

CHAPTER ONE

The Transformation of
the Big Law Firm

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The big law firm has been with us for almost a century. It is, in a Darwinian sense, a success story. Big firms are flourishing. There are more of them, they are bigger, they command a bigger share of an expanding legal market. The big law firm is also a success in a deeper sense, as a social form for organizing the delivery of comprehensive, continuous, high-quality legal services. Like the hospital in the practice of medicine, the big firm established the standard format for delivering complex services in the practice of law. Many features of its style—specialization, teamwork, continuous monitoring on behalf of clients, representation in many forums—have been emulated in other vehicles for delivering legal services. The specialized boutique firm, the public-interest law firm, the corporate law department—all model themselves on the style of practice developed in the large firm. Even legal professions in other countries are emulating the American big firm.

Until recently, the big law firm was not only accounted a success in terms of institutional survival and technical performance, it was acknowledged as

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the paradigm of legal professionalism. Scarcely a generation ago, Jerome Carlin studied the New York bar and found that large-firm lawyers not only had the largest incomes, served the most affluent clients, and were the best trained and most technically skilled, but experienced "maximum pressure to conform to distinctively professional standards, as well as the more ordinary ethical norms; at the same time they are insulated from pressures to violate [those professional standards]" (Carlin 1966, pp. 168-69). In technical skill, collegiality, and probity, the large firm seemed to provide a venue for the most exemplary professionalism. Ironically, Geoffrey Hazard noted in his foreword to Carlin's book (Carlin 1966, p. xxiii), the traditional badges of the profession—an independent general practice rendering personal service to all sorts of people—were no longer the marks by which the truly "professional" lawyer was identified. Instead it was large firm lawyers who embodied the professional ideal.

Since then, these big firms have continued to flourish. They have become larger, more numerous, more prosperous. There has been no decline in specialization or technical skill. Still, the sense that such firms are the chosen vehicle of the professional ideal has waned. The relationship of the large firm to professionalism now seems quite problematic.

Today, there is a palpable anxiety within the legal profession concerning the commercialization and concomitant decline of professionalism in the setting of the big law firm. Should its robust institutional success lead us to dismiss these misgivings as the tremors of the fainthearted as they experience the further development and consolidation of the big firm as an institution? Such a sanguine response is suggested by the observation that laments about commercialization and the loss of professional virtue have recurred regularly for a century (Gordon 1988, pp. 2-6, 48-59). But we submit that something this time around is different. The present "crisis" is the real thing—not in the sense of marking a decisive break from professional ideals, but in the sense that this discomfort reflects real structural changes over the past twenty years or so that are transforming big firms and their world in fundamental ways.

Our paper describes what has happened to the big law firm. We make little attempt here to explain these changes. Elsewhere we argue that as firms have grown they have simply outpaced earlier methods of monitoring and coordinating personnel, recruiting associates, and generating revenues (Galanter and Palay 1990c, 1991). To survive, they have been forced to adapt by slowing growth, generating new sources of income, remolding existing governance structures, or accepting decreased or at least different profit distributions.

We have also argued that to understand why firms have had to restructure one needs to explain why they grew so fast and why staffing and revenue

constraints have begun to restrict their growth. Here too our answer is complex and encompasses changes in what corporate clients demand from law firms, changes in the supply of young lawyers, and the underlying structure of the large law firm. To us, the rapid growth of the large law firm has two components, each responsible for about one-half of the large firm's rapid growth. The first, exogenous to the structure of the firm, accounts for the rapid growth of firms after 1970. The second, endogenous to the firm's governance structure, explains the underlying exponential shape of the growth curves. This latter issue intrigues us particularly, and we have devoted considerable attention to it (Galanter and Palay 1990c, 1991).

We suggest that the big law firm, as presently structured, has a built-in "growth engine" and that roughly half of its recent growth is a by-product of the "promotion to partner tournament" used by law firms to protect the partners' human capital and to motivate the associates. This tournament is essential to the firm's structure and in order to maintain it the firm must grow exponentially. If a firm's required growth outpaces either its revenue base or the relevant supply of labor, further growth becomes impossible without internal change. A firm that does not or cannot grow will be forced to transform itself or will fail.

The transformation we describe below reflects precisely these changes and sets the context for much of the discussion to come in later chapters of this book. We shall examine the origins of the big firm, sketch a portrait of the big firm during its "Golden Age," *circa* 1960, and, finally, describe the transformation experienced by the big law firm since then.

THE EMERGENCE OF THE BIG FIRM

The big firm and its distinctive style of practice emerged around the turn of the century.¹ The break from earlier law practice can be discussed under the six headings; (1) partners, (2) other lawyers, (3) relations to clients, (4) work, (5) support systems, and (6) new kinds of knowledge. Any of these indicia of the big firm can be found apart from the whole cluster, but it is the clustering hangs of all six that gave the big firm its distinctive institutional character—a character that is changing as these features are rearranged.

Partners: In the big law firm the loose affiliation of lawyers, sharing offices and occasionally sharing work for clients, is replaced by the office in

1. We use the term "firm" throughout when discussing these developments; however, for much of the period discussed here the common term for a company of lawyers was "law office" rather than "law firm."

which clients "belong to" the firm rather than to an individual lawyer. The entire practice of these lawyers is shared by the firm. The proceeds, after salaries and expenses, are divided among the partners pursuant to some agreed upon formula.

Other lawyers: Unpaid clerks and permanent assistants are replaced by salaried "associates" (as we have come to call them) who are expected to devote their full efforts to the firm's clients. A select group of academically qualified associates, chosen on grounds of potential qualification for partnership, are given a prospect of eventual promotion to partnership after an extended probationary period during which they work under the supervision of their seniors, receive training, and exercise increasing responsibility.

Clients: Firms represent large corporate enterprises, organizations, or entrepreneurs with a need for continuous (or recurrent) and specialized legal services that could be supplied only by a team of lawyers. The client "belongs to" the firm, not to a particular lawyer. Relations with clients tend to be enduring. Such repeat clients are able to reap benefits from the continuity and from the economies of scale enjoyed by the firm.

Work: The work involves specialization in the problems of particular kinds of clients. It involves not only representation in court, but services in other settings and forums. The emergence of the firm represents the ascendancy of the office lawyer and the displacement of the advocate as the paradigmatic professional figure. The preference for office work is displayed in the advice of a partner to a young lawyer aspiring to join the predecessor to the Cravath firm: "New York is not a very good field for one who desires to make a specialty of court practice or litigated work. The business connected with corporations and general office practice is much more profitable and satisfactory and you will find that the better class of men at our Bar prefer work in that line" (Swaine 1946, pp. 554-55).

Litigation no longer commanded the energies of the most eminent lawyers. By 1900, Robert Swaine concludes, "the great corporate lawyers of the day drew their reputations more from their abilities in the conference room and facility in drafting documents than from their persuasiveness before the courts" (Swaine 1946, p. 371).² In 1908 Roscoe Pound remarked this shift and appraised its consequences for reform: "The leaders of the American bars are not primarily practitioners in the courts. They are chiefly client care-

2. George Gawalt dates the transition even earlier: "By the mid-1880s, the locus of the most elite practice had decisively shifted away from the courtroom to the law office and conference room. The main work of this practice was to serve as legal brokers and intermediaries between large American corporations trying to attract new capital . . . and the investment banking communities of Wall Street and Europe" (1984, p. 59).

takers. . . . Their best work is done in the office, not in the forum. They devote themselves to study of the interests of particular clients, urging and defending those interests in all their varying forms, before legislatures, councils, administrative boards and commissions quite as much as in the courts. Their interest centers wholly in an individual client or set of clients, not in the general administration of justice" (Pound 1909, p. 235).³

Support Systems: The emergence of the big firm is associated with the introduction of new office technologies. The displacement of copying, clerks, and messengers by the typewriter, stenography, and the telephone greatly increased the productivity of lawyers.

New Kinds of Knowledge: The proliferation of printed materials—reporters, digests, treatises—rendered obsolete the earlier style of legal research and required mastery of new areas of specialized knowledge. The acquisition of legal skills changed too. Between 1870 and 1910 the portion of those admitted to the bar who were law school graduates rose from one-quarter to two-thirds (Auerbach 1976, p. 25).

The blending of these features into the big law firm as we know it is commonly credited to Paul D. Cravath, who in the first decade of this century established the "Cravath system" of hiring outstanding graduates straight out of law school on an understanding that they might progress to partnership after an extended probationary period, requiring them to work for the firm only, eschewing practices of their own, paying them salaries, providing training and a "graduated increase in responsibility" (Swaine 1946, pp. 2-12; Hobson 1986, pp. 114, 195-203). Though most fully articulated by Cravath—who was blessed with a partner who half a century later wrote the classic law firm history (Swaine 1946) describing the "Cravath system"⁴—the elements of the big firm were also assembled by other innovators, including Louis D. Brandeis (Hobson 1986, p. 186).

The core of the big firm, we submit, is the "promotion to partnership." This is our shorthand for the organization of the firm around the expectation that the junior lawyer can cross the line by promotion and become a partner. Partners and juniors are not equals, but form a hierarchy with command and supervision exercised by partners. But the junior lawyers are neither transient apprentices nor permanent employees. They are peers, fellow profes-

3. Pound remarks the consequences of this for procedural reform: "As the interest of these clients are in the vast majority of cases defensive and procedure is one of the chief weapons of defense, the best, most vigorous and most constructive talent of the profession either neglects practice in the courts entirely or is enlisted in obstructing and defeating litigation" (1909, p. 235).

4. This term is used by his partner, Robert T. Swaine, whose history of the firm (1946) is the classic of the genre.

sionals of presently immature powers, who have the potential to achieve full and equal stature.

Firms can offer this promise only when they are confident that they will attract sufficient work to keep these young lawyers busy. That is, the senior lawyers must have either clients who produce more work than the senior lawyers can handle themselves or a reputation that will attract such clients.⁵ Typically, association with a corporation or "super-capitalist" provided the necessary stream of work and "the publicity from serving such clients and the expansive contacts of these clients result[ed] in a growing network of contacts for the emergent firm" (Pinansky 1986-87, pp. 593, 605).

