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Smart Growth: The Large Law Firm in the Twenty-First Century

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SMART GROWTH: THE LARGE LAW FIRM IN THE TWENTY-FIRST CENTURY

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INTRODUCTION

The large law firm has long been the subject of many a study, due to its elite rank atop the legal profession,[1] its dominant position both in terms of the number of lawyers affiliated with it and its significant share of the national and global market for legal services,[2] and because information about it is relatively accessible.[3] Recent interest in the future of the large firm has been more practical in nature: whereas before the Great Recession, large law firms were systematically growing, hiring one out of every four law school graduates as entry-level associates,[4] the downturn brought stagnation and reduction in the size of large firms and its aftermath ushered in an ongoing period of uncertainty and instability.[5] Are large law firms likely to experience renewed growth domestically and globally? Will they revert back to massive hiring of entry-level attorneys? Or have large law firms entered a new era of decline, even eventual death?[6]

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1. *See generally* Robert L. Nelson, *Of Tournaments and Transformations: Explaining the Growth of Large Law Firms*, 1992 WIS. L. REV. 733 (book review).

2. *See generally* AM. BAR FOUND. & NALP FOUND. FOR LAW CAREER RESEARCH AND EDUC., AFTER THE JD II: SECOND RESULTS FROM A NATIONAL STUDY OF LEGAL CAREERS (2009); Eli Wald, *Foreword: The Great Recession and the Legal Profession*, 78 FORDHAM L. REV. 2051 (2010).

3. In the early 1980s, journals such as the *American Lawyer* began collecting and systematically publishing information about compensation at large law firms. *See* Eli Wald, *Lawyer Mobility and Legal Ethics: Resolving the Tension Between Confidentiality Requirements and Contemporary Lawyers' Career Paths*, 31 J. LEGAL PROF. 199, 258 (2007). In addition, organizations such as the Association for Legal Career Professionals (NALP) regularly gather and publish information about the hiring and promotion patterns of large law firms. *See, e.g.*, *Minorities & Women*, NALP, http://www.nalp.org/minoritieswomen (last visited Apr. 21, 2012).

4. Aric Press, *Annual Survey Shows the New Reality of Associate Life*, TEXAS LAW. ONLINE, Aug. 10, 2007.

5. Bernard A. Burk & David McGowan, *Big but Brittle: Economic Perspectives on the Future of the Law Firm in the New Economy*, 2011 COLUM. BUS. L. REV. 1, 29–37; Wald, *supra* note 2, at 2051–52.

6. Larry E. Ribstein, *The Death of Big Law*, 2010 WIS. L. REV. 749.

Notwithstanding the significant scholarly attention the large law firm has received,[7] we know little about its organization, management, and growth patterns, and therefore cannot predict its future. Indeed, because we still do not know why large law firms grow,[8] it is hard to speculate whether they will continue to grow, and if so, how and to what extent.

Leading commentators have bemoaned the lack of sufficient empirical study of the legal profession and its various constituencies.[9] Yet when it comes to the large law firm, the problem may be as much with what we think we know about the large firm as it is with what we do not know.[10] This Article argues that a "standard story of the large law firm" has emerged to explain the growth of the large firm, an account by now so well accepted that it hardly gets challenged or revisited. This standard account, however, fails to adequately describe the actual rich and vibrant world of large law firms. Instead, it only explains a subset of the large law firm universe, the old Wall Street elite firms and their progeny. A key, therefore, to understanding the complex world of large law firms, is to broaden the scope of inquiry and move past the standard account as a one-size-fits-all explanation for the rise and growth of the large firm.

Offering a detailed case study of one Am Law 200 firm, this Article questions some of the basic assumptions and predictions of the standard story, suggesting that large law firms may be able to move from a narrow emphasis on corporate law and the service of large corporate entities to more diversified practice areas and client bases; to transition from an associate-heavy attorney pool to a partner-heavy model; and shift from brittle, organic growth models to smart, strategic alternatives.

I. THE "STANDARD STORY" OF THE LARGE LAW FIRM: LAWYER-CENTRIC GROWTH MODELS

The standard story—often referred to as the "Cravath System," after Paul Cravath of the eponymous law firm, whom many credit with leading the

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7. MARC GALANTER & THOMAS PALAY, TOURNAMENT OF LAWYERS: THE TRANSFORMATION OF THE BIG LAW FIRM (1991); Marc Galanter & William Henderson, *The Elastic Tournament: A Second Transformation of the Big Law Firm*, 60 STAN. L. REV. 1867 (2008); Eli Wald, *The Rise and Fall of the WASP and Jewish Law Firms*, 60 STAN. L. REV. 1803 (2008); David B. Wilkins & G. Mitu Gulati, *Reconceiving the Tournament of Lawyers: Tracking, Seeding, and Information Control in the Internal Labor Markets of Elite Law Firms*, 84 VA. L. REV. 1581 (1998).

8. *See* Burk & McGowan, *supra* note 5, at 6–7 (rejecting various models for large law firm growth, and proposing two new theories to explain growth).

9. *See* Deborah L. Rhode, *The Professional Responsibilities of Professional Schools*, 49 J. LEGAL EDUC. 24 (1999); David B. Wilkins, *The Professional Responsibility of Professional Schools to Study and Teach About the Profession*, 49 J. LEGAL EDUC. 76 (1999).

10. *See* Carole Silver, *What We Don't Know Can Hurt Us: The Need for Empirical Research in Regulating Lawyers and Legal Services in the Global Economy*, 43 AKRON L. REV. 1009, 1016 n.19 (2010) ("This debate [over multijurisdictional practice] is difficult to resolve, in large part, because of the absence of empirical evidence about how the elimination of jurisdictional restrictions would affect law practice in the United States, and the inability to obtain such evidence without authorizing national practice." (quoting ABA CTR. FOR PROF'L RESPONSIBILITY, FINAL REPORT OF COMMISSION ON MULTIJURISDICTIONAL PRACTICE, CLIENT REPRESENTATION IN THE 21ST CENTURY 16 (2002))).

first large U.S. law firm—emerged in vanity press accounts of the founding and growth of elite Wall Street large law firms,[11] and was followed by pioneering work by Erwin Smigel,[12] Jerold Auerbach,[13] and Paul Hoffman.[14] It was cemented in place as the standard account of large law firm growth by Marc Galanter and Thomas Palay's seminal study, *Tournament of Lawyers*, published in 1991.[15]

The "tournament of lawyers" model purports to explain the organization, structure, and growth patterns of large corporate law firms serving large for-profit entity clients. The large law firm emerged in the late nineteenth century to serve the business interests of large entity clients. Experienced lawyers with an excess of cultural and social capital such as skill, expertise, and connections—partners—came together to form law firms that offered an increasingly specialized one-stop shop for entity clients with a focus on business law and transactional work. The firms trained inexperienced lawyers with an excess of labor—associates—and after a probation period either promoted the junior attorneys to partnership or helped them be placed elsewhere.

Such tournament for partnership organization addresses three concerns that partners have about associates: grabbing (for example, usurping the partners' clients and expertise), leaving (quitting after obtaining valuable training and before the firm can capitalize on its investment in training and mentoring), and shirking (putting in the hours but not working as hard or as effectively as possible), by providing associates with incentives to avoid such opportunistic behavior.[16] The years-long probation period limits associates' access to the partners' human capital early on in their tenure with the firm, reducing grabbing opportunities. The deferred compensation

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11. *See, e.g.*, LINCOLN CAPLAN, SKADDEN: POWER, MONEY, AND THE RISE OF A LEGAL EMPIRE (1993); NANCY LISAGOR & FRANK LIPSIUS, A LAW UNTO ITSELF: THE UNTOLD STORY OF THE LAW FIRM SULLIVAN & CROMWELL (1988); ROBERT T. SWAINE, THE CRAVATH FIRM AND ITS PREDECESSORS 1819–1947 (1948). Some law firms feature autobiographies or biographies of a founding or influential partner in their history and growth. *See, e.g.*, ARTHUR L. LIMAN WITH PETER ISRAEL, LAWYER: A LIFE OF COUNSEL AND CONTROVERSY (1998) (Paul, Weiss, Rifkind, Wharton & Garrison); JOSEPH M. PROSKAUER, A SEGMENT OF MY TIMES (1950).

