted: (i) an increase in tax audit activity in the industry as a whole over the last several years; and (ii) the adoption by tax administrations of the view that capital can be readily moved around the world with the intent of achieving tax arbitrage objectives. In addition, Mace *et al.* (2007) noted that a lack of concrete transfer pricing guidance further complicates the ability of financial services companies to manage their transfer pricing risks. Without such guidance, taxpayers have been subject to scrutiny from taxing authorities regarding the economic validity of their transfer pricing arrangements. In a 2006 survey conducted by Ernst & Young, tax directors and transfer pricing personnel from 70 of the world's largest financial firms listed the "economic substance" of intrafirm transactions as a key issue when they were asked about the top transfer pricing related challenges raised by tax authorities (Ernst & Young 2006, p.5).

b. Inadequacy of Existing Regulations

Much of the difficulty associated with establishing economically sound transfer pricing policies for intrafirm service transactions stems from the inadequacy of guidance specific to services under the IRC §482 regulations. As a result, taxpayers historically relied on methods intended to price tangible and intangible transfers of goods, notwithstanding that such methods do not take into account the many unique economic characteristics of financial services transactions. In an attempt to address this issue, on August 4, 2006, the US Department of the Treasury issued Final and Temporary regulations¹⁸ relating to the treatment of controlled services transactions under IRC §482. Effective on January 1, 2008, the regulations update the existing rules regarding intrafirm services¹⁹ which were originally made in 1968.²⁰

Among other changes, the new services regulations did away with the Integral Test,²¹ instituted a more stringent Benefit Test,²² revamped the Profit Split Method,²³ and narrowed the definition of what types of services can be constituted "shareholder

activities” (i.e., a specific class of services that can be excluded from consideration for transfer pricing purposes) (US Department of the Treasury 2006, p. 159).

One of the most important developments of the new services regulations was the promulgation of the elective Services Cost Method (“SCM”). The SCM provides for a means by which taxpayers can charge for intrafirm services on a cost only basis, without including a profit element. The SCM is designed to minimize the time spent by taxpayers in preparing documentation for “low margin” or “non value added” services, and therefore streamline their approach to transfer pricing. (US Department of the Treasury 2006, p. 91) In order to apply the SCM, the intrafirm service in question must meet both of the following general conditions:

1. The taxpayer must reasonably conclude in its “Business Judgment” that the services do not contribute significantly to the fundamental risks of success or failure for the business; and
2. The services must not be an “excluded service.”²⁴

In addition, the service must meet one of the following two specific conditions:

1. The service must be specified under IRS Rev. Proc. 2007-13²⁵, which represent services that are largely clerical or administrative; or
2. The taxpayer must conduct a profitability analysis of third party comparable benchmarks, derive the median result from such an analysis, and confirm that the median profit margin is less than or equal to seven percent. (US Department of the Treasury 2006, p. 91)

VI BENEFITING FROM MICROANALYSIS

For services that are specifically listed by the IRS under Rev. Proc. 2007-13²⁶, the SCM may provide a means to address the corporate transfer pricing problem. However, what is not known are the transfer pricing implications of the new IRS guidance for services that are not specifically listed under Rev. Proc. 2007-13. One mechanism for answering this question is to place ourselves in the position of a manager at Global Co., a hypothetical multinational firm struggling with a solution to its corporate transfer pricing problem. By establishing a realistic fact pattern for Global Co. and analyzing the decision process Global Co. management is likely to follow in determining an economically sound transfer pricing policy, we can extrapolate general observations on the sufficiency of the new services regulations.

a. The Case of “Global Co.”

Global Co. operates as a diversified financial services firm that maintains operations worldwide. As part of a recent company wide realignment, Global Co. has consolidated all back office support functions into one center, located in Des Moines, Iowa. The services performed in Des Moines for the benefit of Global Co. affiliates worldwide encompass a broad array of activities, from human resource recruiting and performance measurement to finance related supportive functions. Global Co.’s key offices are located in the tax jurisdictions of Germany, Italy, and Japan - where corporate tax rates are comparable to that of the United States. By reference to the

aforementioned Benefit Test, affiliated offices receive an economic benefit from these services, and therefore an appropriate amount of compensation must be determined.