The big law firm—and with it, the organization of law practice around the promotion to partnership pattern—became the industry standard (Hobson 1986, p. 201). Gradually, the older patterns of fluid partnerships,⁶ casual apprenticeship, and nepotism were displaced. Law firms grew. In every city, the number of big firms (as big was then defined) increased at an accelerating rate, and over time there were ever-bigger firms. First in New York, then in other large cities, then in smaller cities throughout the country there were more, bigger law firms. This can be seen in Wayne Hobson's compilation of the number of firms with four or more lawyers, which grew from 17 in 1872, to 39 in 1882, to 87 in 1892, to 210 in 1903, to 445 in 1914, to "well over 1000" in 1924 (Hobson 1986, p. 161). As firms grew, the lawyers in them became more specialized and firms began to departmentalize.

Though ascendant in the profession, these successful lawyers were subservient to and dependent on their business clients.⁷ From its origins the big firm was haunted by a sense that the profession had compromised its identity and had itself become a branch of business.

By the 1930s, the scale and stability of these firms was recognized in the pejorative term "law factory." The phrase captures not only the instrumentalism, but the systematization, division of labor, and coordination of effort

5. For example, "When the law firm of Shearman & Sterling was established in 1873, Jay Gould promised Shearman that he would take his legal business to the new firm. . . . Gould was more than a rich client that assured the new firm a few large fees. At the time of the establishment of Shearman & Sterling, there were sixty-three cases pending involving Jay Gould. One year later, the figure had risen to ninety-seven" (Pinansky 1986-87, p. 610). On the Jay Gould litigation, see Earle 1963, pp. 30-31, 69-87.

6. Looking back from 1914, Theron Strong observed that "life-long partnerships . . . after all . . . are exceptional and the partnership changes which occur in the course of years are almost as great as the changes of the figures in the constantly turning kaleidoscope" (Strong 1914, p. 360).

7. One contemporary observer describes them as "little more than . . . paid employee[s] bound hand and foot to the service of [the corporation]. . . . [the lawyer] is almost completely deprived of free moral agency and is open to at least the inference that he is virtually owned and controlled by the client he serves" (Strong 1914, pp. 353-54).

introduced by the large firm.⁸ The frenetic pace and intense specialization of the large firm repelled many established lawyers. The factory metaphor was felt to identify something about these offices that was profoundly at odds with professional traditions of autonomy and public service.

CIRCA 1960: THE GOLDEN AGE OF THE BIG LAW FIRM

Before the Second World War the big firm had become the dominant kind of law practice. It was the kind of lawyering consumed by the major economic actors. It commanded the highest prestige. It attracted many of the most highly talented entrants to the profession. It was regarded as the "state of the art," embodying the highest technical standards. In the postwar years this dominance was solidified.

To get a reading on the changes over the past generation, we will develop as a baseline a portrait of the big firm in its "golden age" before the transformation that it is now undergoing. This golden age of the big firm, the late 1950s and the early 1960s, was a time of stable relations with clients, of steady but manageable growth, of comfortable assurance that an equally bright future lay ahead—which is not to say that its inhabitants did not look back fondly to an earlier time when professionalism was unalloyed.

New York firms loom disproportionately large in studies of the golden age. New York City was home to a much larger share of big-firm practice than it is now. In the early 1960s, there were twenty-one firms in New York with fifty or more lawyers and only seventeen firms of that size in the rest of the country (Smigel 1964, pp. 43, 34-35). A few years earlier, the largest firm in New York (and the country) was Shearman & Sterling & Wright with thirty-five partners and ninety associates. Three other Wall Street firms had over a hundred lawyers. The twentieth-largest firm in New York had fifty lawyers (Klaw 1958, p. 194; Smigel 1964, pp. 34-35).

To examine the golden age we compiled data from the *Martindale Hubbell Directory of American Lawyers* on two sets of firms: Group I consists of fifty

8. Some sought to wring further parallels, attributing to large firms the standardization, "robotization," and monotony thought characteristic of factories. In 1939, muckraking journalist Ferdinand Lundberg entitled the last of his series of *Harper's* articles on lawyers, "The Law Factories: Brains of the Status Quo." Lundberg explains that the "term 'law factories,' widely used in the legal profession, may be derisive, but it is accurate. The great law firms are organized on factory principles and grind out standardized legal advice, documents and services as systematically as General Motors turns out automobiles" (Lundberg 1939, p. 182).

firms that were among the largest in 1986; Group II consists of fifty smaller (but still large) firms ranked roughly between two hundredth and two hundred fiftieth in the United States in 1988.⁹

We were able to examine the sizes of thirty-five firms from each group in 1955 and 1965.¹⁰ In 1955, our thirty-five Group I firms ranged in size from 7 to 84 lawyers, with an average size of 40 lawyers. By 1965, their sizes ranged from 13 to 112 lawyers, with an average of 62.6. The thirty-seven firms in Group II ranged from 6 to 35 lawyers in 1955, with an average of 15.8; in 1965, they ranged from 8 to 46 with an average of 25.1 lawyers. This was a period of prosperity and manageable growth for big firms. Over the decade ending in 1965, the Group I firms that twenty years later figured among the fifty largest grew at an annual rate of 5.3 percent. The Group II firms grew at an annual rate of 5.5 percent.¹¹

Firms were located in and identified with a single city. An earlier wave of European and Washington offices had been largely abandoned (Smigel 1964, p. 207). "Formation [in 1957] of a nationwide . . . law firm with offices interlocking in Illinois, Washington, D.C. and New York" was startling, "so unusual that it had to be approved in advance by the Bar Association" (Levy 1961, p. 20).

Hiring: Firms were built by "promotion to partnership." Lateral hiring was almost unheard of, and big firms did not hire from one another. Partners might leave and firms might split up, but it didn't happen very often.¹² Hiring of top law graduates soon after their graduation was one of the building blocks of the big firm. Most hiring was from a handful of law schools, and walk-in interviews during the Christmas break were the norm.

9. The two data sets are described in Appendix A of Galanter and Palay, (1991) and presented in their entirety in tables B-1 and B-2 in Galanter and Palay (1990a).

As we discuss in Galanter and Palay (1991), *Martindale Hubbell* is a far from perfect source for data on the size of law firms. Unfortunately, there exists no systematic compilation of law-firm growth statistics. Published data tend to be grossly incomplete and are often constructed from two or more incompatible sources. Because *Martindale Hubbell* and the *National Law Journal* use different methods to count attorneys, the data provided by these sources should not be combined. See Appendix A of Galanter and Palay (1991). To fill the gap in the available data our research assistants have literally counted the names associated with selected firms listed in the *Martindale Hubbell* directory. Despite the fact that *Martindale Hubbell* systematically undercounts associates, these data sets still surpass anything previously available.

10. All calculations are based on the firms for which data were available for both years in question.

11. Our figures on growth are a little higher than those reported by Smigel (1964, p. 351). He reports that from 1957 to 1962, the number of partners in twenty large New York firms increased by 16% and that the total number of lawyers in the seventeen large firms outside New York had grown by 37% from 1951 to 1961. Since we were looking at firms that succeeded in becoming very large two decades later, it is not unlikely that our sample is biased toward greater growth.

12. The forty-two firms that responded to Siddall (1956, p. 33) had been in existence an average of fifty-eight years. He asked them to detail the "number of splits in the line of succession." Twenty-nine of the forty-two had had none; the other thirteen had undergone a total of 56 splits.

Starting salaries at the largest New York firms were uniform—\$4000 in 1953, rising to \$7500 in 1963 (Smigel 1964, p. 58). The "going rate" was fixed at a luncheon, attended by managing partners of prominent firms, held annually for this purpose (Smigel 1964, p. 58; Mayer 1966, p. 332).

Historically, the big firms had confined hiring to white Christian males.¹³ Few African-Americans and women had the educational admission tickets to contend for these jobs. But there were numerous Jews who did and, with a few exceptions, they too were excluded.¹⁴ This exclusion began to break down slowly after the Second World War. Jewish associates were hired, and some moved up the ladder to partner. The lowering of barriers to Jews was part of a general lessening of social exclusiveness. In 1957, 28 percent of the partners in the eighteen firms studied by Erwin Smigel were listed in the *Social Register*. By 1968, the percentage had dropped to 20 percent. But African-Americans and other minorities of color were still hardly visible in the world of big law firms. In 1956 there were approximately eighteen women working in large New York firms—something less than one percent of the total complement of lawyers. As late as 1968, Cynthia Fuchs Epstein estimates, "only forty women were working in Wall Street firms or had some Wall Street experience" (Epstein 1981, p. 176).¹⁵

Promotion and Partnership: Only a small minority of those hired as associates achieved partnership. Of 454 associates hired by the Cravath firm between 1906 and 1948, only 36 (just under 8 percent) were made partners (Smigel 1964, p. 116). Cravath may have been the most selective but it was not that different from other firms. In 1956 Martin Mayer reported that the "chance of becoming a partner . . . varies from one in seven to one in fifteen, depending on the firm and the year in which he joins it" (1956b, p. 52). The "average chance at a partnership . . . is only one in twelve" (Mayer 1956b, p. 54). Spencer Klaw, writing two years later, provides the more optimistic assessment that partnership is achieved by "perhaps one out of every six or seven" (1958, p. 142).

13. Some women and Jews were hired during World War II, when the normal supply of "desirable" candidates had dried up.

14. A *Yale Law Journal* survey found that Jewish students from the Yale classes of 1951 to 1962, especially those below the top third of their class, were less successful in obtaining work in the larger, higher-paying firms. During the 1950s and early 1960s, Jews graduating from Yale went to firms roughly half the size of their gentile classmates and earned the equivalent of classmates ranking an average of one third of a class lower in law school ranking (*Yale Law Journal* 1964). This study was based on interviews with Yale students and with hiring partners and on a survey of Yale graduates of this period who worked in New York. The exclusion of Jews and others from the big firms (and from the bar) is chronicled by Auerbach (1976, chapter 4 and *passim*).

15. Epstein reports that "[o]f the thirty four women partners on Wall Street in 1979, only three achieved partnership before 1970" (1981, p. 180).