12. ERWIN O. SMIGEL, THE WALL STREET LAWYER: PROFESSIONAL ORGANIZATION MAN? (1964).

13. JEROLD S. AUERBACH, UNEQUAL JUSTICE: LAWYERS AND SOCIAL CHANGE IN MODERN AMERICA (1976).

14. PAUL HOFFMAN, LIONS IN THE STREET: THE INSIDE STORY OF THE GREAT WALL STREET LAW FIRMS (1973).

15. GALANTER & PALAY, *supra* note 7; *see also* Wilkins & Gulati, *supra* note 7. This is not to belittle the contributions of early pioneers of empirical study of the profession, *see, e.g.*, JEROME E. CARLIN, LAWYERS' ETHICS: A SURVEY OF THE NEW YORK CITY BAR (1966); JOHN P. HEINZ & EDWARD O. LAUMANN, CHICAGO LAWYERS: THE SOCIAL STRUCTURE OF THE BAR (1982); DONALD D. LANDON, COUNTRY LAWYERS: THE IMPACT OF CONTEXT ON PROFESSIONAL PRACTICE (1990); or of scholars who examined the large law firm, *see, e.g.*, ROBERT L. NELSON, PARTNERS WITH POWER: THE SOCIAL TRANSFORMATION OF THE LARGE LAW FIRM (1988).

16. *See* Ronald J. Gilson & Robert H. Mnookin, *Sharing Among the Human Capitalists: An Economic Inquiry into the Corporate Law Firm and How Partners Split Profits*, 37 STAN. L. REV. 313, 330–39 (1985).

scheme whereby associates' income increases significantly upon promotion decreases their incentive to leave. And the tournament competition for the ultimate prize, making partner, provides a strong disincentive to shirk. At the same time, the tournament organization provides associates with two important reassurances. Partners have an incentive to deliver on the promise of sharing their human capital and training associates well, because failure to do so deprives the firm of developing a strong pool of future partners. Next, in return for their labor contribution to the firm, associates are compensated handsomely with both high pay and elevated professional status.[17]

Under the model, each partner mentors and supervises several associates pursuant to a partner-to-associate ratio that ensures profit maximizing and efficient utilization of partners' social and cultural capital vis-à-vis associates' labor.[18] Over time, as new partners are continuously elected and begin to mentor new generations of associates, the model yields two important consequences. First, the tournament theory results in an associate-heavy, pyramid shaped organizational structure, in which associates outnumber partners pursuant to the firm's partner-to-associate ratio. Second, the model features an internal growth engine: the tournament theory results in a continuous gradual expansion in the number of partners, and correspondingly, a continuous increase in the number of associates. The end result is exponential growth within the firm—in sheer size, in number of offices, in profits, and in geographical reach.[19]

In turn, the emphasis on large corporate clients explains both the demand and supply sides of the model: on the demand side, large corporate entities became the target of significant and complex bodies of regulation, and their own growth led to an increased demand for their legal services.[20] On the supply side, provision of transactional and litigation legal services to large corporate clients in part explains the structure of large corporate law firms. Large corporate clients tend to be involved in significant transactions and complex litigations, and have routine standard needs such as quarterly filings, and corporate minutes that regularly create "paperwork" for the large law firm's associate-heavy base. Thus, the practice realities of large corporate law firms, catering primarily to large corporate clients, tend to comport with the prediction of the tournament of lawyers model by

17. *Id.* at 322–29; *see also* GALANTER & PALAY, *supra* note 7; Wilkins & Gulati, *supra* note 7.

18. Studying means of legitimizing power and authority, Bourdieu has identified three forms of symbolic capital: economic capital (money and property), social capital (social networks), and cultural capital (cultural competence). Pierre Bourdieu, *The Forms of Capital*, *in* HANDBOOK OF THEORY AND RESEARCH FOR THE SOCIOLOGY OF EDUCATION 241–58 (John G. Richardson ed., 1986). See Fiona M. Kay, *The Social Significance of the World's First Women Lawyers*, 45 OSGOODE HALL L.J. 397, 419–20 (2007) (book review), for a discussion of the expanding use of the Bourdieusian approach in studies of contemporary law practice.

19. *See generally* GALANTER & PALAY, *supra* note 7.

20. *Id.*; Wald, *supra* note 7.

following a pyramid structure and relying on a broad base of associates to support a profit-maximizing partner-to-associate ratio.[21]

One way to understand the internal growth engine of large law firms is as a mechanism of organic growth, that is, growth on the supply side that depends on and follows increased client demand for corporate legal services. The internal growth engine aspect of the standard story, however, tends to obscure the model's essential assumption regarding increased client demand, without which large law firm growth cannot continue to take place. Indeed, the internal growth engine implicitly minimizes the role of clients in explaining law firms' growth by making clients, and their demand for legal services, a necessary background assumption rather than an integral part of the story. In the context of the tournament theory, the internal growth engine takes a life of its own, independent of client demand, suggesting that by virtue of organizing as tournaments of lawyers, large law firms must grow quickly. In this sense, the growth aspect of the standard story constitutes an instance of lawyer exceptionalism: it focuses so intently on lawyers and their organization that it negates the inherent importance of clients to law practice.[22] Yet a law firm growth model that implicitly assumes increased demand and otherwise mostly ignores clients is bound to prove not only lawyer-centric but also incapable of explaining and predicting growth patterns under conditions in which demand for corporate legal services was stagnant or in decline.

To be sure, the body of work that told the standard story was limited in scope—examining the organization, structure, and history of Wall Street's elite law firms and their successor firms, as well as of a small subset of large firms, both on and off Wall Street, which adopted and followed the Cravath system. Moreover, it accounted for the organization and growth of large law firms in a particular era: one in which law firms faced robust demand for legal services from large corporate entities, and in which the relative small size of in-house legal departments precluded entity clients from both closely supervising and managing large law firms' work, and from handling routine paperwork in-house.[23]

In a historical context, conflating and confusing Wall Street's elite with large law firms more generally was an understandable, even excusable mistake: as late as the 1960s and 1970s, Wall Street elite law firms constituted and dominated the world of large law firms. It was only in later years, when the universe of large law firms expanded to include firms from different places and of different molds, that a gap emerged between the Cravath System—which has come to be understood as the standard story of

21. *See* GALANTER & PALAY, *supra* note 7, at 77–120.

22. *See* John P. Heinz et al., *Lawyers for Conservative Causes: Clients, Ideology, and Social Distance*, 37 LAW & SOC'Y REV. 5, 33–34 (2003); Sung Hui Kim, *Lawyer Exceptionalism in the Gatekeeping Wars*, 63 SMU L. REV. 73, 76–77 (2010).