From a corporate strategy perspective, Global Co. wants to keep revenue in the local offices where revenue is being created and “value added” functions are being performed. This will serve as an incentive to management who bear financial responsibility for local office operations. Global Co. is also concerned about corporate efficiency, and making sure the costs of these support functions accurately reflect their consumption of resources. Furthermore, Global Co. is currently subject to an IRS tax audit, so they are keen to minimize any potential transfer pricing adjustments that would result in economic double taxation. Like many firms, Global Co. wants to satisfy the relevant transfer pricing regulations while keeping revenue in the proper locations given the economics of their business.

With these facts in mind, Global Co. decides to explore the possibility of applying the SCM in order to reimburse the Des Moines office on a cost only basis. The nature of the activities performed in Des Moines is such that they are not “specified” services under Rev. Proc. 2007-13, are not “excluded” under US Treas. Reg. §1.482-9T(b)(3)(ii), and in the opinion of management do not contribute significantly to the fundamental risks of success or failure for the business.

b. The Search Process for Comparables

The first step for Global Co. is to perform a profitability analysis by reference to independent, US based companies who perform services similar to those performed by the Des Moines office. To perform this search, the June 2007 edition of Compustat North America (produced by Standard & Poor’s) is used.²⁷ The search process adopted for the comparable search²⁸ consisted of three main stages of identification and screening:

1. Electronic identification of a sample of entities which would be potentially comparable to the tested party by using the automated search capabilities of the database;
2. Refinement of this initial sample of entities by performing manual research based on the quantitative and qualitative information contained in the databases; and
3. Wherever necessary and reasonably possible, validating the initial sample as refined above by reviewing the most recent 10-K / annual report filings made by the companies with the SEC and / or relevant regulatory authorities; and / or undertaking additional Internet research.

Compustat classifies companies according to Standard Industrial Classification (“SIC”) codes.²⁹ Given the activities performed by the Des Moines office of Global Co., the Compustat database was searched for an SIC code that may contain potentially comparable companies. The search therefore focused on SIC code 7389, representing miscellaneous business services that are not classified in other, more specific codes. Fiscal years from 2004 through 2006 were encompassed in the search. Compustat identified 147 potentially comparable companies from the search. To this set, a financial screen was applied, and 39 companies were removed for not maintaining financial data for all three years from 2004 through 2006. In addition, 14 companies were removed for reporting three years of consecutive operating losses,

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under the assumption that these companies were in a start up phase, or were otherwise subject to exogenous variables (e.g., acquisitions) that distorted their financial results. The remaining 94 companies were reviewed in detail, to ensure economic comparability to the activities performed by the Des Moines office of Global Co. Companies were removed on the basis of one or more of the following criteria:

- Primarily performs non comparable business activities (e.g., provides credit reporting services, licenses technology products, operates as a media marketing company, etc.);
- Operates in a non comparable geographic region;
- Functions as a subsidiary of a parent company (under the assumption that the parent company could exert control over the pricing arrangements of its subsidiaries);
- Maintains ownership of intangible property (e.g., trademarks and/or software programs); and
- Insufficient information was available to determine economic comparability (e.g., inadequate business descriptions available through public sources).

As a result of these screening criteria, a total of 8 companies remained. These companies were deemed sufficiently comparable to the activities performed by the Des Moines office for purposes of determining the suitability of the SCM.

c. Calculating Profitability Indicators

For these 8 companies, a measure of profitability known as the full cost markup³⁰ was calculated for the period from 2004 through 2006. These results were then averaged for each company, as shown below.

Table 1: *Full Cost Markup for Comparable Companies*

	2004	2005	2006	Average
Firm A	-2.2%	4.6%	7.2%	3.2%
Firm B	14.2%	7.5%	4.4%	8.7%
Firm C	3.4%	2.1%	5.5%	3.7%
Firm D	1.5%	-2.2%	2.4%	0.6%
Firm E	2.9%	2.7%	5.2%	3.6%
Firm F	1.5%	2.9%	3.3%	2.6%
Firm G	5.3%	3.9%	5.6%	4.9%
Firm H	9.3%	7.6%	8.3%	8.4%

Source: derived from search using Compustat database, June 2007 edition.

d. Calculating the Arm's Length Range

Once these averages have been calculated, the next step is to construct the arm's length range of results, which under the guidance of the IRC §482 regulations is derived from the interquartile range.³¹ Summary statistics, including the lower, median, and upper boundaries of the arm's length range for the selected set of comparable are presented below.