The time it took to become a partner varied from firm to firm and associate to associate. For the New York lawyers becoming partners around 1960 the average time seems to have been just under ten years.¹⁶ Outside New York the time to partnership was closer to seven years (Nelson 1988, p. 141). Throughout the 1960s the time to partnership dropped.¹⁷

One of the basic elements of the structure of the big firm is the up or out rule that prescribes that after a probationary period, the young lawyer will either be admitted to the partnership or will leave the firm. In this model, there can be no permanent connection other than as a partner. It is easy to overestimate the rigor with which the up or out rule was in fact applied.¹⁸ In his 1958 study, Klaw observed that “[f]ew Wall Street firms have an absolutely rigid up-or-out policy, but most of them discourage men from staying on indefinitely as associates” (p. 197). Many firms had an explicit up or out rule—in some cases quite recently minted (Smigel 1964, p. 44)—but there was at work a competing and powerful norm that it was not nice to fire a lawyer. In 1956, Mayer reported that “nobody is ever fired except for immediate and specific cause” (1956b, p. 54). Smigel reports a “widespread feeling that it is not professional to fire a lawyer” (1964, p. 77). Termination tended to be drawn out and disguised. “Failure . . . is carefully disguised by the firms with the knowing help of their members and associates” (Smigel 1964, p. 78). Addressing a Practicing Law Institute forum in 1965, a Shearman and Sterling partner said of those passed over: “Naturally, we don’t desert these fellows. Anybody who has been with us that long is entirely welcome to stay, and they are so few that we can accommodate them as valued “permanent” associates because they have demonstrated their ability” (PLI 1965, p. 199).

For associates who did not make partner, firms undertook outplacement, recommending them for jobs with client corporations and with smaller firms

16. In a hundred lawyer firm with twenty-six partners studied in 1956, partners had taken an average of 9.1 years to partnership (Smigel 1964, p. 137). At Simpson Thacher those who became partners between 1945 and the late 1950s had spent an average of 10.6 years with the firm (Smigel 1964, p. 79). In a firm that Smigel identifies as a “social” firm the average time to partnership was 11.7 years (Smigel 1964, p. 92). A respondent at Sullivan and Cromwell reported that “it now takes longer than ten years to become a partner” (Smigel 1964, p. 84). Compare Mayer’s report that most partners felt that “ten is about right” (1956b, p. 53).

17. At the 1965 Practicing Law Institute forum, “Managing Law Offices,” a Davis Polk partner observed: “In our firm . . . [time to partnership] used to be a little more than ten years, except in the rarest cases. More recently, it has been five, six, or seven years though in some cases it may still take ten years or more. The time varies with the individual, his department, and the need of the firm for another partner from a particular department” (PLI 1965, pp. 20–21).

18. Thus in a recent paper Gilson and Mnookin (1989) refer to the up or out system as “the long dominant career pattern by which employee (associate) lawyers are either promoted to partnership or fired” (p. 567) and note that it only now “appears to be changing” (p. 567).

(Smigel 1964, p. 64).¹⁹ Ties might be maintained as the firm referred legal work to them or served as outside counsel to the corporation.

Although departure from the firm was decreed by the up or out norm, there were some lawyers who were permanent but not partners. These included managing clerks and a few specialists who because of a low-status specialty (such as immigration or labor law) or low-status origins had no expectation of being considered for partnership, although they were professionally respected and well paid (Smigel 1964, pp. 119, 231). But most permanent associates were “failures,” “second-class citizens” who had not been promoted but stayed on and were assigned routine work—especially “back office” work that did not involve dealing with clients (1964, pp. 164, 231). Permanent associates were not as rare as the up or out norm might suggest. Smigel gives figures on two firms in 1956: one firm with one hundred lawyers had nine permanent associates; another with eighty-nine had twenty-two permanent associates (24.7 percent). Of all those who had started out at the Cravath firm from 1906 to 1948, sixteen remained as permanent associates—almost half as many as became partners (1964, p. 116).²⁰

In the course of the 1960s, there was a decline in the number of permanent associates; or, to put it another way, the up or out norm was enforced more vigorously. In his epilogue, Smigel notes the “reduction in the number of permanent associates. The firms . . . no longer consider the permanent associate desirable” (1969, p. 375 n. 11). He suggests a number of possible reasons for this: the firms’ work may have become more complex; the work formerly done by permanent associates was now being done by in-house corporate counsel; the permanent associate was viewed as an undesirable model of failure for associates (p. 375 n. 11). In the early 1970s, Paul Hoffman reported that “[p]ermanent associates are a dying breed . . . being phased out by attrition at most firms” (1973, p. 44). As we shall see, it was not to be long before they were phased back in.

Partners were chosen by proficiency, hard work, and ability to relate to clients (Smigel 1964, p. 97). In many cases there was some consideration of the candidate’s ability to attract business (Mayer 1966, p. 334). And selection depended on the perceived ability of the firm to support additional partners (Lisagor and Lipsius 1988, p. 190).

Achieving partnership, the “strongest reward,” meant not only status but security and assurance of further advancement: “[T]hey . . . know that they

19. In our “circa 1960” period, corporate legal work in many cases paid better than law firms (Siddall 1956, p. 107).

20. In 1934, when Sullivan and Cromwell had sixteen partners, “the firm had eight senior associates who had been there more than fifteen years and never expected to make partner” (Lisagor and Lipsius 1988, p. 108).

have tenure and feel certain that they will advance up the partnership ladder" (Smigel 1964, pp. 259, 302). There was certainly pressure to keep up with one's peers, but competition between partners was restrained. In this environment, "[a]dmission to the partnership of a leading firm was a virtual guarantee not only of tenured employment but of a lifetime of steadily increasing earnings unmatched by a lawyer's counterparts in the other learned professions" (Stevens 1987, p. 8).

But this should not lead one to conclude that the classic pattern of dividing the proceeds of the big-firm partnership was some approximation of giving each partner an equal share—or a share by seniority (the so-called lockstep system). If this was ever true, by circa 1960 the prevailing practice was to divide profits by individualized shares rather than by a norm of equal participation.²¹

Work and Clients: The work of the big firm was primarily office work in corporate law, securities, banking, and tax with some estate work for wealthy clients. Divorces, automobile accidents, and minor real estate matters would be farmed out or referred to other lawyers (Levy 1961, p. 35). Litigation was not prestigious, and it was not seen as a money-maker. Mayer estimates that "litigation occupies less than one-tenth the time of large law firm" and reports that "[s]ome firms avoid it entirely" (Mayer 1956a, p. 36). He describes large-firm litigation in the early 1960s as involving taxes, contracts, personal injury defense, and defense of corporations and directors from shareholders suits. "But to most large law firms, the word 'litigation' connotes an antitrust suit, not because the number of such cases is large but because each of them represents so enormous a quantity of work" (Mayer 1966, p. 320). The surge of antitrust litigation tended to elevate the standing of litigators, who had been "overshadowed by office-lawyer partners . . . who seldom, if ever, went near a courtroom" (Klaw 1958, p. 144). Where big firms were involved in litigation, it was typically on the side of the defendant.²² Big firms usually represented dominant actors who could struc-

21. Siddall (1956, p. 43) reports a great variety of compensation schemes among the forty-two firms he studied. The data here do not tell us how much of the variation may be accounted for by seniority, but they cast some doubt on the notion that many or most law firms were equal partnerships. At least some of these firms attempted to apportion rewards according to the contribution of each partner to income (Siddall 1956, p. 48).

22. This tilt to big firm participation in litigation was noted by an earlier writer about Wall Street law practice: "[M]ost of the legal cases handled by the big law firms . . . place them on the side of the defense. . . . So imbued do the corporation lawyers become with a defensive psychology that they have unconsciously evolved a folklore—familiar to all newspaper men who report Wall Street—in which plaintiffs figure as racketeers or Bolsheviks, in spirit if not in fact. To the average Wall Street corporation lawyer, in whose very fibre is burned the conviction that the management is always right, stockholders who bring suit against the management are simply racketeers and their lawyers are little

ture transactions to get what they wanted; it was the other side that had to seek the help of courts to disturb the status quo. Disdain of litigation reflected the prevailing attitude among the corporate establishment that it was not quite nice to sue (Macaulay 1963).

As they grew, many firms broadened their client bases, becoming less dependent on a single main client. Relations with clients tended to be enduring. "A partner in one Wall Street firm estimate[d] its turnover in dollar volume at 5 per cent a year, mostly in one-shot litigation" (Hoffman 1973, p. 72): Corporations had strong ties to "their" law firms. Many partners sat on the boards of their clients²³—a practice that had been viewed as unprofessional earlier in the century—and would lose favor again later.²⁴ A 1959 Conference Board survey on the legal work of 286 manufacturing corporations found that "three fourths of them retain outside counsel on a continuing basis. . . . Companies most frequently report that 'present outside counsel has been with us for many, many years,' or that 'we are satisfied with the performance of our outside counsel and have never given any thought to hiring another'" (1959, pp. 463, 464).

We have no evidence about how many hours were actually worked or billed. Smigel reports that "[s]ome firms believe an associate should put in 1800 chargeable hours a year and a partner 1500, with the hours decreasing as the partner gets older" (Smigel 1964, p. 220).²⁵ It was widely believed, perhaps with some basis, that lawyers (especially associates) were not working as hard as they had in earlier times (Smigel 1964, pp. 43, 104; Klaw 1958, p. 194).

Circa 1960, New York still dominated the world of big-time law practice.

better; anyone who is injured in a train wreck and who sues the great and good railroad company is little more than a scoundrel. . . . Again, the bondholder who finds that he has been sold securities by means of a misleading prospectus, and who brings suit, is a knave, and his lawyer is probably more of a knave, meriting disbarment. . . . Similarly, lawyers who chase ambulances in search of clients are little better than pickpockets and their clients hardly more than criminals" (Lundberg 1939, pp. 187–88).

23. Mayer noted that "lawyers want to sit on boards because . . . it sews up the client's legal business" (1956a, p. 56).

24. Gartner reported that liability and conflict of interest concerns were leading law firms to reappraise the desirability of directorships (1973, p. 4).

25. In a detailed explication of law office organization in 1941, Reginald Heber Smith suggested as approximations of "the number of hours experience indicates [lawyers] actually will work on the average year in and year out": juniors, 1600; partners, 1520; and "older senior partners" who "are commonly devoting more time to public service, to charities," 1200 (Smith 1940, pp. 610, 611).