23. *Cf.* Eli Wald, *In-House Myths*, 2012 WIS. L. REV. 407, 413–17.

large law firms more generally—and the actual practice realities of large law firms.[24]

Second-generation literature relaxed some of the model's basic assumptions, exploring phenomena such as a shift from one tournament (among associates competing for a partnership) to a series of tournaments (among non-equity partners competing for equity partnership); a transition from an "up-or-out" probation period to a more elastic, diamond-shaped structure including multiple non-associate, associate, and partnership tracks; the institutionalization and professionalization of law firms; the shifting culture and ideology of the firm; and intentional and implicitly discriminatory hiring and promotion patterns.[25] Nonetheless, the standard story of the large law firm with its constitutive features—emphasis on corporate and transactional work; organization as a tournament or tournaments of lawyers at least in terms of understanding the roles of associates and partners; reliance on an associate-heavy base, and, as new non-partnership elastic tracks were developed, reliance on a non-partner-heavy base; and, most important, expecting and predicting growth focusing on the law firm's internal growth engine—has continued to dominate the scholarship.[26]

In a provocative 2010 article titled *The Death of Big Law*, Larry Ribstein asserted that the firm structure and some limited growth constitute a mechanism of "reputational bonding" that enables partners to minimize agency costs between lawyers and clients.[27] Yet as his title suggests, Ribstein did not believe that reputational bonds can explain the growth of contemporary large law firms and he therefore predicted their eventual decline, of which, to date, there is little evidence. Recently, Bernard Burk and David McGowan maintained that large law firms' organization and growth are explained in part in terms of relational capital, that is, that the firm and its growth serve as internal referral networks for partners with excess human capital, as well as an arena in which they can mine their own capital with the help of worker bee attorneys.[28] Yet even Burk and McGowan's "brittle" model of relational capital concedes the key features of law firms that serve "substantial business organizations," are organized in "essentially two classes of professionals" and feature internal growth.[29]

24. Eli Wald, *The Other Legal Profession and the Orthodox View of the Bar: The Rise of Colorado's Elite Law Firms*, 80 U. COLO. L. REV. 605 (2009).

25. *See, e.g.*, Galanter & Henderson, *supra* note 7; Deborah L. Rhode, *From Platitudes to Priorities: Diversity and Gender Equity in Law Firms*, 24 GEO. J. LEGAL ETHICS 1041 (2011); Eli Wald, *A Primer on Diversity, Discrimination, and Equality in the Legal Profession or Who Is Responsible for Pursuing Diversity and Why*, 24 GEO. J. LEGAL ETHICS 1079 (2011); Wald, *supra* note 7; David B. Wilkins & G. Mitu Gulati, *Why Are There So Few Black Lawyers in Corporate Law Firms? An Institutional Analysis*, 84 CALIF. L. REV. 493 (1996).

26. *See* Galanter & Henderson, *supra* note 7. *But see* Wald, *supra* note 24, at 609–20 (challenging the dominance of the standard story of the legal profession and its large law firms).

27. Ribstein, *supra* note 6, at 753–54.

28. Burk & McGowan, *supra* note 5, at 64–70.

29. *Id.* at 8–10.

As the dust began to settle over the Great Recession, however, a surprisingly rich reality has emerged, one that the standard story of the large law firm, even as revised, cannot explain. Domestically and globally, as predicted by the standard story, some large national and global law firms certainly exist that feature corporate practices governed by tournaments of lawyers, are non-partner heavy and perhaps most striking, appear to grow organically either by promoting associates to the partnership or by mergers with and acquisitions of other law firms.[30] Yet the marketplace also reveals what appear to be alternative models and growth patterns. First, some "large" law firms have opted out and chose to remain, relatively speaking, small. This, of course, is not a per se new development,[31] but it is striking that many of the historically elite large law firms have taken this path,[32] defying the organic growth prediction of the standard story, as well as, increasingly, its expectation of a non-partner-heavy lawyer pool. Second, some national large firms have pursued a limited regional growth model, as opposed to a global one,[33] which the standard story simply cannot explain.

30. As the market for corporate legal services has become increasingly global, the standard story has been deployed to explain the emergence and growth of global law firms. John Flood, *Lawyers as Sanctifiers: The Role of Elite Law Firms in International Business Transactions*, 14 IND. J. GLOBAL LEGAL STUD. 35, 38–44 (2007); Christopher J. Whelan, *The Paradox of Professionalism: Global Law Practice Means Business*, 27 PENN ST. INT'L L. REV. 465, 466 (2008). *But see* Laurence Etherington & Robert Lee, *Ethical Codes and Cultural Context: Ensuring Legal Ethics in the Global Law Firm*, 14 IND. J. GLOBAL LEGAL STUD. 95, 107 (2007) (questioning the applicability of the standard model to non-Anglo-American global law firms).

Baker & McKenzie, for example, grew organically over the years to become one of the world's largest global law firms. *See Firm History*, BAKER & MCKENZIE, http://www.bakermckenzie.com/firmfacts/firmhistory/ (last visited Apr. 21, 2012); *see also* John Flood & Peter D. Lederer, *Becoming a Cosmopolitan Lawyer*, 80 FORDHAM L. REV. 2513 (2012). Bryan Cave, another global giant, followed a similar growth pattern. *See History*, BRYAN CAVE, http://www.bryancave.com/bryancave/history/ (last visited Apr. 21, 2012). DLA Piper, in contrast, grew in recent years as a result of several mergers between American and British law firms. *See Our History*, DLA PIPER, http://www.dlapiper.com/global/about/ourhistory/ (last visited Apr. 21, 2012).

31. Wachtell, Lipton, Rosen & Katz of New York, a leading elite law firm at the top of the Am Law 200 profit-per-partner chart, has long been known as an M&A boutique. *See* Eli Wald, *The Rise of the Jewish Law Firm or Is the Jewish Law Firm Generic?*, 76 UMKC L. REV. 885, 914 (2008).

32. These include firms such as Cravath, Swaine & Moore; Davis Polk & Wardwell; Shearman & Sterling; and Sullivan & Cromwell. Striking but not surprising: as I argue elsewhere, the very elitist conservatism that explained these firms' status also inhibited their growth. Similarly, it is perhaps not surprising that some of the new giants are the old Jewish firms of Skadden, Arps, Slate, Meagher & Flom and Weil, Gotshal & Manges. *See* Wald, *supra* note 7, at 1839–41; Wald, *supra* note 31, at 914–33.

33. *See, e.g.*, Brian Baxter, *Faegre & Benson, Baker & Daniels Say Their Merger Is Officially On*, AM. LAW. (Oct. 12, 2011), *available at* http://www.law.com/jsp/tal/PubArticleFriendlyTAL.jsp?id=1202518842532 (reporting on the merger between Faegre & Benson and Baker & Daniels to create a Minneapolis-Indianapolis regional giant). *Compare Holland & Hart Opens Las Vegas Office*, DENVER BUS. J., Sept. 25, 2006, *available at* 2006 WLNR 16611216, *with Holland & Hart Adds 29 Lawyers in Salt Lake City*, DENVER BUS. J., May 17, 2011, *available at* 2011 WLNR 9830393 (reporting the regional growth of the firm). *See generally* WILLIAM H. HORNBY, THE LAW OUT WEST: HOLLAND & HART 1947–1988 (1989) (describing the background conditions and considerations that informed the regional mode and growth strategy adopted by the firm).

Third, some have followed a smart growth strategy establishing niches in particular subject matters, contradicting the corporate law emphasis of the standard story. Fourth, some large firms have disappeared, electing to merge with growing law firms.[34] These rich practice realities disprove the standard account and its constitutive features. In particular, they establish that the internal growth engine simply does not explain the growth patterns of large law firms in a day and age in which increased client demand for corporate services cannot be taken for granted. New models of organization and theories of growth patterns must be developed to account for the diversity of entities populating the large law firm universe.