Table 2: *Interquartile Range for Comparable Companies*

Average	4.4%
Minimum	0.6%
Lower	2.9%
Median	3.6%
Upper	6.7%
Maximum	8.7%

As can be seen, the results of the profitability analysis reveal that the arm's length range extends from 2.9% to 6.7%, with a median of 3.6%. This implies that independent companies who perform services similar to those performed by the Des Moines operation earn margins equal to costs incurred plus a profit element that falls within this range.

e. Implications

Under the guidance of the new services regulations, Global Co. is eligible to apply the SCM and to reimburse the Des Moines operations on a cost only basis as the median result of the comparables is less than seven percent. This, however, does not result in a clear, economically viable solution for Global Co.'s transfer pricing needs. That is, in order to support the potential application of a cost only approach, Global Co. had to prepare a benchmarking study that effectively amounts to having applied a Comparable Profits Method or similar profit based transfer pricing analysis. Rather than minimize the amount of effort expended by Global Co. to defend its transfer pricing structure for a non-core function, the new services regulations have added a burdensome layer of analysis.

From a strategic point of view, Global Co. has also now tipped its hat to US tax authorities, insofar as their documentation reveals that companies engaged in comparable functions receive a mark-up, albeit a relatively low one in the range of 2.9% to 6.7% above costs. This would only make sense, as one would not expect independent companies operating in the US marketplace to continue operations at such a rate as to only recoup operating costs. So Global Co. is still saddled with its original dilemma: do they reimburse on a cost only basis, or institute a transfer pricing policy that includes a modest profit margin? Electing to apply the SCM is no guarantee that on audit the IRS will agree with their position, and thus the risk of economic double taxation still applies in the first instance. In the second, Global Co. would face the same challenge as if they had applied the CPM or a similar profit based method: they are effectively resting their hat on the economic substance of the intrafirm transaction in question and on the validity of their third party benchmarking analysis. In addition, regardless of what the results of their benchmarking analyses indicate, Global Co. is going to fight an uphill battle in convincing its local managers in Des Moines to operate under a policy where only costs are reimbursed. This will not provide any incentive to local managers to perform their best, and may force Global Co. into a position where it will have to maintain one transfer pricing policy for management reporting purposes and a separate policy for statutory accounting purposes. Determining the appropriate transfer pricing policy is also important with respect to corporate efficiency. Pricing intercompany services incorrectly could lead to Global Co. employees overusing the support services performed out of the Des Moines office.

For all of these reasons, solving the corporate transfer pricing problem is a priority for Global Co., and applying the guidance of the SCM has not moved Global Co. any closer to a solution.

VII MACRO PERSPECTIVE: TRANSFER PRICING AND THE ECONOMY

As demonstrated via the case study of Global Co., transfer pricing can play an important role in the strategic decisions made by multinational firms. Looking beyond the firm level, there is an abundance of literature that examines the interrelationship between transfer pricing and the larger economy. Kant (1990; 1995) examines the impact of transfer pricing on intrafirm trade and government revenues. Clausing (1998) and Collins *et al.* (1998) find that foreign direct investment may be negatively impacted by high tax rates, leading to aggressive transfer pricing policies. Eden and Smith (2001) note that firms can use transfer pricing to the demise of nation specific goals such as productivity, growth, and employment. To understand the broader implications of transfer pricing, we will review two studies that demonstrate the potential links between transfer pricing and stock market valuations, aggregate export price indices, and evaluations of corporate performance.

Eden *et al.* (2005) addressed the question of how transfer pricing penalties impact the profits of multinational firms, restricting their analysis to Japanese companies with US subsidiaries. Their hypothesis was that if these multinational firms were manipulating transfer prices to shift profits out of the United States, then the introduction of US transfer pricing penalties would reduce their incentive for this behavior, resulting in decreased cash flows in the United States and lower stock market prices for their American Depository Receipts. Performing an event study of the period from February 20, 1990 through July 17, 1997,³² they found that in the absence of the penalty legislation the market value for these American Depository Receipts would have been USD 56.12 billion, or 12.56% higher than it was at the end of the period.