Subsequently, expectations about billable hours seem to have declined. In 1973, Hoffman reported that "[a]s late as five years ago [1968], associates were expected to produce 2,000 billable hours a year. The target is now down to 1,600 and the actual output is even less" (1973, pp. 130–31). It is difficult to interpret changes in these figures because "billable hours" is a product not only of actual time spent, but of recording and billing practices.

Large firms elsewhere were constructed along the same "promotion to partnership" lines, but tended to operate a bit differently. Firms outside New York tended to be more recently founded (Smigel 1964, p. 190). There was also less departmentalization, specialization, and supervision (p. 186). The organization was less formal, with fewer rules about meetings, training, conflicts of interest, and so on (pp. 184–85). The turnover of associates was lower, and there was less up or out pressure. Partnership was also easier to attain and came earlier (pp. 182, 183). There was more use of such intermediate classifications as junior or limited partners (p. 183). There was more lateral hiring (p. 181). Outside New York, firms were less highly leveraged. The ratio of associates to partners in the nineteen New York firms Smigel studied was two to one; in the firms outside New York, it was, in some instances, as low as one to one (pp. 183, 203).²⁶ A lawyer from a big firm in Chicago observed that New York firms "frequently employ two or three or even more associates per partner. In Chicago these ratios are lower; and there has been a well-defined trend in recent years, toward increasing the number of partners in the larger firms as compared with the number of associates" (Austin 1957, p. 16).

For big firms, circa 1960 was a time of prosperity, stable relations with clients, steady but manageable growth, and a comfortable assumption that this kind of law practice was a permanent fixture of American life.²⁷ Notwithstanding their comfortable situation many inhabitants and observers regarded the world of the big firm as sadly declined from an earlier day when lawyers were statesmen and served as the conscience of business (Gordon 1988, p. 48). Echoing laments that have recurred since the last century, partners complained to Smigel that law had turned into a business (Smigel 1964, pp. 303–5). No longer, Mayer reflects, do young associates regard themselves as servants of the law and holders of a public trust: "[T]hey are too busy fitting themselves for existence in the 1950s, when efficiency, accuracy, and intelligence are the only values to be sought" (1956b, p. 56).

Big law firms enjoyed an enviable autonomy. They were relatively independent vis-à-vis their clients; they exercised considerable control over how they did their work; and they were infused with a sense of being in control of

26. In late 1957, the twenty largest Wall Street firms (ranging in size from 125 to 46) had 2.28 associates for each partner. Calculated from data found in Klaw 1958, p. 194.

27. For other strata of the profession, however, there was a sense of decline from a more prosperous past. The ABA's Special Committee on the Economics of Law Practice in 1959 complained that lawyers' incomes had fallen relative to those of doctors and dentists. They saw the profession "endangered by the creeping instability of its economic status" (ABA 1959, p. 3) and "dwindling" as the percentage of national income spent on legal services fell to one third of what it had been at its all time high in the early Depression years. The solution was minimum fee schedules to be enforced by the profession's disciplinary bodies (ABA 1959).

their destinies. A sharp contrast with present practices and perspectives is implicit in the retrospective glance of a contemporary author:

[C]ompetition was very much a gentlemanly affair. With the banks and manufacturing corporations pacing America's industrial expansion—and with the Securities Acts and New Deal legislation complicating business transactions—the workload grew faster than the firms' ability to service it. Protected by their captive relationships, the established practices had no reason to fear competitive assaults and were not, in turn, moved to encroach on their competitors' turf. Blessed with virtual monopolies in their respective markets, they focused instead on practice standards, on establishing self-indulgent compensation systems, and on perfecting the mystique and the mannerisms of elite professionals. How cases were staffed and billed, how partners were selected and paid, and how new partners were admitted to the ranks were issues based on internal considerations rather than market factors. Free to conduct their affairs as they saw fit, the established practices could all but ignore such boorish concerns as efficiency, productivity, marketing and competition. [Stevens 1987, pp. 8–9]

THE TRANSFORMATION OF THE BIG FIRM

The more numerous and more diverse lawyers of the late 1980s were arrayed in a very different structure of practice than their counterparts a generation earlier. There has been a general shift to larger units of practice.²⁸ The number of lawyers working in sizable aggregations, capable of massive and coordinated legal undertakings has multiplied many times over.²⁹ One estimate is that in 1988, there were 35,000 lawyers at 115 firms with more than 200 lawyers and a total of 105,000 lawyers in 2000 firms larger than 20 lawyers (Brill 1989, p. 10).

Growth: In the late 1950s there were only 38 law firms in the United States with more than fifty lawyers—and more than half of these were in New York City (Smigel 1964, p. 58). In 1985, there were 508 firms with fifty-one or more lawyers (Curran et al. 1985b, p. 58).

Not only were there more big firms, but they were growing faster. The firms in our Group I (fifty of the largest firms in 1986) grew from an average

28. In 1948, more than six out of ten lawyers practiced alone; in 1980, only one third of a much larger number of lawyers was in sole practice (Abel 1989, p. 179; Curran 1985a, p. 14).

29. In 1980, there were almost fifty thousand lawyers in firms of twenty-one or more—they made up 9.2% of all lawyers, 13.4% of lawyers in private practice, and 26.1% of all lawyers practicing in firms (Curran 1985a, pp. 13, 14).

size of 124 in 1975 to 252 in 1985.³⁰ In this period, the average size of our Group II firms (the 200th to 250th largest in 1988) doubled from 44 to 89 lawyers.³¹ The average annual growth rate over this ten-year period was 8 percent for both Group I and Group II.³² These rates are considerably higher than the rates at which these same firms were growing twenty years earlier. From 1955 to 1965, the average annual growth rate was only 5.3 percent for the Group I firms and 5.5 percent for Group II firms.

In 1960 big law firms were clearly identified with a specific locality, as they had been since the origin of the big firm.³³ But by 1980, of the 100 largest firms, 87 had branches. Of all firms with fifty or more lawyers, 62 percent were in more than one location and 24 percent were in three or more locations in 1980 (Curran et al. 1985a, p. 53). Some of this branching was by "colonization" but most of it involved mergers with firms (or with groups defecting from firms) in the new locality. Washington has been the favorite site for branches. In 1980, 178 firms from outside Washington had branches there (Abel 1989, p. 188). But as branching activity has increased, Washington offices are a declining portion of all branches.

In the 1980s the home office and branch pattern was joined by the genuine multi-city law firm (Lewin 1984, p. 31).³⁴ To capture the dynamic of multi-city growth, we compared twenty of the largest firms based in New York City (NY) and twenty of the largest firms based outside New York City (ONY) for the years 1980 and 1987.³⁵ The NY firms had a total of 70 branch offices in

30. The range was from 50 to 198 lawyers in 1975 and from 142 to 419 lawyers in 1985. These figures are somewhat lower than those in the last paragraph, because they are drawn from our data set, based on *Martindale-Hubbell*, rather than from the *National Law Journal* Surveys. We use the *Martindale-Hubbell* data here because, unlike that from the *National Law Journal*, it permits comparisons with earlier periods.

31. The range was from 21 to 68 in 1975 and from 54 to 121 in 1985.

32. These ranges are confirmed by annual surveys of the five hundred largest firms conducted by *Of Counsel* since 1986. The reported rate of growth for all of these firms was over 9 percent for each of the three years, 1986, 1987 and 1988 (*Of Counsel* 1989, p. 1).

33. The occasional Washington or foreign branch office was anomalous (Smigel 1964, p. 207).

34. The true pioneer is Baker & McKenzie, which in the 1950s established four foreign offices, staffed largely by local lawyers, as well as a Washington office. Thirteen more foreign offices were added in the 1960s. In 1988, the firm consisted of forty-one offices in twenty-five countries (*National Law Journal* 1988, p. S-4; Lyons 1985, p. 116). On its organizational strategy, see also Stevens 1987, pp. 153-66. Another pioneer in the design of the multi-city firm was the late Robert Kutak, whose Omaha-based Kutak, Ročk, and Huie, founded in 1965, was established in six regional centers by 1980 (Tybor 1981, p. 8). In the late 1970s, the firm planned to open an office in one new city each year and by the end of the 1980s to have seventeen offices around the country (Kiechel 1978, pp. 112, 113). The firm was unable to keep up this pace and experienced a severe contraction in late 1980 (Tybor 1981, p. 1).

35. This comparison is based on our "Two Twenties" Data Set, described in Galanter and Palay (1991, appendix A). For convenience, we refer to "branches," but we use that term to mean an office other than the office of the firm that contains the largest number of lawyers. In 1987, only one of our forty firms (Akin Gump) had an office larger than its "home" office.

1980 and 99 branches in 1987. The ONY firms had a total of 61 branches in 1980 and 124 branches in 1987. Thus there was a 41 percent increase in branches of NY firms over this seven-year period and a 103 percent increase in branches of ONY firms.

Not only did the number of branches increase, but so did their size. The average size of each branch of a NY firm went from eight lawyers in 1980 to seventeen in 1987. The branches of the ONY firms grew from an average of fifteen lawyers in 1980 to thirty lawyers just seven years later. The growth in branches accounted for 31 percent of the total growth of the twenty NY firms and 69 percent of the total growth of the ONY firms. The percentage of lawyers outside the largest office rose from 15 to 21 percent for the NY firms while doubling from 21 to 42 percent for the ONY firms.

We can see that branches grew much faster than main offices during this period. By 1987 there were a number of firms that had a substantial portion of their lawyers away from the largest office. Eight of the NY firms had more than 25 percent of their lawyers outside the main office (up from four in 1980); and seventeen of the ONY firms had more than 25 percent of their lawyers outside the largest office—seven had more than 50 percent outside.

Increasingly, large firms operate on an international basis. Of the one hundred largest firms in 1988, some forty-four had a total of 136 overseas offices.³⁶ Our comparison of the twenty largest NY and twenty largest ONY firms indicates that the largest NY firms have more overseas branches, but the gap is closing. These New York firms had thirty-nine in 1980 and forty-three in 1987. Their ONY counterparts had nine in 1980 and twenty-one in 1987. Foreign offices tend to be a larger share of the offices of the NY firms (36 percent in 1987) than of the ONY firms (15 percent in 1987).