As studies of the large law firm have multiplied, critics have argued that scholars ought to pay closer attention to other, less "sexy," often-neglected segments of the profession.[35] The critique is not without merit: as important and interesting as large law firms are, the vast majority of American lawyers do not practice with large firms and are not directly influenced by large law firms' practice realities.[36] Nonetheless, in a meaningful way, the relatively extensive literature on large law firms is too narrow and does not capture the actual richness of large law firm practice realities, domestically and globally. Historically focused (if only implicitly) on the old Wall Street elite, the literature is now centered on the world of the emerging global law firms, neglecting in the process both the majority of large American law firms and their lawyers, and some super-national and international law firms that do not conform to the standard story. To be sure, the study of global law firms is certainly worthwhile. Yet it simply does not cover the entirety, or even the bulk, of the large law firm universe.

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34. *See, e.g.*, Brian Baxter, *Bryan Cave to Combine with Holme Roberts & Owen*, AMLAW DAILY (Dec. 6, 2011, 9:01 AM), http://amlawdaily.typepad.com/amlawdaily/2011/12/bryan-cave-hro.html (reporting on the acquisition of Holme Roberts & Owen, a regional Am Law 200 law firm by Bryan Cave, a global Am Law 200 firm); Ribstein, *supra* note 6, at 813–15.

35. *See, e.g.*, JOEL F. HANDLER, THE LAWYER AND HIS COMMUNITY: THE PRACTICING BAR IN A MIDDLE-SIZED CITY (1967); LANDON, *supra* note 15; AUSTIN SARAT & WILLIAM L.F. FELSTINER, DIVORCE LAWYERS AND THEIR CLIENTS: POWER AND MEANING IN THE LEGAL PROCESS (1995); *see also* David B. Wilkins, *From "Separate Is Inherently Unequal" to "Diversity Is Good for Business": The Rise of Market-Based Diversity Arguments and the Fate of the Black Corporate Bar*, 117 HARV. L. REV. 1548 (2004).

36. CLARA N. CARSON, THE LAWYER STATISTICAL REPORT: THE U.S. LEGAL PROFESSION IN 2000, at 7–9 (2004). Recent empirical undertakings include the *After the JD* project, *see* RONIT DINOVITZER ET AL., NALP FOUND. FOR LAW CAREER RESEARCH & EDUC. & AM. BAR FOUND., AFTER THE JD: FIRST RESULTS OF A NATIONAL STUDY OF LEGAL CAREERS (2004), *available at* http://www.americanbarfoundation.org/uploads/cms/documents/ajd.pdf, and the GLEE project, exploring emerging legal professions in emerging economies, *see Globalization, Lawyers, and Emerging Economies (GLEE)*, PROGRAM ON THE LEGAL PROFESSION, HARV. L. SCH., http://www.law.harvard.edu/programs/plp/pages/glee.php (last visited Apr. 21, 2012); *see also Is the In-House Counsel Movement Going Global? Assessing the Role of Internal Counsel in Emerging Economies*, UNIV. OF WIS. MADISON (Nov. 19, 2011), http://law.wisc.edu/media/item/2-1%20Session%20no.5-%20In-House%20Counsel%20in%20Transnational%20Firms%20and%20Emerging%20Economies.mp4 (video recording of discussion by David B. Wilkins at a Wisconsin Law Review Symposium).

Put differently, the challenge of studying large law firms, domestically and globally, is to be willing to question what we think we know about them. Scholars of large law firms need to set aside the orthodoxy of the standard story. Rather than assuming that a one-size-fits-all tale of corporate law firms—organized as tournaments of lawyers in a non-partner-heavy fashion and featuring organic growth—tells the story of all large law firms, the evidence notwithstanding; or imposing theoretical models on existing firms, their limited explanatory power notwithstanding, researchers need to study the organization and structure of actual large law firms.

To that end, this Article studies the rise of a large Am Law 200 firm that does not follow the standard story of the tournament theory and its internal growth engine prediction.[37] Instead, its story suggests an alternative model, one that relies on practice areas other than corporate law, depends on a client base not dominated by large corporate entities, and that features a partner-heavy, as opposed to an associate-heavy (or as of late, a non-partner-heavy) attorney pool. Most significantly, this case study questions the basic prediction of the standard story with regard to the growth of large law firms. Rather than relying on an internal growth engine to get bigger by organically increasing the number of its partners and rapidly increasing the number of its associates, the firm initially utilized other models of organic growth and subsequently replaced organic growth with "smart" strategic growth models. In our hypercompetitive era in which large law firms can no longer assume and expect continuously increasing demand for their legal services, and therefore cannot rely naïvely on their own internal growth engine, the case study offers a fresh perspective on how large law

37. From March through December 2010, the author conducted thirty semi-structured interviews with current and former Brownstein Hyatt Farber Schreck, LLP partners, as well as partners at other leading Colorado-based large law firms. Professor Wald contacted respondents by snowball sampling. After interviewing the three founding members of the firm, as well as several of the lawyers who joined the firm in its early years, he asked each interviewee for a list of partners at the firm, former partners, or attorneys at other firms who would be the most knowledgeable about the experience of the firm and the environment in which it practiced. Wald contacted the referrals and continued the process.

Snowball sampling can introduce bias into a study in that the sample respondents may not be representative of the universe, but rather of a selected group or network within a universe. These potential biases are always a concern. In this case, the author believes that bias through snowball sampling is less of a concern. The purpose of the present Article is not to generalize to a broad universe, but to explore the experience and growth of BHFS. The focus of the study was BHFS's establishment, client base, growth, and development, as well as its culture and professional ethos. Wald wanted to study the considerations that have shaped and influenced the firm's structure, organization, growth, hiring and promotion procedures, compensation, and future plans. The purposive universe was therefore limited to current and former "partners with power," *see* NELSON, *supra* note 15, such as founding and name partners, managing partners, practice group heads, and rainmakers at the firm, who were likely to be privy to, and exercise influence over, the firm's important decision making processes. The interviews were taped and transcribed verbatim. The respondents were told that their identities would be kept confidential. The interviewees' statements have been lightly edited by the Fordham Law Review for grammatical and stylistic clarity.

In the interest of full disclosure, Professor Wald currently serves as a legal ethics advisor to Brownstein Hyatt Farber Schreck, LLP.

firms can respond, adapt, and succeed in a national, even global, fragmented, and multi-dimensional competitive market for legal services.

II. THE STANDARD STORY TESTED: THE CASE OF BHFS

In 2005, Brownstein Hyatt Farber Schreck, LLP (BHFS), a large Denver-based law firm listed in the Am Law 200, had 109 lawyers and was the fifth largest law firm in Colorado.[38] By 2009, the firm had 213 attorneys, gross revenue of $131,000,000, and an impressive profits-per-partner of $735,000.[39]

A straightforward application of the standard story would assume that BHFS was a corporate law firm, and purport to explain the firm's growth in terms of its internal growth engine, given a profit-maximizing partner-to-associate ratio. Second-generation insights would predict eventual adoption of multiple associate and partnership tracks alongside continued organic growth, including increased lateral hires and mergers with other law firms.

The practice realities at the firm, however, differ quite significantly from some of the assumptions and predictions made by the standard story. To begin with, the firm was not primarily a corporate law firm and its clients were not primarily large corporate entities. Instead, the firm was established as a general service walk-in practice, developed into a commercial real estate boutique, later adding a lobbying arm, and finally became a full-service large law firm. Its initial non-corporate law expertise and client base in turn influenced the structure and growth pattern of the firm. Whereas the standard story predicts that a firm's tournament structure will result in an associate-heavy lawyer pool, BHFS never developed a great appetite for associate labor. In particular, the firm's commercial real estate work did not create a significant need for paperwork, and as a result the firm had little use for armies of associates. Instead, the firm was and still is partner heavy with a relatively low partner-to-associate ratio.[40] That low ratio deprived the firm of having an internal growth engine. As a result, the firm grew gradually, steadily, and linearly, but certainly not exponentially.[41]

Next, as the firm grew in size and reputation and began to compete with non-Colorado large law firms for corporate and litigation work—if only initially for the corporate and litigation work of its real estate clients—its competitive edge was the promise of hands-on involvement of its partners, its lean staffing of assignments with fewer attorneys and, in particular, fewer associates, and its lower hourly rates. This competitive edge was

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38. Wald, *supra* note 24, at 683.