Bernard *et al.* (2008) examined whether transfer prices set by multinational firms differ between independent third parties and related party entities, and the extent to which these differences are elastic to product and firm characteristics, market structure, and government policy. Working with point of export customs documents which provide pricing information for US international export transactions occurring between 1993 and 2000, their analysis reveals that on average, third party prices were 43% higher than related party prices for similar goods transacted under similar circumstances. This gap is wider for differentiated products than for commodities, is more pronounced for firms with greater market power, and increases in instances where corporate tax rates are low and tariffs are high. Bernard *et al.* (2008) therefore argues that tax minimization may indeed play a role in transfer pricing decisions made by firms, as firms appear to make substantial price adjustments to changes in country tax and tariff rates.³³ In addition, they note that the gap narrows as the US dollar appreciates relative to the currency of the foreign country, with the implications that: (i) intrafirm trade plays a role in the determination of aggregate export price indices; and (ii) firms may be able to insulate themselves from exchange rate movements using transfer pricing. Finally, Bernard *et al.* (2008) question whether evaluations on the performance of multinationals should incorporate the effects of transfer pricing,

insofar as the ability to purchase goods from affiliates at lower prices may influence a firm's size, and levels of innovation, productivity, and wages.

VIII CONCLUSION

As intrafirm cross border trade expands, the practice of transfer pricing is framed by the popular press as a practice that can be used to minimize corporate tax liabilities. Consider this fear in the context of the current business environment where governments are searching for additional sources of revenue and multinational corporations are subject to increased public scrutiny, and one can understand why transfer pricing has become a hot topic in the world of international business. Beyond tax implications, however, transfer pricing is an area with strong roots in the discipline of economics that presents a challenge for proper implementation at the firm level. Specifically, firms seek to solve the corporate transfer pricing problem of achieving a transfer pricing system that: (i) satisfies the needs of the business with respect to strategy and internal incentives; (ii) results in an efficient use of resources; and (iii) provides the “right” transfer pricing answer from a tax perspective. This is a daunting task, particularly for financial services firms, and one that has not been remedied by recent transfer pricing regulations. Beyond its impact on the firm, however, transfer pricing can also have significant impacts on cross border, international trade and on the macro economy. As the prevalence and complexity of intrafirm, cross border trade increases, economic analysis will continue to play a key role in assisting firms to navigate the transfer pricing process.

END NOTES

* Represents US international cross border trade and sales through majority owned affiliates.

² The reader is referred to Peralta *et al.* (2006) for an exploration of the theory that countries may achieve optimal benefit by *not* monitoring the profit shifting activities of multinational firms by way of strict regulations.

³ This guidance was issued in four parts. The most recent (focusing on insurance transactions) was released in draft form for industry commentary on August 22, 2007.

⁴ The arm's length principle derives from the “separate entity” approach of determining taxable income, whereby each affiliate of a multinational organization is treated as an independent entity for purposes of determining taxable income. Hyde and Choe (2005) make the important observation that although this approach has been embraced by the OECD as the standard for international transfer pricing, the “formula apportionment” approach, whereby a formula based on factors such as consolidated sales and assets is used to allocate consolidated taxable income among a multinational organization's affiliates, remains an alternative. Interested readers are also directed towards an article by Paul Armstrong (*Tax Business* November/December 2005) that discusses alternatives to the arm's length principle.

⁵ The interested reader is referred to Herr and Jain (2007) for a case study surrounding the use of Monte Carlo simulation techniques in estimating arm's length prices.

⁶ Congress first consolidated the tax penalties into IRC §6662 in December 1989, and in the ensuing years a number of revisions were made. The process was brought to a finish when the IRS established a penalty oversight committee to ensure uniform application of §6662 on March 11, 1996.

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⁷ OECD member countries include: Australia, Austria, Belgium, Canada, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Korea, Luxembourg, Mexico, Netherlands, New Zealand, Norway, Poland, Portugal, Slovak Republic, Spain, Sweden, Switzerland, Turkey, the United Kingdom, and the United States.