Over the past thirty years, there has been a marked movement away from New York City as the nation's legal center.³⁷ In 1957, there were 21 firms with over fifty lawyers in New York City and only 17 in the rest of the country (Smigel 1964). In 1980, there were 72 firms of fifty-one or more in New York State (Curran et al. 1985a, p. 166) but in the whole country there were 287 (p. 51). In twenty years, New York City's share of large firms had fallen from more than half to less than a quarter. New York City has retained a somewhat larger but declining share of the very largest firms. In 1987, 32 of the 100 largest firms were based in New York (down from 36 in 1975)

36. The number of overseas offices ranges from one to thirty-two; eight firms had five or more overseas offices.

37. This reflects the dispersion of corporate headquarters and financial markets. In 1960, 128 of the Fortune 500 industrial corporations had headquarters in New York City; in 1988, only 50 were headquartered there. There were comparable shifts in other categories of corporations (*Fortune* 1960a, p. 131; 1960b, p. 137; 1988a, p. D-11; 1988b, p. D-7).

(Abel 1989, table 47).³⁸ The hundred largest firms were based in twenty-four cities (up from eighteen in 1975).³⁹

Work and Clients: The kinds of work big firms do have changed. The mix of work coming into big firms has been changed by a surge of corporate litigation since the 1970s (Galanter and Rogers, 1989) and by the increase in the number, size, and responsibility of in-house legal departments. Long-term retainer relations have given way to comparison shopping for lawyers on an *ad hoc* transactional basis (Flaharty 1983, p. 1; Jensen 1988, p. 1; Couric 1988, p. 2). Corporations that view legal expenses as ordinary costs of doing business rather than singular emergencies have monitored legal costs, set litigation budgets, required periodic reporting, and awarded new business on the basis of competitive presentations from competing outside firms.

The practice of law has become more specialized. Within large firms, specialization has become more intense and the work of various levels more differentiated (Nelson 1988, pp. 147, 171). Much routine work has been retracted into corporate law departments, shifting the work of large outside firms away from office practice toward litigation⁴⁰ and deals. With more deals, higher stakes, more regulation to take into account, and more volatile fluctuations of interest and exchange rates there is greater demand for intensive lawyering. The large contested and/or risk-prone one-of-a-kind, "bet your company" transactions—litigations, takeovers, bankruptcies, and such—make up a larger portion of what big law firms do. Since few clients provide a steady stream of such matters and those that have them increasingly shop for specialists to handle them, firms are under ever greater pressure to generate a steady (or increasing) supply of such matters, by retaining the favors of old clients and securing new ones.

Competitiveness: The new aggressiveness of in-house counsel, the breakdown of retainer relationships, and the shift to discrete transactions has made conditions more competitive.⁴¹ The practice of law has become more openly

38. A 1989 survey found that thirty-three of the one hundred firms with the largest gross revenues were based in New York (*The American Lawyer* 1989).

39. The decline in the predominance of New York based firms points to, but overstates the decline of New York City as a locus of legal activity. A significant portion of the branching activity discussed in the preceding paragraphs consists of the establishment in New York of branches by ONY firms. In 1980, only three of our ONY firms had offices in New York (average size seventeen). By 1987, ten of the twenty ONY firms had New York offices (average size thirty-nine).

40. Chayes and Chayes (1985, p. 295) report that major corporations responding to a small survey reported half of all legal fees paid to outside lawyers were for litigation.

41. During this period, the profession's traditional means of suppressing intraprofessional competition, minimum fee schedules, was struck down by the Supreme Court as a violation of the Sherman Act (*Goldfarb v. Virginia State Bar*, 421 U.S. 773 [1975]). Two years later the traditional ban on advertising fell (*Bates v. State Bar of Arizona*, 433 U.S. 350 [1977]). The demise of minimum

commercial and profit-oriented, "more like a business."⁴² Firms rationalize their operations; they engage professional managers and consultants; their leaders worry about billable hours, profit centers, and marketing strategies. "Eat what you kill" compensation formulas emphasize rewards for productivity and business-getting over "equal shares" or seniority (Heintz 1982, p. 24; Gilson and Mnookin 1985, p. 313; but see Nelson 1988, pp. 202-4). There is more differentiation in the power partners wield and the rewards they receive; standing within the firm depends increasingly on how much business a partner brings in.⁴³ Rising overhead costs and associate salaries put pressure on partners. In many firms, partners work more hours, but their income has not increased correspondingly.⁴⁴

The need to find new business has led to aggressive marketing. Some firms have taken on marketing directors, a position that did not exist in 1980. In 1985, there were forty such positions (Galanter 1985, pp. 1, 28).⁴⁵ By 1989 "almost 200 law firms ha[d] hired their own marketing directors."⁴⁶ The push for new business also brought about increased emphasis on "rain-making" by more of the firm's lawyers (Haserot 1986, p. 15; Jensen 1987b, p. 1). Those lawyers who are responsible for bringing in business enjoy a new ascendancy over their colleagues.⁴⁷ The need to find new business has

fee schedules did not directly affect the big firms, but the encouragement of competition and particularly the freedom from restrictions on self-promotion provided them with new means to adapt to the changing marketplace. On the indirect effects of *Bates*, see Galanter and Palay (1991, chapter 4).

42. Recall that similar observations have been made ever since the early days of big law firms.

43. Reflecting on Smigel's contention that law firms lack the hierarchy, rules, and conflict characteristic of other organizations because they are organized around professional norms, Nelson concedes that if this was so in "the stable professional community of New York law firms in the late 1950s . . . [i]t is clearly not accurate today. Large firms are the regimes of client-producers, and this stratum of partners dictates the policies of the firm and projects the ideology of professionalism that justifies the structure of the firm and the client-producers' role in it" (1988, p. 276).

44. A survey by Altman & Weil of median earnings of partners in 700 large (75-plus lawyers) firms found earnings in 1986 had increased by 78% over those ten years earlier, but inflation had raised prices 93%. Average hours billed were up 8% to 1,685 hours annually (Jensen 1987a, p. 12). A Price-Waterhouse survey of medium and large firms found that from 1978 to 1988 partner earnings rose only 1% after accounting for inflation (cited in Brill 1989, p. 6).

45. The next year it was reported that "more than 60 law firms, ranging in size from 14 lawyers to nearly 600 . . . [in] about 25 cities . . . had hired a marketing administrator." A National Association of Law Firm Marketing Administrators was established in the same year (Schmidt 1986, p. 15).

46. Merrilyn Astin Tarlton, former president of the National Association of Law Firm Marketing Administrators, quoted in the *New York Times*, 2 June 1989, p. 86.

47. "Rainmaker" is a term of fairly recent vintage. None of the 1960s material we used employed it. For example, Mayer spoke of "the business-getters [who] eventually refused to put up with . . . [equal shares]" (1966, p. 336). The idea of a lawyer who specializes in obtaining business has been part of the large-firm scene for a long time. The older term was the straightforward "business getter." As early as 1907, a practitioner observed that "[i]n nearly every large firm in our great cities the indispensable partner is 'the business getter.'" (Andrews 1907, p. 608). An extended 1925 satirical sketch describes the business-getter as a type that "has waxed and swelled, until his work constitutes

shaken the traditional structure of the big firm. A description of big firms in the Southeast reports that the "shift from a traditional reliance upon a small number of rainmakers to the aggressive stance that everyone must make rain has resulted in a reduction in numbers of associates receiving a vote for partnership as well as—in many cases—a redivision of partners' profit pie. Many firms also go a step further by eliminating non-producing partners and restructuring or jettisoning non-productive departments" (Bellon 1988, pp. 19, 20).

The search for new business has been directed not only toward would-be clients, but to existing ones. In a setting where corporations are more inclined to divide their custom among several law firms, firms engage in "cross-selling" to induce the purchaser of services from one department to avail itself of the services offered by other departments (Weklar 1988, pp. 22, 26; O'Neill 1989, p. 17).

Lateral Hiring and Mergers: In the classical big firm, almost all hiring was at the entry level. Partners were promoted from the ranks of associates. Those who left went to corporations or smaller firms, not to similar large firms since these adhered to the same no lateral hiring norm. But starting in the 1970s, lateral movement became more frequent. At first, firms made an occasional lateral hire to meet a need for litigators or to fill some other niche. But soon lateral hiring developed into a means of systematically upgrading or enlarging the specialties and localities they could service and of acquiring rainmakers who might bring or attract new clients. As lateral movement increased, a whole industry of "headhunter" firms emerged, gaining respectability as it grew.⁴⁸ The number of legal search firms grew rapidly from 83 in 1984 to 167 in 1987 to 244 in 1989 (Abel 1989, p. 188; *National Law Journal* 1989a, p. S-3).

The flow of lateral movement widened from individual lawyers to whole departments and groups within firms and to whole firms. Mass defections and mergers became common, enabling firms at a stroke to add new depart-

a profession in itself, and he bestrides the legal world like a colossus." Technically a lawyer, "[a]ctually he is a peripatetic electric signboard, a prospectus that walks like a man, a barker with a modulated voice, a glorified sandwich man, a solicitor in more senses than one, broadcasting the virtues of his law firm in waves more subtle than those of Marconi" (Smith 1925, pp. 199-200). Nelson recounts a humorous folk categorization of big-firm lawyers into "finders, minders, and grinders" (1988, pp. 69-70)—those who acquire new clients, those who attend to existing ones, and those who grind out the work.

48. Legal headhunter firms emerged in New York in the late 1960s in response to the constriction in the supply of lawyers. At first such activity was regarded as a discreditable departure from professional decorum. "In 1967 when Lois R. Weiner . . . decided to specialize in finding jobs for lawyers, the publishers of [the] Martindale-Hubbell [Directory] refused to sell her a copy" (Stevenson 1973, pp. 12, 13).

ments and expand to new locations. A casual search of the legal press from 1985 to 1989 produced a list of seventy-one mergers involving eighty-three firms with more than fifty lawyers; in fifty-eight of these mergers, at least one of the merging firms had one hundred lawyers—a sizable portion of the whole population of firms of that size.⁴⁹ Mergers were not only a way to grow; they also provided a convenient device to shake out or renegotiate terms with less productive partners.