39. *The Second Hundred*, AM. LAW., June 1, 2010, at 111.

40. Interview #4, in Denver, Colo. (Apr. 14, 2010), at 14 ("We have always been partner heavy, we were partner heavy in the '80s . . . [and] '90s and probably still are.").

41. On the loss of corporate work historically done by large law firms to in-house legal departments, see Abram Chayes & Antonia H. Chayes, *Corporate Counsel and the Elite Law Firm*, 37 STAN. L. REV. 277 (1985); Mary C. Daly, *The Cultural, Ethical, and Legal Challenges in Lawyering for a Global Organization: The Role of the General Counsel*, 46 EMORY L.J. 1057 (1997); Robert Eli Rosen, *The Inside Counsel Movement, Professional Judgment and Organizational Representation*, 64 IND. L.J. 479 (1989).

reinforced by its partner-heavy workforce and its ethos of around-the-clock client service, in a day and age where Colorado's largest firms still featured a more relaxed culture.[42] As a result, while the firm was partner heavy and had fewer associates than the tournament of lawyers model would have predicted, it quickly developed a tiered partnership structure, and relied on a rainmaker and worker bee model. In other words, unlike the standard story's account, BHFS's adoption of tiers of partners was not a recent phenomenon designed in the shadow of the Great Recession to allow it to retain and please rainmakers in an increasingly competitive and mobile environment. Rather, it was a structural feature that reflected its different organization, client base, and the nature of legal services provided to clients.

Finally, BHFS did not get bigger by utilizing the internal growth engine predicted by the standard story. The internal growth engine is an example of organic growth in that it follows client demand, if only passively and implicitly.[43] Yet an internal growth engine is certainly not the only means of organic growth based on client needs. Rather than growing passively by increasing the number of its associates and upon promotion of its partners pursuant to the probation period and partner-to-associate ratio of the tournament theory, BHFS grew organically by proactively and laterally adding partners and hiring associates as prescribed by its clients' needs. Importantly, BHFS's growth model, initially organic, quickly turned strategic and "smart." Rather than feature passive reliance on increased client demand and the firm's internal growth engine, BHFS turned to aggressive lateral hiring early on (and later on to strategic mergers); it sought to grow and establish itself in traditional and non-traditional practice areas low in paperwork and high in prestige, with high-end work and cutting-edge expertise. As a result, its growth patterns did not feature explosive growth of its home office, followed by expansion either to other major metropolitan markets in the U.S. or global venues, as anticipated by the standard story. Rather, it expanded as a function of its smart growth model regionally and in select markets.

A. Getting Bigger Without Relying on an Internal Growth Engine: Client-Driven Organic Growth

1. Transition from a Walk-In General Practice to a Real Estate Boutique

The law firm of Brownstein Hyatt & Farber was formed in 1968 by childhood friends and law school buddies Norm Brownstein, Jack Hyatt, and Steve Farber. The trio grew up in West Denver, then a predominantly Jewish, blue-collar neighborhood.[44] Brownstein Hyatt & Farber had a

42. *See* Wald, *supra* note 24, at 620–79.

43. *Supra* note 22 and accompanying text.

44. *See generally* JEANNE E. ABRAMS, HISTORIC JEWISH DENVER (1982) (describing historical Jewish neighborhoods, temples, hospitals, businesses, and other notable sites); JEANNE E. ABRAMS, JEWISH DENVER: 1859–1940 (2007); ALLEN DUPONT BRECK, THE CENTENNIAL HISTORY OF THE JEWS OF COLORADO 1859–1959 (1960); 1 PHIL GOODSTEIN,

modest start. Norm's father, a small business owner, co-signed the lease, and the three rented a small office space at the 350 Capital Life Building, with Norm's mother serving as the firm's first receptionist. Having no prior contacts, networks, or prospective clients, the young firm started as a walk-in general law practice, handling cases that ranged from divorce work to litigation, and from criminal matters to bankruptcy. It relied on casual referrals, for example, from a mentor assigned by the bar association, an established solo litigator with an office next door who had an overflow of clients, and from the legal aid society. A friend of Norm's brother had a collection agency, and after becoming unhappy with his law firm, he began sending the firm significant collection work, which over time led to additional collection work from other entities.

One founding partner described the firm's early client base:

> [W]e opened our door and we had a few clients, we sent out announcements, and called people we knew. I remember one of our first matters was a house closing for a friend of ours. . . . [S]omebody had referred some real estate business . . . [I]f we had an expertise it was doing anything that walked into the door . . . .[45]

Another partner who had a part-time criminal defense practice recalled: "[S]ome of my clients would come into the waiting room and if Norm would see them he would just shiver all over, but when they brought in grocery bags full of cash to pay their bill, it was okay with Norm."[46]

Gradually, the young firm began to develop a reputation for real estate work. The specialization was at first random and then grew organically: following a referral of some real estate business work, a contemporary whose father was a wealthy real estate developer gave the firm additional real estate work. Another friend who was starting a real estate and construction company hired the firm. Then, based on the firm's emerging reputation in the field, a wealthy Jewish businessman, oil man, and banker gave the firm some real estate work. Slowly but surely, the firm developed a reputation as a real estate boutique, representing developers, land speculators, and residential and condominium developers.

The firm's expansion, however, was not merely a matter of coincidence, followed by hard work, organic growth, and increased specialization in real estate work. Rather, the firm began to occupy a niche that had been previously unfulfilled by the established Denver bar. One partner noted: "I could see that the big firms who we [meant] nothing to basically were not interested in real estate; they were interested in business. So it was kind of open . . . ."[47] Another partner observed that "the large firms had real estate groups, but they may not have been as focused on real estate . . . they weren't directly seeking real estate work, as such . . . ."[48]

DENVER IN OUR TIME: A PEOPLE'S HISTORY OF THE MODERN MILE HIGH CITY: BIG MONEY IN THE BIG CITY 7–37 (1999).

45. Interview #12, in Denver, Colo. (May 25, 2010), at 2–3.
46. Interview #2, in Denver, Colo. (Mar. 31, 2010), at 6.
47. Interview #13, in Denver, Colo. (June 1, 2010), at 1.
48. Interview #3, in Denver, Colo. (Apr. 14, 2010), at 16.

The existing large law firms steered clear of representing developers because of their own structure and organization, which demanded representation of large institutional clients who tolerated generous staffing and generated work for associates; as well as the perception of the work for developers as high risk and low in status. Explained one partner,

> if a client went to a large firm to have a real estate deal done, it might have one of its corporate associates or real estate associates working on it and then the standard large firm thing [would happen,] where a young associate drafts a contract, a senior associate reviews it, a partner does the final review and [the] final goes to the client and that takes a few days. If the client came here, they had a contract the next day if they needed it the next day, and somebody at the level of Norm, Jack, or Steve was involved in it.[49]

In other words, the traditional tournament structure of the established Denver bar produced relative delay and resulted in higher fees, which on the one hand did not fit the needs of developer clients, and, on the other hand, explained why the established law firms preferred to represent larger institutional clients, such as lenders.