⁸ The report *Transfer Pricing and Multinational Enterprises*, published by the OECD Committee on Fiscal Affairs in 1979, was the foundation for the OECD Guidelines. To reflect changes in international trade and benefit from the United States experience on the subject, the OECD published the revised OECD Guidelines in 1995, with subsequent chapters added in 1996 (intangible property and intercompany services) and 1997 (cost contribution arrangements). Various annexes, reports, and glossaries related to transfer pricing have subsequently been issued by the OECD, and transfer pricing economists generally intend the phrase “OECD guidelines” to capture these documents as well

⁹ It should be noted that although OECD membership is comprised of countries from around the world, the discussion herein is limited to the application of the OECD guidelines to European nation states.

^{*0} In the United Kingdom, for example, the 1998 Finance Act (“FA 98”) introduced a comprehensive modernization of the United Kingdom’s transfer pricing legislation. FA 98 altered language in the prior Income and Corporation Taxes Act in order to more closely align the UK’s approach to transfer pricing to Article 9 of the OECD Model Tax Convention and Chapter IV of the OECD guidelines.

^{*1} OECD 1995 guidelines paragraph 1.6.

^{*2} OECD 1995 guidelines paragraph 7.6.

^{*3} The Transactional Net Margin Method under the OECD 1995 guidelines, for example, is analogous to the Comparable Profits Method under the IRC §482 regulations.

^{*4} OECD 1995 guidelines paragraph 2.1.

^{*5} Generally, the OECD 1995 guidelines indicate that methods should be considered in the following order: Comparable Uncontrolled Price, Resale Price, Cost Plus, Profit Split, and Transactional Net Margin.

^{*6} Surgically controlled time was specified by Kuntz and Vera (2005) as: (i) the pure surgical time (from incision to closing of the wound); (ii) time spent positioning and preparing the patient; and (iii) time spent by surgeons in washing and dressing in preparation for the operation.

^{*7} It should be noted that in an attempt to secure a corresponding decrease in income recorded in the foreign tax jurisdiction, and therefore eliminate double taxation, the firm may appeal to the Competent Authority process. Competent Authority is a process established under the mutual agreement procedure articles of US tax treaties that enables taxpayers to obtain double taxation relief when one treaty country makes a transfer pricing adjustment (Chung and McAlonan 2007). Chung and McAlonan (2007) note, however, that most corporate tax departments do not have direct experience with this procedure, and that it takes on average two to three years to reach a competent authority settlement.

^{*8} US Treas. Reg. § 1.482-9T.

^{*9} US Treas. Reg. § 1.482-2(b).

²⁰ The IRS had released services regulations in September 2003 in proposed form, but these fell short by many accounts and it took three years to iron out all of the wrinkles.

²¹ A four-part test previously used to determine whether an intrafirm service warranted a cost only reimbursement.

²² A threshold test previously used to determine whether a profit element should be factored into intrafirm prices. Under the new service regulations, the Benefit Test examines whether an intrafirm transaction should be compensated in some fashion. The determination of whether this compensation should include a profit element is left to the taxpayer (US Department of the Treasury 2006, p. 158).

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²³ The Profit Split Method relies on the assumption that certain activities are central to the creation of value within a particular enterprise, whereas other functions are ancillary or routine in nature. Under the residual profit split method, profits are first allocated to the “value added” functions of an enterprise based on metrics such as usage rates, revenue, and head count, and then the remaining (residual) profit is allocated to the routine functions. The comparable profit split relies on independent, third party profit split data to benchmark the appropriate split of profits for the intrafirm transaction(s) under question. (OECD 1995, p. III-2)]

²⁴ Excluded services are listed under US Treas. Reg. §1.482-9T(b)(3)(ii) and include services such as manufacturing, production, and construction.

²⁵ The IRS herein lists 101 specific activities, organized into 20 categories.

²⁶ A revenue procedure is an official statement of a procedures that affects the rights or duties of taxpayers or other members of the public under the Internal Revenue Code, related statutes, tax treaties, and regulations that should be a matter of public knowledge. Procedures do not have the fore and the effect of Treasury Department Regulation, but may be used as precedents. The IRS issues revenue procedures sequentially, such that Rev. Proc. 2007-13 represents the 13th procedure issued during 2007.