Firms hired laterally not only by mergers but by inducing specific lawyers to change firms, "cherry picking" as it came to be called in the late 1980s. A 1988 survey of the five hundred largest law firms found that over a quarter reported that more than half of their new partners were not promoted from within but came from other firms.⁵⁰ Lateral movement was not confined to the partner level. The same survey found that one quarter of the responding firms reported that more than half their associates were hired laterally (Smith 1989, p. 6). Increasingly, associates move from one big firm to another. A recent survey of promotions at thirty-five large firms in seven localities reveals thirty-three of the thirty-five firms hired some associates laterally and that of 2227 associates who entered in the late 1970s, 500 (22 percent) had not come to those firms directly from law school, but "arrived at their current firm later in their careers" (Wise 1987, pp. 1, 32).⁵¹ A recent *New York Law Journal* survey found that at twenty-three of the thirty largest firms in New York, an average of 24 percent of the associates being considered for partnership were lateral hires (Adams 1989, pp. 1, 6).

The other side of this movement was splits and dissolutions of firms.⁵² As firms grew larger the task of maintaining an adequate flow of business often

49. Compiled from data supplied by Holly Moyer of Hildebrandt, Inc. According to the *National Law Journal* annual surveys, there were only 218 firms with one hundred or more lawyers in 1985 and fewer than 300 in 1988.

50. A survey in *Of Counsel*, reported in Smith 1989, p. 6. Approximately four hundred firms provided information on lateral hiring. The figures in this survey were close to those in a 1986 survey.

51. We use "late 1970s" here to include the few instances in which the data cover years as late as 1981. It is not clear whether these associates arrived in the years stated or arrived later but were assigned to an earlier associate "class." The data presented do not permit us to distinguish between lateral hires arriving from clerkships and government service and those who were leaving other firms, but it seems safe to assume that there were at least some of the latter.

52. According to Hildebrandt, Inc., about one hundred law firms dissolved in 1987, including about a dozen with more than thirty lawyers (*Wall Street Journal* 1988; Abel 1989, pp. 186-87). Although there have been some spectacular breakups of large firms, such as the dissolution of Finley Kumble in 1987, the pressure to merge or dissolve was thought to be most severe for midsize firms. In 1988, a Hildebrandt consultant reported that "[i]n the past two years, more than 60 midsize firms—more than 10% of the total nationwide—have either dissolved or merged. . . . Though midsize firms make up 10% of all law firms they accounted for 25% of the field's mergers and closing in the past two years" (Dockser 1988, p. B-1).

became more difficult. Firms were more vulnerable to defections by valued clients or the lawyers to whom those clients are attached. Size multiplies the possibility of conflicts of interests resulting in tension between partners who tend old clients and those who propose new ones that can induce a breakaway. Surrounded by other firms attempting to grow by attracting partners with special skills or desirable clients, firms are vulnerable to the loss of crucial assets. So dissolution may be catalyzed by lateral movement and merger activity and such break-up in turn stimulates a new round of lateral movement.

Hiring: As firms grew, thus requiring larger numbers of qualified associates, recruitment activity intensified. Recruiting visits to an increasing roster of law schools, extensive summer programs, brochures, and expense-paid "call-backs" of candidates have become familiar parts of the big law firm scene.⁵³ Starting salaries have increased dramatically, beginning with a great contraction of the supply of associates in the late 1960s. The Vietnam War draft diverted law graduates to occupations in which they could obtain deferments, just when 1960s activism inspired a disdain for corporate practice among students seeking work in poverty law and public-interest law. The percentage of elite law graduates entering private practice dropped precipitously.⁵⁴ Confronted by criticism that their work was unfulfilling and inimical to the public interest, many firms acceded to demands that recruits be able to spend time on "pro bono publico" activities (Berman and Cahn 1970). The *Wall Street Journal* reported that "now it's common for [the big corporate law firms] to permit their attorneys to spend substantial portions of their time in noncommercial work" (Falk 1970, p. 1).

Firms responded to their supply problem not only by accommodating their recruits' public-interest impulses but by sharply increasing their compensation. In 1967, the starting salary for associates at elite firms in New York was \$10,000; scheduled to increase to \$10,500 for 1968 recruits. In February 1968, the Cravath firm, breaking with the "going rate" cartel (Smigel 1964,

53. This trend has transformed the law school scene by linking law students early and tightly to the world of law practice, a development that has been described by Roger Cramton as "the new apprenticeship" (1981, p. 521).

54. "From 1964 through 1968 . . . the number of Harvard Law School graduates entering private law practice declined from 54 to 41 percent." Yale graduates entering private practice dropped from 41 percent in 1968 to 31 percent in 1969; the percentage of Virginia graduates entering private practice dropped from 63 percent to 54 percent from 1968 to 1969 (Berman and Cahn 1970, pp. 16, 22-23). "[I]n 1970, none of the thirty-nine law review editors graduating from Harvard expects to enter private practice" (Green 1970, pp. 658, 659). A similar drop among Michigan graduates is documented by David Chambers, who found that those entering private practice dropped from 74 percent in the classes of 1965 and 1966 to about 60 percent for the years from 1967 to 1970. Chambers shows that most of the decrease was due to diversion into teaching and graduate work to secure draft deferments (Chambers 1989a, pp. 8-11).

p. 366), raised the salaries for incoming associates to \$15,000, setting in motion a new competitive system of bidding for top prospects.⁵⁵ Firms that wanted to be considered in the top stratum had to match the Cravath rate. The change in New York starting salaries reverberated throughout the upper reaches of the profession. The salaries of more senior associates had to be raised to preserve differentials; the take of junior partners had to be adjusted accordingly; firms outside New York, though paying less, had to give corresponding raises to maintain parity with their New York rivals. Unlike later increases in compensation, the one in the late 1960s was not accompanied by pressure to bill more hours. In fact, it appears that hourly billings were dropping during this period.⁵⁶

In 1986, when the highest-paid beginning associates were getting \$53,000, Cravath administered a second shock by unilaterally raising salaries to \$65,000 (Lewin 1986, p. 33). At the time of the first "Cravath shock" the big-firm "going rate" referred primarily to a few dozen firms, most which were located in New York; by the time the second occurred the big-firm world consisted of several hundred geographically dispersed firms, many national in scope. Long-accepted city differentials have been eroded by branching, especially by recent moves by New York firms into other legal markets, causing some firms in those localities to match the higher New York salaries.

As the number and size of large firms has increased, recruitment has become more competitive and more meritocratic, leading to changes in the social composition of the new recruits.⁵⁷ The range of law schools from which the big firms recruit has widened, and recruitment has gone "deeper" into each graduating class.⁵⁸ Religious, racial, and gender barriers have been swept away. The social exclusiveness in hiring that was still a feature of the world of elite law practice in 1960 has receded into insignificance. Performance in law school and in the office counts for more; social connections for less.⁵⁹

55. Observers also saw the move as a response to the declining popularity of practicing in New York, as opposed to other locations, and a Cravath partner attributed the increase to the high cost of living in New York (Zion 1968a, p. 45; 1968b, p. 31).

56. In 1973, Hoffman reported that "the associates' work load has fallen greatly throughout the blue-chip bar" and suggested that the reduced hours reflected both interest in pro bono work and a new unwillingness of recruits to sacrifice their private lives (1973, pp. 130-31).

57. Consider Bernstein's analysis that demand for new associates by the 250 large firms outruns the total production of the "top twenty" law schools, however generously defined (1988, p. 20).

58. This is frequently described as a dilution of quality, but it should be recalled that since the golden age law school has attracted a much more talented pool and law school admissions have become more selective (Abel 1989, table 4).

59. But even absent deliberate exclusion, selection on the basis of educational credentials and the candidates' social affiliations, personal preferences, and career expectations will maintain some degree of association between legal roles and the social origins of lawyers (Heinz and Laumann

By the late 1980s the population of lawyers in big firms included a significant number of women and members of minority groups. A 1989 survey of the 250 largest firms found that 24 percent of their lawyers were women: 9.2 percent of the partners and 33 percent of the associates (Jensen 1990). A 1987 survey of these firms reported that women were "40 percent of the associates hired in the last two years, the same percentage as women in law school" (Weisenhaus 1988, pp. 1, 48). The percentage of women partners increased at almost one percent a year throughout the 1980s.⁶⁰ These numerical gains took place even as many women have expressed dissatisfaction with working conditions and career lines in large firms, especially as these obstruct and penalize child-rearing (Klemesrud 1985, p. 14; Mairs 1988, p. 1; Kingson 1988, p. 1; Holmes 1988). Women have been less satisfied than their male counterparts with law practice in general and with practice in large firms specifically (Tucker, Albright, and Busk 1989; Hirsch 1985; Nelson 1990).

African-Americans remained underrepresented in the world of large law firms. In 1989 they composed 2.2 percent of associates and less than one percent of partners (Jensen 1990). The ratio of partners had doubled since 1981, but the percentage of African-American associates declined slightly after 1981 (from 2.3 percent to 2.2 percent), while the percentages of other minorities rose (Weisenhaus 1988, p. 50; Jensen 1990).

Leverage: Firms have become more highly leveraged—that is, the ratio of associates to partners has risen. Using the data from our Group I set of fifty of the largest firms in 1986⁶¹ we calculated the change in associate to partner ratios at five year intervals from 1960, the midpoint of the golden age, to 1985 (Galanter and Palay 1990b, table 3). During that period these firms grew from an average size of 48 to 239 and the ratio of associates to partners increased 28 percent from 1.16 to 1.49.⁶² The ratio of associates to partners

1982, p. 332). Abel argues that the inclusion of women and the erection of higher educational hurdles have worked to "narrow the class background of lawyers, whose origins have grown even more privileged" (1989, pp. 109–10).

60. Women were 2.8% of partners in 1981 and 9.2% in 1989 (Jensen 1990).

61. This data set is discussed in Galanter and Palay (1991, appendix A).

62. We also used the data from our *National Law Journal* "Two Twenties" Data Set" (described in Galanter and Palay, 1991, appendix A) to calculate the change in associate to partner ratios from 1980 to 1987. We found that between these years the associate to partner ratio increased 31% from 1.72 to 2.25.