Another partner added,

> [R]eal estate is kind of boom bust and the larger firms don't tolerate that kind of bust scenario . . . and frankly the larger firms didn't have great real estate practices . . . . [W]e had a culture here that was very, very responsive . . . [w]hereas the larger firms tend to be quite a bit more bureaucratic so that they're just not as responsive and not as seasoned. If you go to New York for a transaction, you'll find that there's a partner that really knows what he's doing, and frankly may have just fabulous skills and expertise, but you're also dealing with a third-year associate that really doesn't and that person has spent a lot of time working on due diligence, understands part of the deal, understands part of the law, maybe has closed a couple of deals, but not very many. Being a smaller firm we were able to compete and the developers were attracted to us because we had great transactional expertise, and we were responsive, and the larger firms just simply weren't that way. We ran into the same thing in the banking area.[50]

The needs of established corporate law firms who followed the traditional Cravath System model of heavily staffing matters with associates and generating higher fees, as well as those firms' disdain for low-status areas such as real estate, created pockets of practice relatively shielded from competition in which smaller firms such as BHFS could grow and establish themselves.[51] In turn, the very nature of BHFS's provision of legal services and its clients' expectations helped determine its organization as a partner-heavy firm.

49. *Id.* at 17.
50. Interview #4, *supra* note 40, at 8–9.
51. On protected pockets of practice, see Wald, *supra* note 7, at 1833–36; Wald, *supra* note 31, at 914–18.

Over time, the firm established a leading reputation as a commercial real estate boutique and began to grow steadily. With Norm increasingly pursuing real estate work, Steve undertaking real estate and corporate work, and Jack assuming responsibility as the firm's manager and doing tax work—and given that the three disliked litigation—the firm needed a litigator to be able to address some of the interests of the firm's real estate clients, for example, in construction litigation. In October of 1972, the firm added two new partners: Ken Robins to its growing real estate practice; and Mark Leonard, its first litigator, a former classmate of the three founders. The firm's sixth lawyer and fourth name partner was John Madden, another contemporary from law school, who had established himself as a prominent litigator.

As dictated by the ebbs and flows of work and the growing needs of clients, the firm grew in modest spurts, from three lawyers to five to six, then ten to twelve, then twenty. The firm's growth pattern was organic: mostly in its booming real estate practice, and as needed, in ancillary areas serving the needs of its real estate clients, such as litigation. Importantly, however, most of this early growth was accomplished by means of lateral recruitment of experienced partners, not by hiring associates. Correspondingly, the firm first added a conference room and a fourth office to its original location at 350 Capital Life Center, then by 1980, moved to a larger space at 1660 Lincoln and, in 1990, moved to its current location occupying several floors in a downtown location.

By the early 1980s, the firm was a well-known real estate boutique in Colorado, representing developers and investors. One partner noted that "if Colorado's established large firms "had a bank, then they knew they had a steady stream of work . . . [W]e never had the substantial amount of our work being on the lending side, it was always more from the development side and the investment side."[52] The partner added that

> most of the deals that I worked on in the '80s had somebody from Holme Roberts[53] on the other side, usually representing the bank . . . . [I]t may have been a difference in that their approach to real estate was from the lender's side, which is very cautious, very analytical, . . . and not taking a view of the upside of a real estate transaction because the lender doesn't get the upside. The lender always has to look at the downside and is going to get stuck with it. Whereas the developer wants to know "how fast can I get this under contract, can I get out of the contract if I need to," the larger firms had a more process-driven way of handling deals, and it might have been because they were usually representing lenders, and it was hard for them to make that transition to the mentality of a developer . . . let alone a speculator.[54]

52. Interview #3, *supra* note 48, at 17–18.

53. Holme Roberts & Owen was, for over a century, one of Colorado's elite law firms. *See* Wald, *supra* note 24, at 651. In late 2011, the firm was acquired by Bryan Cave. *See* Baxter, *supra* note 34.

54. Interview #3, *supra* note 48, at 17.

The firm established a position of dominance in the representation of land developers and investors. Recalled one partner,

> [W]e were going through a period of time where it seemed like whenever there was a major project, we were the firm that was brought into it, and it was a lot of fun to represent those types of projects, it was a great experience. It was like having a thousand and a ten thousand piece puzzle and putting it together and that was kind of the challenge of [the] practice of law . . . .[55]

Another noted that

> [t]he Skyline started to develop and we probably had a piece of every deal that was done in [the] Skyline, from representing the developer, to representing the landowner, to representing . . . the contractor, to representing . . . you name any aspect, we probably had a part in every building that was built from 1975 on.[56]

The growth in the firm's reputation and practice allowed it not only to develop a small ancillary litigation department serving the occasional litigation needs of its real estate clients, but also to organically grow a small corporate department, specializing in cutting-edge financing of commercial real estate transactions. The firm's brand of organic growth, however, differed from the standard story's internal growth engine. Rather than emphasizing lawyers and their numbers, BHFS's organic growth was driven by clients and their needs.

> [D]uring the downturn in the late '80s and early '90s, the way to get retail development done was through public–private partnerships, through Urban Renewal Projects, or some arrangement with the local government . . . . So if a developer came along that [the cities] believed could actually generate sales tax, then they were very interested in whatever they could do to help those projects. . . . So these were . . . great opportunities for me because I learned all about Urban Renewal, a lot about municipal law, a lot about bond financing . . . .[57]

That partner also recalled, "[W]e developed a lot of work later in the '80s with savings and loans companies doing their major loans . . . and this was through connections with people in the junk bond industry."[58] A third partner noted, "[We] were working on the legislation that formed . . . the RTC [Resolution Trust Corporation] and that was going to affect these savings and loans clients . . . ."[59]

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55. Interview #12, *supra* note 45, at 4. "[T]he real estate market in Denver was . . . it was really the go-go years in the early '80s; every piece of property downtown seemed like it passed through our office . . . ." Interview #3, *supra* note 48, at 4.

56. Interview #13, *supra* note 47, at 2.

57. Interview #3, *supra* note 48, at 12.

58. *Id.* at 9–10.

59. *Id.* at 11. Similarly, Interviewee #4 described in detail how financing of real estate transactions evolved: from variable rates to secondary mortgage market transactions and pooling of mortgages, low-income housing bonds, public finance, asset securitization, mortgage warehousing, real estate syndication, real estate investment trusts, private equity. Interview #4, *supra* note 40, at 2–5.

By the first decade of the twenty-first century, the firm had a real estate department of over sixty attorneys, and was a leading real estate presence locally and regionally. Moreover, as the end result of its organic growth, it was no longer primarily representing local developers.

> [O]ur practice is at a level of sophistication and pricing that is much harder for your local entrepreneurial developer. . . . [W]e got ourselves situated whether we wanted to or not, to be able to handle these very large portfolio transactions whether it was a refinancing or an acquisition, that's how real estate was getting done from about 2002 to 2008, it was mega transactions. . . . [S]o we need to maintain, we want to maintain our relationships with local developers, but they're not going to own it, and they're probably not going to control the project . . . .[60]

2. Expansion from a Real Estate Boutique to Lobbying, Government Relations, and Power Brokering

BHFS features one of the nation's most influential and profitable lobbying practices, and its leaders are considered powerful political actors both locally and nationally. A typical 1998 article listing the most powerful people in Denver, Colorado, listed Steve Farber at number one, followed by Denver's Mayor, Colorado's Governor, and Norm Brownstein at number four.[61] In another article Norm Brownstein was called the "101st Senator."[62] At the firm level, BHFS was ranked ninth on the *Influence 50 Top Law Firms* list in 2009,[63] and was the fifth-largest lobbying firm in Washington, D.C. in 2009.[64]

Yet the firm's early venture into lobbying and politics was a modest one, following the familiar path of happenstance, hard work, and diligent pursuit of opportunity that explained its growth as a real estate firm. Norm and Steve had an interest in local and national politics that initially had little to do with their law practice. Some of the early interest was quite literally coincidental and personal, as opposed to strategic and professional. One partner at the firm recalled that "Norm got a very big interest in Tim [Wirth],[65] he went to some meetings and he came back to us and he said,

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60. Interview #3, *supra* note 48, at 22–24.