²⁷ Compustat is a database of North American public business establishments. The database provides business descriptions and detailed financial information including income statement, balance sheet, cash flow and supplemental data for over 23,000 public business establishments in the United States and Canada. The data is primarily sourced from publicly available documents filed with the US Securities and Exchange Commission. The Compustat database is commonly used for the purposes of constructing transfer pricing benchmark sets, and is used by the IRS in performing transfer pricing audits.

²⁸ Although the fact pattern is hypothetical, the data used for the comparables search is factual. For confidentiality purposes the names of the individual companies used in the analysis are not revealed.

²⁹ The SIC system is a four digit scheme of business classification developed by the US government to classify companies according to the type of economic activity in which they are engaged.

³⁰ The full cost markup is defined as the ratio of operating income / (sales – operating income).

³¹ Note that the interquartile range as calculated under the IRC §482 regulations differs from that commonly found in statistics textbooks due to differences in rounding.

³² This time horizon was selected by Eden *et al.* (2005) to correspond to the period between February 20, 1990, when the IRS made public its intention to audit foreign multinationals for transfer pricing related tax underpayments, and September 17, 1997, when the first transfer pricing penalty was announced.

³³ See also Bartelsman and Beetsma (2003) who examine tax avoidance in OECD member countries.

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CAPITAL, LABOR AND THE ENVIRONMENT[†]

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Environmental degradation is the outcome of many diverse and interacting processes in capitalism. The production of commodities with the motive of profit plays a substantial role in this degradation, as it has been well-documented by the eco-socialist literature. However, at the same time, pollution and natural resource exhaustion have serious negative effects on capital and labor in capitalist societies. In particular, to the extent that ecological degradation is generalized and affects the regulating conditions of production, the cost, value and price of commodities tend to increase and thus give rise to reactions to it by affected producers. On the other hand, to the extent that deteriorating ecological conditions are not generalized, but only affect certain capitals in different locations or sectors, changes in profits and rents can trigger economic and political reactions to contain or eliminate these negative effects.

In other words, competition among capitals over access to nature comes into shaping environmental regulation and adjustments. Moreover, and in so far as natural conditions affect the (biological, psychological, aesthetic and other social) conditions of living of the working people, they can increase people's cost of living or deteriorate their standards of living, both possibly instigating environmental, economic and social struggles. The state may be called upon to regulate access to nature. The establishment and the concrete shaping of environmental regulation then becomes an arena where various classes or class segments and social movements struggle to secure their access to nature (Vlachou 2000, 2001, 2002, 2003–4).

It was Marx's analysis of work-time legislation that inspired and guided me when deriving environmental regulation as an outcome of struggles over the appropriation of nature in capitalism. Marx recognizes that work-time legislation emerged as the outcome of working class struggles and of a conjunctural coincidence of interests among competing classes or class segments. The lengthening of the working day by individual capitalists appeared to be against the interests of the working class and also against the interests of the capitalist class as a whole since the resulting physical exhaustion of workforce increased the cost of labor power reproduction (Marx 1991, Vol. I, 376–377). Significantly, state intervention emerged as a solution when not only the working class but also capitalists favored it with the advent of machinery. In particular, the manufacturing capitalists promised it to the workers in order to mobilize the workers to help them to win a victory over the landlords in England. In Marx's words:

[†] This short article elaborates further a critical argument that first appeared in Vlachou (2003–4).

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[H]owever much the individual manufacturing might like to give free rein to his old lust for gain, the spokesmen and political leaders of the manufacturing class ordered a change in attitude and in language towards the workers. They had started their campaign to repeat the Corn Laws, and they needed the workers to help them to victory! They promised, therefore, not only that the loaf of bread would be twice its size, but also that the Ten Hours' Bill would be enacted in the free trade millenium. Thus they were even less inclined, and less able, to oppose a measure intended only to make the law of 1833 a reality. And finally, the Tories, threatened in their most sacred interest, the rent of land, thundered with philanthropic indignation against the 'nefarious practices' of their foes (Marx 1991, Vol. I, 393).