The trends here are the same as reported in the text; the magnitudes of ratios differ because of the different way that the various sources counted their data. Our assumption is that the various figures provided by the *National Law Journal*, and the data reported by *Business Week*, *Juris Doctor*, and Klaw (see the discussion of these in Galanter and Palay, 1991, appendix A), are more accurate representations of absolute firm size than those in our data set, which is based on *Martindale-Hubbell*. But our data set, because it goes back much further and was gathered in a consistent manner, provides a more accurate representation of trends. Here, as elsewhere, we are more

rose consistently during the successive five year intervals, with the exception of the period from 1965 to 1970. The slight drop in the associate to partner ratio in this period is consistent with the initial phasing-out of permanent associates and the tightening of the labor market, both of which occurred about this time.⁶³

Because of the well-known (but less well explained) difference in the leverage of large New York firms and those elsewhere, we also divided our firms into two groups: those whose principal office is located in New York and those whose principal office is found elsewhere. Between 1960 and 1985 the average size of New York's biggest firms increased almost 375 percent from an average of 45 lawyers to 214 lawyers. The increase in size of firms based elsewhere was somewhat greater, growing 425 percent from 50 to an average of 261 lawyers; still, the New York firms continued to be more highly leveraged. In New York the average ratio of associates to partners increased from 1.36 in 1960 to 1.82 in 1985. The firms in other cities, by contrast, had only an average of 1.05 associates per partner in 1960 and 1.18 in 1985.⁶⁴ This means that New York firms were not only more heavily leveraged than other firms, but that the differences were increasing. The average number of associates per partner in New York grew by 34 percent between 1960 and 1985 while outside the New York it increased by only 12 percent. Moreover, in 1960 only 20 percent of firms based outside New York had associate to partner ratios exceeding that of the average New York firm. By 1985 none of them did.⁶⁵

interested in the change in leverage than in its absolute amount at any given time in any given firm. We report the *National Law Journal* data here only to give the reader a sense of the absolute size of the ratios. Once again, the reader is cautioned not to mix data from the different sources.

63. This dip appears in another data set that we can derive by combining a report in *Business Week* (1968, p. 79) on the twenty largest firms and a report in *Juris Doctor* on the twenty-five largest firms (de Tocqueville 1972, p. 56). Both of these reports, apparently based on information supplied by the firms, list numbers of partners and associates. Comparing the *Business Week* 1968 figures and the *Juris Doctor* 1971 figures, the decrease in leverage is even more pronounced, from an average ratio of 1.99 associates per partner in the 1968 top twenty, to 1.72 associates per partner in the 1971 top twenty-five. The greater decrease might be due to the different dates (1968 and 1971 in the combined set, and 1965 and 1970 from our *Martindale Hubbell* set) or from some disparity in the way in which the *Business Week*, and *Juris Doctor* surveys were conducted.

64. At least part of the difference between New York firms and firms elsewhere probably lies in the different meanings attributed to the term "partner." If firms designate as partners those lawyers who have been given that title (and a promise of permanent tenure) but not a share of the firm profits, then they would display lower associate to partner ratios than if the partner designation were reserved to lawyers who had a share of the profits. There is reason to think that in at least some cities outside New York the designation partner is used more expansively (Wise 1987). Since this practice would simultaneously reduce the number of associates and increase the number of partners used in calculating these ratios, our comparisons would overstate the difference in leverage.

65. Again comparing the *National Law Journal* data with ours, we see that the trends are basically consistent, though the absolute numbers differ. Using our "Two Twenties" Data Set, we found that

Promotion and Partnership: Over the two decades preceding 1980 the period during which lawyers served as associates before becoming partners became shorter. Robert Nelson found that the average time spent as an associate by those promoted to partnership in large Chicago firms during the 1950s was 7.5 years; this fell to 7.21 in the 1960s; to 6.19 for those promoted between 1970 and 1975; to 5.64 for those promoted between 1976 and 1980 (Nelson 1988, p. 141). But in the 1980s time to partner seems to be stretching out. A study of five large New England firms found that associates had to wait eight or nine years instead of seven (Spangler 1986, p. 55). A *National Law Journal* survey of thirty-five firms in seven localities found that some two-thirds of associates hired in the late 1970s had spent seven to eight "years to partner" (Wise 1987).⁶⁶ Many partners anticipated further increases (Nelson 1988, p. 141).

Generally, increases in leverage suggest that a smaller percentage of associates will be promoted to partner. Nelson studied associates hired by nineteen large Chicago firms from 1971 to 1983 and determined which of them were still with these firms in 1984. If we assume that anyone who was there after nine years had become a partner, we see that fewer than half of those hired before 1975 had departed by 1984, so that more than half had become partners (Nelson 1988, p. 139, table 7). But Nelson suggests that "if we project current annual rates [of departure] over a six-year period [the normal period to partnership in Chicago], little more than one-quarter of the lawyers starting with firms would be expected to make partner" (Nelson 1988, pp. 138-39).

between 1980 and 1987 the associate to partner ratio at the twenty largest New York firms grew from 2.16 associates per partner to 2.82. Over the same period the ratio of associates per partner in the firms outside New York jumped from 1.2 to 1.63. The "Two Twenties" data shows a slight convergence in the ratios of the two samples. According to the "Two Twenties" data the firms outside New York have increased their ratio of associates to partners by about 36%, while the New York firms have risen by only 31%; however, in neither 1980 nor 1987 was any firm outside New York more leveraged than the average New York firm.

In addition, Klaw reports the total number of associates and partners at the twenty largest firms on Wall Street in 1957 (1958, p. 194). From this we calculate that the average associate to partner ratio at that time was 2.27. The percentage difference between Klaw's lawyer counts (apparently based on information from firms) and ours (based on *Martindale Hubbell*) is roughly the same as the difference between our counts in later years and those of the *National Law Journal*. On the assumption that both Klaw's and the *National Law Journal*'s counts are roughly equivalent and disregarding the fact that Klaw is counting Wall Street as opposed to New York city firms, we can combine these two data sets to get a rough second approximation of the change in associate to partner ratios in New York between the golden age and today. The trends are quite similar to those we report in the text, though again the absolute numbers differ, with an increase of roughly 25% in the average ratio of associates to partners in New York firms.

66. A survey of 150 medium-sized firms found that the median time to achieve partnership had increased between 1975 to 1985 from five years to six years (telephone interview with D. Weston Darby, Jr., of Cantor & Co., August 1989; reported in Darby 1985).

A 1987 *National Law Journal* survey (Wise 1987) of promotion at the five largest firms in each of seven localities revealed both regional and inter-firm disparities. The portion who made partner varied from the lowest range of 10 to 35 percent in New York to the highest of 29 to 64 percent in Los Angeles. The portion making partner at the five largest Chicago firms ranged from 33 to 48 percent, higher than the percentage Nelson anticipated for the coming years, but lower than what he reported for the period just past (Wise 1987, p. 32). Similarly, lowered estimates of the percentage of associates who will make partner are suggested by an account of large-firm practice in the Southeast, which reports that "[m]anaging partners at many major firms speak openly of their expectations that no more than 10 percent of any incoming class eventually will make partner" (Bellon 1988, pp. 19, 20).

A constriction of promotion to partnership, anticipated elsewhere, seems to have arrived already in New York's largest firms. A *New York Law Journal* survey computed the chances of achieving partnership at twenty-two of the thirty largest firms in New York City in 1980 and 1989. Some 25.1 percent of the "associate classes" of 1968, 1969, and 1970 (including laterals assigned to those classes) had become partners by 1980; but only 18.8 percent of the classes of 1978, 1979, and 1980 had become partners by 1989 (Adams 1989, pp. 1, 6).⁶⁷ These lower figures seem in the neighborhood of the chances of become a partner back in the 1950s (Mayer 1956b, p. 52; Klaw 1958, p. 142; see also Smigel 1964, p. 116).⁶⁸

We noted earlier that in the 1960s firms applied the up or out norm with increasing stringency. Permanent associates were described as "a dying breed." But before the end of the decade, the institution was reinvented (Bodine 1979). Firms modified the promotion to partnership model by creating a new stratum of permanent salaried lawyers (Graham 1983, p. 3; Hallam 1983, p. 1; Galante 1983a, p. 1; 1983b, p. 1; Singer 1987, p. 12; Freeman 1987; Blum and Lobaco 1988). This is done under various names: nonequity partner, special partner, senior attorney, senior associate, participating associate, etc. As a Washington legal headhunter recently observed, "Everyone is studying this because everyone is running against the same economic realities. The larger classes of associates are coming up, and there is just not enough room at the top" (Griggs and McNeill 1987-88, p.

67. These figures should not be overinterpreted. Not only is the time interval for the more recent group one year shorter than for the older group, but the findings are equally consistent with lengthening of time to partnership.

68. Contemporary associates have their own "golden age" myth of a time when young lawyers were trained as generalists rather than being pushed early into a specialty, received intensive mentoring, and "could expect to make partner after a certain number of years" if they "performed well and committed no egregious blunders" (Holmes 1988, p. 20).

4). But permanent associates need not be those who failed to make partner. The managing partner at Cravath noted in 1983 that “[w]e now have about 24 what we call ‘permanent associates,’ who almost all were specialists in one sort of work or another. Most, but not all, had been hired laterally with their specialties already in hand.”⁶⁹ After a hiatus of some years, Sullivan & Cromwell resumed the hiring of permanent associates: “Of the sixteen . . . in 1987, nine or ten worked in the area of clearing securities registrations, and others in oil and gas taxes, wills, and litigation” (Lisagor and Lipsius 1988, p. 258).