61. Daniel Brogan, *The Players*, 5280: DENVER MAG., Apr.–May 1998, at 42, 44.

62. Patrick Doyle, Maximillian Potter & Luc Hatlestad, *The 5280 Fifty*, 5280: DENVER MAG., Jan. 2010, *available at* http://www.5280.com/magazine/2010/01/5280-fifty ("Brownstein's ability to galvanize funding for virtually anything, from DIA to Stapleton, is so legendary on Capitol Hill that Ted Kennedy once called him 'the 101st senator.'").

63. To qualify for the *Influence 50*, law firms must have reported at least $2 million in Lobbying Disclosure Act fees and had at least $7 million in overall lobbying revenue. *See The Influence 50*, NAT'L L.J., Apr. 5, 2010, at 23.

64. Aldo Svaldi, *Denver Law Firm Brownstein Hyatt Surges to Fifth in Lobbying Revenues*, DENVER POST, June 13, 2010, at 1K, *available at* http://www.denverpost.com/search/ci_15282169.

65. Timothy Endicott Wirth is a former U.S. Senator from Colorado. Wirth, a Democrat, was a member of the House from 1975 to 1987 and was elected to the Senate in 1986, serving one term there before stepping down. *See Wirth, Timothy E.*, BIOGRAPHICAL DIRECTORY U.S. CONGRESS, http://bioguide.congress.gov/scripts/biodisplay.pl?index=W000647 (last visited Apr. 21, 2012).

'oh, this Tim [Wirth] is the greatest and I want to get involved' and fine, we encouraged that."[66] Another partner recalled that when there were

> maybe only five or six [attorneys] in the firm, . . . my friend Hal [Haddon] agreed to be Gary Hart's campaign manager,[67] and Hal called me and said, "Do you suppose you can get me a meeting with your firm to see if I could get them on board to support Gary Hart," and I said, "I'll try." . . . [S]o Norm and Steve were there, I was there, I don't remember if Jack was there or not, but I believe he was—he would have been too afraid that we were going to give away money not to be there—but so Gary Hart comes over and this is his first senatorial campaign [in 1974], . . . and I remember Norm saying, "What the hell can you do for us?"[68]

Other early political connections were personal in nature and stemmed from some lawyers' interest in, and commitment to, the state of Israel.

> [W]e got involved in politics—and it was really not part of our practice—with Hank Brown [pledge brother of Steve and Norm in college] running for Congress, state house and then Congress, and the U.S. Senate, and also on the Democratic side Tim [Wirth] running for Congress, and then U.S. Senate, and we met a lot of the people that they knew in Washington—from Al Gore to John Kerry—and it so happens we just talked to these people primarily over the issues of the U.S.–Israel relationship, and I don't even remember lobbying any of the people I just mentioned on behalf of clients.[69]

Over time, the firm and its lawyers built on these relationships and have become influential in local and national politics. One partner recalled,

> [Roy] Romer was running for governor and had asked me to chair his campaign, and so I became his campaign chair for three terms . . . . [W]e had also helped Federico Peña in his run for mayor . . . . [W]e weren't doing it for business, necessarily, we were doing it because of how important we thought good leadership was to Denver evolving into a world class city in Colorado, evolving into the [place] where our children and our grandchildren would want to live,[70]

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66. Interview #10, in Denver, Colo. (May 12, 2010), at 4–5.

67. *Harold A. Haddon*, HADDON MORGAN FOREMAN, http://www.hmflaw.com/attorney-harold-haddon.html (last visited Apr. 21, 2012). Gary Hart, a politician and lawyer, served as a U.S. Senator from Colorado between 1975 and 1987. He ran in the presidential primaries in 1988, and was considered a frontrunner for the Democratic nomination until reports of an extramarital affair derailed his candidacy. *See Hart, Gary Warren*, BIOGRAPHICAL DIRECTORY U.S. CONGRESS, http://bioguide.congress.gov/scripts/biodisplay.pl?index=H000287 (last visited Apr. 21, 2012); *see also* GARY HART, THE THUNDER AND THE SUNSHINE: FOUR SEASONS IN A BURNISHED LIFE 97–161 (2010).

68. Interview #2, *supra* note 46, at 29.

69. Interview #12, *supra* note 45, at 3. George Hanks "Hank" Brown, a politician and lawyer, served as a Republican U.S. Senator from Colorado between 1991 and 1997. *See Brown, George Hanks (Hank)*, BIOGRAPHICAL DIRECTORY U.S. CONGRESS, http://bioguide.congress.gov/scripts/biodisplay.pl?index=B000919 (last visited Apr. 21, 2012). Brown joined the law firm of BHFS as a partner in 2008.

70. Interview #12, *supra* note 45, at 4. Roy R. Romer, a politician and lawyer, was the thirty-ninth Governor of Colorado. *Biography of Governor Roy Romer*, COLO. ST. ARCHIVES (June 18, 2003), http://www.colorado.gov/dpa/doit/archives/romer/govbio.htm. Federico

adding,

> The community was very good to us, and early on we always thought that it was necessary to become part of the community, again not necessarily [because] it was going to enhance our practice, but it was going to enhance us as people and it was going to make us feel a part of the community, and secondarily and indirectly make us unbelievable contacts . . . .[71]

Over time, however, the firm's lawyers realized that political connections and relationships might allow them to more effectively serve their clients' interests within the bounds of the law. One partner described the connection between political relationships, lobbying, and traditional law practice:

> [T]here were times where if we couldn't get the intended result for a client through negotiations, contract work, maybe through litigation, that there might also be a legislative solution, and from what I saw, we were probably one of the few firms that did that, and offered that to our clients, and I think that it set us [apart,] hopefully in a positive way [such] that we could reach solutions for our clients in ways that other law firms didn't . . . .[72]

Another partner vividly described the inherent ties between a real estate practice on behalf of developers and a government relations practice:

> [A]s a land speculator, [a client] bought up a lot of land on what was to be [highway] C470 and the Governor, then Dick Lamb, killed the highway project. I think that made the client and Norm Brownstein acutely aware that . . . when you're doing business deals, and particularly real estate business deals, you can't ignore the political side of what's going on. Obviously we knew that in the zoning context, because there was plenty of politics there, but to have a huge project like a beltway basically killed for probably 10 years . . . by an executive decision of the Governor kind of brought home that you had to be more aware of other political forces. I think that's when the firm started to pay more attention to state politics and national politics too, because these large projects require federal funds, and there [are] a lot of national figures that get involved in any kind of business that you're representing.[73]

Lobbying, as practiced by the firm, created synergies to all parties involved, private and public, allowing the firm to generate value not only for its clients but also for the community.[74] Explained one partner:

> [A] lot of what I did personally was [to bring] the political leadership and the business leadership together to work on public opinion, and ultimately

Fabian Peña, a politician and lawyer, was elected Mayor of Denver in 1983. Peña subsequently served as U.S. Secretary of Transportation and Secretary of Energy. *See* Matthew L. Wald, *Same Predicament, Different Agency: Federico Fabian Pena*, N.Y. TIMES, Dec. 21, 1996, at A11.

71. Interview #12, *supra* note 45, at 6.

72. *Id.* at 5.

73. Interview #3, *supra* note 48, at 6.

74. *See* Ronald J. Gilson, *Value Creation by Business Lawyers: Legal Skills and Asset Pricing*, 94 YALE L.J. 239 (1984).