Moreover, the establishment of work-time legislation implicates competition between producing capitalists along with the pressures exerted by the working class. In particular, small capitalists supported a limitation of the working day to increase the amount of capital invested in machinery necessary for large-scale production, or to render large-scale fixed capital, already invested, idle and hence uncompetitive.¹ On the other hand, large-scale capital appeared also to support the limitation of the working day in order to weaken small capitals, which continued to rely upon the extensive exploitation of their workers through long hours and low wages, and take them over (see also Fine 1979, 114–5). Marx indeed observed that:

The chief objection, raised repeatedly and passionately on behalf of each manufacture threatened with the Factory Act, is in fact this, that in order to continue the business on the old scale a greater outlay of capital will be necessary. But, as regards in the so-called domestic industries and the intermediate forms between them and manufacture, as soon as limits are set to the working day and to the employment of children, those industries go to the wall. Unlimited exploitation of cheap labour-power is the sole foundation of their ability to compete (Marx 1991, Vol. I, 605).

In such circumstances, workers can take advantage of the divisions among the bourgeoisie itself. In particular, according to Marx and Engels, the organization of the proletarians into a class, and consequently into a political party, "compels legislative recognition of particular interests of the workers, by taking advantage of the divisions among the bourgeoisie itself. Thus the ten-hours' bill in England was carried" (Marx and Engels 1969, 117). The work-time legislation in Britain actually developed due to the conjuncture of the forces of competition between capitalists and the fundamental struggle between the working class and the capitalist class over the limitation of working hours (Fine 1979, 114–5).

Furthermore, from Marx's time until today, *the establishment, content, and the enforcement* of labor power market regulations is the outcome of incessant class struggles fought between the capitalists and the working class, and among capitalists. In the case of the legislation for the limitation of working hours in England, the "revolt of capital" against the regulation once established led to a differentiated application of the law by 1850. According to Marx,

Some of the manufacturers themselves grumbled: ‘One Law holds in Yorkshire, another in Lancashire.... The manufacturer in large towns could evade the law, the manufacturer in country districts could not find people necessary for the relay system, still less for the shifting of hands from one factory to another, etc.’ And the most fundamental right under the law of capital is the equal exploitation of labour-power by all capitalists (Marx 1991, Vol. I, 405).

The Act of 1850 (finally completed in 1853) followed and regulated the working day of all workers in the branches of industry subject to it.

This reading of classic Marxian texts has inspired my work on environmental regulation, and obviously differs significantly from that of Burkett’s who claims in abstract terms that “explicit social regulation of work-time contradicts the basic principles of capitalist competition” (Burkett 1999, 142). In Marx’s analysis, competition among capitals, the “reciprocal interaction of many capital with one another” occurring in production, circulation, distribution, and taking different forms, is important in shaping the work-time legislation and capitalist growth.

Following this line of reasoning, I have argued in detail (Vlachou 2000), that intra-capitalist struggles are nowadays waged by capitals suffering from pollution and by capitals that are to profit from pollution abatement, resource conservation and substitution, and from recycling, and play an important role in the shaping a environmental regulation and change. Polluting and resource-depleting capitalists tend to resist the establishment and enforcement of regulation (often quite fiercely), especially policies affecting them at an individual or local basis, fearing competitive disadvantage. The many forms of business opposition and their implications are well narrated by O’Connor (1998), Kovel (1999) and Beder (2002). Nevertheless, as I have argued in detail elsewhere (Vlachou 2000), there is an emerging tendency among several polluting and resource-depleting capitalist firms (most of them are large and transnational) to view environmental regulation as an opportunity for restructuring and growth. It is important, that the struggles waged by environmental, social, and labor movements to defend the natural conditions of people’s lives, take account and advantage of these intra-capitalist struggles.

Such a conceptualization of capitalist competition is, however, missing from many Marxists’ analyses. For Burkett, for example, “The goal of capitalist competition is simply and solely monetary accumulation” (Burkett 1999, 218). Capitalist competition compels maximum accumulation by *capital as a whole*. Capital (in singular) tends generally to “homogenize, relocate, and outstretch natural conditions” (Burkett 2003–4, 458).