Firms also have increased the use of personnel who are not eligible to be partners. This is most evident in the increasing delegation of work to paralegals—that is, lower-salaried nonlawyer employees performing routine legal tasks under the supervision of lawyers (R. Simon 1988, p. 1).⁷⁰ The number of paralegals working in law firms increased from 14,000 in 1972 to 32,000 in 1977 to 58,000 in 1982 (Sander and Williams 1989, p. 442 n. 24). Paralegals can be found in law firms of all kinds and sizes, but they have become an important and growing presence at big law firms. In 1980 at the twenty largest firms in New York, there were 23.4 paralegals for every hundred lawyers; by 1987 this had increased to 30.9 paralegals per hundred lawyers—an increase of 32 percent.⁷¹ Outside New York, paralegals were almost as numerous, 20 per hundred lawyers in 1980 and 25.5 per hundred in 1987—a 32 percent increase. In short, the paralegal population of the big-firm world seems to be growing slightly faster than the lawyer population. The presence of paralegals has been growing at the same time that the ratio of associates to partners is increasing, giving firms additional leverage without additional pressure to create partners.

The search for leverage without “the pressure created by regular associates eager to make partner” is also evident in the hiring of associates on a lower-paid nonpartnership track (Orey 1987, p. 20). Programmatic two-tier hiring was initiated by Jones Day in 1984. The second tier was drawn from less prestigious law schools, and the academic performance of these associates was generally lower than that of those on the partnership track. Second-tier associates are paid less (in 1986 starting staff attorneys at Jones Day received \$30,000 per year, as opposed to \$52,000 for starting associates). The presence of these low-paid lawyers enables firms to compete for “low

69. As noted, the up or out norm had rarely been applied with absolute rigor. A Davis Polk partner observed that the new senior attorney program “just regularized what’s been the fact for some time in the past” (Graham 1983, p. 3).

70. As Simon points out, definitional problems abound.

71. This is drawn from analysis of our *National Law Journal* “Two Twenties” Data Set.

end price sensitive business,” including routine work that might have been done in-house by corporate law departments (Orey 1987). A 1988 survey found that twenty-three of the five hundred largest law firms had added “staff attorney” positions outside the partnership track during the preceding year (Nelson 1989, p. 14).

Another device for enlarging capacity without engaging new associates is the use of “temporary” lawyers. These “legal temps” are not employees of the firm, but are supplied by agencies who screen and certify them. Use of temporaries enables firms to respond to fluctuations in demand (often but not always, in connection with litigation) without the increase in overhead to accommodate additional regular employees. Such jobs attract lawyers who wish to work part time or irregularly. Temporaries are used frequently by smaller firms to enable them to handle more business without expanding, but they are another tool for big firms to enlarge capacity without adding to the partner/associate core. The first legal temp agency opened in 1983; in 1988 there were about a dozen agencies that, between them, operated in about as many jurisdictions (Labaton 1988, p. 26; Berkman 1988, p. 24; Mansnerus 1988, p. B-10).⁷² Instead of bringing temporaries in, excess work can be sent out to “satellite firms.” And other services, such as “litigation support” can be purchased from outside suppliers,⁷³ enabling firms to achieve enlarged capacity without bringing additional lawyers into the partner/associate core of the firm.

In these ways the classic big-firm notion of “promotion to partnership”—that all the lawyers were potentially members of a fraternity of peers—is attenuated. But if all lawyers are no longer potential peers, some nonlawyers are being invited into the core of the firm’s operations. We have noted the drive to cover more specialties and more locations. The movement to build on successful relations with clients to sell them new kinds of services is not limited to legal services. Since legal services are often consumed in conjunction with other services, some firms have adopted strategies of hiring non-lawyer professionals. “Firms have brought in engineers, teachers, lobbyists, regulatory economists, banking regulators, nurses, doctors, and business managers (MBAs) to help provide client services” (Haserot 1987, p. 16;

72. The New York City Bar Association’s reproach of these agencies’ percentage fees as violating the ban on fee-splitting chilled the business there, engendered heated protest, and was withdrawn (Mansnerus 1989, p. 19).

73. These include not only computerized document retrieval but can extend to “taking over case management, tracing the whereabouts of defendants and witnesses, writing briefs and researching issues, providing expert witnesses and making visual presentations for trial” (Middleton 1984, pp. 1, 26).

Lauter 1984, p. 1). Other firms have established coordinate "nonlegal" businesses (investment advice, economic consulting, real estate development, consulting on personnel management, marketing newsletters, etc.) (Stille 1985, p. 1; Saltonstall and Lane 1988, p. 25; Siconolfi 1985, p. 33; Marcus 1986, p. A-1; Silas 1986, p. 17; Lewin 1987, p. 25). A lawyer whose firm branched out into office support services said that acquisition of this business was "like a company that makes peanut butter buying a company that makes peanut butter jars" (Stille 1985, p. 22). Others project a grander vision of the evolution of law firms into diversified knowledge conglomerates: "If the railroads had asked themselves what business they were in and had answered 'Transportation,' they might be in the airline business [today]. . . . We realized we were in the business of selling knowledge, whether we were advising legal clients, giving seminars, doing investment banking, making video tapes, or publishing newsletters" (Stille 1985, p. 20).

A partner at Arnold & Porter, which has established three consulting subsidiaries, anticipates that

by the end of the century . . . large firms will become immensely more diversified in the services they offer. They will become more oriented toward problem-solving than traditional law firms, assemble teams of experts—lawyers and non-lawyers—and offer their clients "one stop shopping." . . . By the end of the century, legal services will be provided broadly in the context of a diversified service firm that will draw upon the talents of many disciplines with financial, economic and scientific resources available within a single institution. [Fitzpatrick 1989, p. 465]

In the meantime it is clear that the notion of the law firm as an exclusive and specialized repository of distinctively legal knowledge and skills has been loosened, if not abandoned.⁷⁴

As the firm copes with the exigencies of its new competitive environment, the situation of the junior lawyer is more precarious and more pressured, although it is also more lucrative. But the partnership core is even more affected. Partners are under mounting pressure to maintain a high level of performance—and performance that fits the business strategy of the firm. Many new features of the law firm world such as mergers and lateral movement amplify the power of dominant lawyers within a firm to sanction their errant colleagues—and the prevalent culture endorses such sanctions.

74. The shift in perspective is succinctly put by one general counsel reflecting on the change in the nature of professionalism: "Most lawyers think of themselves first and foremost as lawyers, when in reality, they are a very small part of a much larger profession or industry. That industry is the industry of information management" (Liggio 1984, p. 106).

So partners worry about having their prerogatives or shares reduced or even being "pushed off the iceberg" or "de-partnerized" (Fisk 1988, p. 50). There are now real possibilities of downward movement. "[W]ith profits being squeezed and competition on the rise," reported one consultant, "many firms can no longer afford to support these [unproductive or disaffected] partners. Firms are trying to 'rehabilitate' these partners, decreasing some partners' incomes and asking others to leave" (Heintz 1983, p. 15). Thus a long-established 87 lawyer Seattle firm recently dismissed eight partners and six associates, on the grounds that "the firings were necessary to increase profitability and keep talented attorneys from being hired away."⁷⁵ The unassailable security of partnership is no longer assured. "Partnership used to be forever, but it is no longer" (Bernstein 1982, p. 100).

As the world of big law firms undergoes these dramatic structural changes, many of its inhabitants experience considerable distress about commercialization, the decline of professionalism, (see, e.g., ABA 1986) and the loss of the distinctiveness of law practice. To some extent this distress about lost virtue is a constant feature of elite law practice. But what distinguishes current worry about commercialism and professionalism from that of a generation ago is that the latter was combined with stable expectations about the large firm as an institution. If the inhabitants of the golden age thought the large firm was already too big,⁷⁶ they harbored few doubts about its durability.

CONCLUSION

For a long time, those who inhabited the world of the big firm could expect that the years to come would not be terribly different from the years just past. But this sense of stability has been shaken.

By choosing the "promotion to partnership tournament" as a form of governance the big firm committed itself to a dynamic of exponential growth. The environment allowing, growth comes in ever-larger increments and eventually changes the character of the firm and, by the conjoint growth of its companions, of the legal world in which it is situated. This is not to say that

75. "Mass Firing in Seattle," *National Law Journal* 1989b, p. 2. Cf. the report that in the early eighties, "[d]issatisfied with the performance of some of its partners, Willkie, Farr and Gallagher of New York has asked about a half dozen to leave" (Bernstein 1982, pp. 84, 100).

76. Smigel reports that in the early 1960s most lawyers in firms of one hundred or more lawyers "feel they have reached or passed their optimum size" (1964, p. 367).

the classic "promotion to partnership" firm is doomed. Undoubtedly many such firms will continue to exist. If it starts small enough and has good luck in obtaining clients, such a firm can have a long run. But the world of legal practice will cease to be dominated exclusively by firms of this type. This is because the most "successful" and enduring (and hence the largest) of these firms are likely to turn into something quite different from the firms of the recent past.

Those who cannot manage exponential growth or who seek to avoid its unattractive accompaniments will devise other institutional forms more to their liking. Some of these will flourish, changing the mix of firms that populate the corporate hemisphere of the legal world in the near future. We anticipate pluralization—both that big firms will be less similar to one another and that some of the work they presently do will be done by firms (or non-firms) that are not big firms at all.

What kind of setting will these successor forms of practice provide for the admired qualities associated with professionalism such as self-governance, independence of judgment, and individualized treatment? There is no reason to believe that the big firm is the only possible vehicle for these qualities. The transformation and displacement of the big law firm is not necessarily a danger to professionalism; indeed it may present an opportunity for new forms of pursuing professionalism.

Looking back, we see the relationship of the big firm to professionalism as ambivalent. Law practice, or at least that part of it that serviced large organizations, departed a century ago from the individual practice format for doing legal work. But it never arrived at the great bureaucratic corporation as a format for practice (on the specter of practice by corporations, see Bristol 1913, p. 590, Dawson 1930, p. 274). Perhaps the promotion to partnership firm should be credited with averting such developments by permitting development of sufficient size to undertake the most large-scale and complex work.⁷⁷ The big firm form carried an inadvertent commitment to exponential growth, but that growth was sufficiently slow to be compatible for a long period with "professional" forms of governance. Law practices never suffered the separation of ownership from control. Compared to other business services, law remained relatively unconcentrated, decentralized and un-bureaucratic. As the big firm becomes a less congenial vehicle, lawyers confront new challenges to use their institution-shaping skills to reorganize the formats of professional work to make it produce the services and protections desired by the society while making it fulfilling for those who do the work.

77. Apparently the big firm enjoyed some comparative advantage over internal law departments within corporations (Pinansky 1986-87).