For Joel Kovel, it is the accumulation of capital and, in particular, the scale of capital that drives ecological crises. According to Kovel “It is the scale of capital that makes this deadly. Thus the larger problem is accumulation itself and the kind of crises it engenders and through which attacks the ecosystems. Crises are inherent within the accumulation process, and grow in ecological impact with the scale of the system and its chaotic character” (Kovel 2003, 135). This reasoning leads Kovel to argue that capital’s “stewardship of the earth will *necessarily* bring about ecological catastrophe—and with it, the breakdown of the capitalist system and the civilization

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organized about its reproduction” (Kovel 1999, 3). A similar line of thinking, although more nuanced, is embedded in Liodakis’ argument that “a more generalized systematic increase of values and prices of all commodities (price level), due to a more generalized environmental degradation” *necessarily* relates to crises and “to the *real catastrophic impact* on the environment” in a capitalist social formation (Liodakis 2003–4, 466).

Significantly, however, Marx’s analysis of the labor-time legislation shows that in the case of labor power (also a natural entity), the intensified despoliation of labor power did not necessarily mean the devastating exhaustion of workforce. This would indeed be a catastrophic scenario for capitalism, given that it is based on the pumping out of surplus labor from workers. However, Marx did not theorize crises (a *recurrent* phenomenon in capitalism), or the collapse of capitalism, as a result of the physical exhaustion of labor power, despite the dreadful working conditions of workers in his time. This line of thinking is embedded in my unwillingness to underwrite arguments which claim that an intensified environmental degradation *necessarily* brings forward ecological crises and catastrophes. Marx’s analyses of labor-time legislation and crises warn us against these mechanical dialectics. The economic and social impacts of nature’s degradation (in part captured by changes in values, prices, profits and rents) result in conflicts between capitalists and the working class, and between capitalists themselves that give rise to environmental regulation and adjustments—the “greening” of capitalism (Vlachou 2000).

Workers-citizen engaged in struggles over labor market regulation and over access to nature, are groping and searching for policies conducive to their own individual and collective human development. And in a class-divided capitalist society, there is no common interest among all society’s members (between capitalists and workers), despite the great cultural effort of dominant classes to convince the exploited and unprivileged otherwise, in order to legitimize their policies and have them accepted. This is a decisive line of demarcation that differentiates radical eco-socialist politics from social-democratic ones. Referring to the interests of “society as a whole” to assess regulation makes sense then for Marx, because of his vision of a classless society, when abstracting from class divisions (Vlachou 2000, 2002, 2003–4).

Did Marx consider labor-time legislation “just a reformist corrective transformation contained within capitalism”? I believe he did not. Struggles waged by labor, environmental, and social movements may (hopefully) pave the way to an ecologically defensible classless society. Although work-time or labor-power markets regulation is always a contestable arena and may be far from materializing a socialist transformation—as it has been (and will be) the case with environmental regulation—Marx did not suggest to workers to abandon such struggles to defend or improve their living conditions in capitalism. There is no other road for labor besides continuous struggles over its conditions of work and life as a way of empowering and organizing itself with the goal to radically transform capitalism into an ecologically defensible socialist society.

I am afraid that arguments that insist on the incorrigibility of capitalism and downplay its contradictions are not merely pessimistic. They can potentially open space to challenges posed and ruptures achieved by the labor and environmental movements and could be interpreted as impossibility arguments regarding the emergence of a

social agency and effective in bringing forward radical social change. And Kovel activates such concerns when he argues that “when challenged from below, or through competition, they [the “personifications” of capital] respond so as to induce further crisis, and do so in proportion to the magnitude of the capital they express.” (Kovel 2003, 135). Is there any way then that the bourgeoisie will “produce, above all, its own grave-diggers,” as Marx and Engels used to believe (Marx and Engels 1969, 119)? The fall of contemporary capitalism is still grounded today, I believe, in the uprising of the working class and social movements that it produces.

I would like to emphasize that most of us are aware (and worried about) that the present labor and other social movements stand fragmented and more or less disorganized and thus politically ineffectual. Boucher et al. have argued that hope, not fear (of an ecological catastrophe, for example) is the best inspiration for a society in which both social and ecologically justice will finally come to pass (Boucher et al. 2003, 131).

END NOTES

¹Marx observed that “The increase use of machinery... makes a constantly increased prolongation of the working day ‘desirable’” since the lengthening of the working day “permits an expansion of the scale of production without any change in the amount of capital invested in machinery and building” (Marx 1991, Vol. I, 529–530).

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