> see to the execution of these projects. None of them would have happened but for [our ability to create] a win–win atmosphere where government walked away and said "this is great for government," and the business community walked away and said, "It's great for the business community."[75]

Gradually, the firm began to leverage these relationships nationally. The same partner recalled,

> We did have one client walk in at one time [with] an issue in Washington, D.C., we looked at each other and thought . . . we might as well attempt to see if we could help, and we were very successful, and we decided that we would start lobbying on behalf of a few clients in Denver . . . .[76]

Of course, as documented by generations of Realist and subsequently Critical scholars, law and politics have always been closely, intimately, and inherently linked.[77] Large Wall Street law firms rose representing "captains of industry,"[78] while benefiting from close social and cultural ties to the dominant power elites in the economy and political lives.[79] In Colorado, a web of nepotism and political connections linked elite law firms to the political establishment, and explained the rise of some large law firms to the top of the Colorado legal profession.[80] The phenomenon, to be sure, was a common one.[81]

What was unique about BHFS's emerging lobbying practice, therefore, was not its reliance and utilization of the relationship between law and politics. Rather, it was the overt manner in which it practiced law and politics, contradicting and shuttering the myth of the strict separation between law and politics. Lawyers had always taken great care to pretend

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75. Interview #12, *supra* note 45, at 5. Similarly, one interviewee recalled receiving a phone call from the

> Governor's office [in which he was told,] "We're going to invite in all the [venture capitalists] and we're going to invite in all the wealthy people, we're going to get 50 key business people, and we're going to have two lawyers there, [and] we'd like you to be one of them because we want to see [what] we as government can do to help wealthy business."

Id. at 13.

76. *Id.* at 3–4.

77. *See generally* MARK KELMAN, A GUIDE TO CRITICAL LEGAL STUDIES (1987).

78. GALANTER & PALAY, *supra* note 7, at 16 (quoting THERON GEORGE STRONG, LANDMARKS OF A LAWYER'S LIFETIME 378 (1914)).

79. E. DIGBY BALTZELL, THE PROTESTANT ESTABLISHMENT: ARISTOCRACY & CASTE IN AMERICA (1964); RICHARD BROOKHISER, THE WAY OF THE WASP: HOW IT MADE AMERICA AND HOW IT CAN SAVE IT, SO TO SPEAK (1991); Wald, *supra* note 7, at 1810–25. The very definition of elite large law firm lawyers embedded a role for lawyers that included a significant public role. Indeed, a large body of literature laments the very decline of the role of lawyers as public citizens and civic leaders. *E.g.*, MARY ANN GLENDON, A NATION UNDER LAWYERS: HOW THE CRISIS IN THE LEGAL PROFESSION IS TRANSFORMING AMERICAN SOCIETY (1994); ANTHONY T. KRONMAN, THE LOST LAWYER: FAILING IDEALS OF THE LEGAL PROFESSION (1993); Russell G. Pearce & Eli Wald, *The Obligation of Lawyers to Heal Civic Culture: Confronting the Ordeal of Incivility in the Practice of Law*, 34 U. ARK. LITTLE ROCK L. REV. 1, 25–39 (2011).

80. *See generally* Wald, *supra* note 24.

81. *See* Wald, *supra* note 7. *See generally* BALTZELL, *supra* note 79; BROOKHISER, *supra* note 79.

they were not intimately linked. Thus, lawyers taking public office at least formally severed their ties to their law firms, and prominent practicing lawyers engaged in political power brokering behind the scenes and outside of their law offices, often in country clubs.[82] As described by another partner at the firm, "[P]olitics was always going on with law firms in Denver, but it was at the Denver Country Club or Cherry Hills Country Club or behind closed doors at [Holland &] Hart or [Davis Graham], etc. and what [we] did differently was to bring it out in the open."[83]

The firm's emerging reputation and subsequent growth began to attract the attention of Colorado's established elite firms. Recalled one partner,

> [T]hey kept telling all of the[ir] clients that we were just [a] political firm, and that was the pitch that other law firms were telling our people. . . [W]e [had] played a role in politics in Colorado since the early 1980s—both state and local not to say national—but [other firms] were just saying, "These guys are political guys; if you need something political that's when you should go to them." That offended Farber and [me] because we were a lot more than political, but we just went on; we didn't give it a second thought. By the 1990s they . . . were still saying this, but we were getting more than our share of business in Colorado and supplementing it with national business that nobody had, and therefore we didn't have any of the downside that happened over those 30 years.[84]

Another partner explained the role lobbying and government relations practice play vis-à-vis traditional law practice:

> [T]here's a little bit of a misconception about lobbying, the type of lobbying we do. It's principally [for] corporations [that] want a particular thing changed in the Bankruptcy Code or a particular piece of proposed tax legislation that they want to get modified . . . it's not a Democratic ACLU Planned Parenthood position versus a Focus on the Family position. [I]t's a business issue . . . [P]eople's historical political affiliation by which you sometimes gauge their level of social liberalism and conservatism, that aspect of that doesn't even come into play when you're representing the client, . . . when it comes down to just doing the business for the bulk of the clients, it's not hard. We don't do lobbying for social interest groups by [and] large so it isn't as big of an issue as the people outside of the firm might think it would be.[85]

He added that

> lots of people in the business world love to hear what they think is inside gossip in Washington. So it is great to take Norm or Steve with you on a pitch to a client, and suddenly they get a phone call and it's Senator so-and-so's office wanting to talk . . . .[86]

82. Wald, *supra* note 24, at 642–53; Wald, *supra* note 7, at 1831.

83. Interview #2, *supra* note 46, at 29. Holland & Hart and Davis, Graham & Stubbs are two of Colorado's well-established elite law firms. *See* Wald, *supra* note 24, at 646–48, 669–71, 682–83.

84. Interview #13, *supra* note 47, at 4–5.

85. Interview #20, in Denver, Colo. (June 16, 2010), at 29–30.

86. *Id.* at 34.

3. Informal Formation of Practice Groups

As the firm grew and transformed, first from a walk-in general law practice to a real estate boutique representing developers and investors, then adding a government relations practice, it began to capitalize and build on the expanding needs of its real estate clients to establish additional practice groups such as litigation and corporate law.

Recalled one partner, "[W]hen I came in, I was the litigation department . . . [handling] anything that came in with regard to litigation . . . . I did just about everything that walked in the door."[87] That attorney had a background in criminal law. Describing the gradual process by which his practice moved away from criminal defense and grew to serve the needs of the firm's real estate clients, the partner noted:

> [I]f you're not in the business of criminal law and if you start to get out of it, it's hard to stay in it. So that business dwindled over the years, and I became much more of a civil litigator, but I did everything that came in. I did securities litigation, construction litigation, divorces, workouts.[88]

The same attorney further described his first case litigating on behalf of a real estate client:

> I remember one night, 2:00 in the morning, the phone rings [and] its [another partner at the firm], he's completely freaked out, and he said "I've got this big construction case, . . . [the] trial [is] coming up and I can't do it, I'm overwhelmed . . . can you help me" and I said "sure." So the next morning, I wasn't helping him[, rather,] he gave me the case and that was my first big construction case.[89]

This major construction litigation led to additional cases representing the firm's real estate clients, but, the litigator noted, "[E]ventually I got help because the litigation got out of hand, [and I] couldn't do it all."[90] Adding to its litigation practice, the firm hired its sixth lawyer, John Madden, a litigator from the U.S. Attorney's Office, because the firm was "getting more and more good-sized litigation, [including] a lot of construction litigation."[91]

Organic growth thus led to the gradual and informal development of an ancillary litigation department, fueled in part by the firm's founding lawyers' relative lack of interest in litigation. The firm laterally hired a seasoned litigator, and then another, and the litigation department was thus established.

The departmentalization of the firm was gradual and informal, organically driven by the growing needs of clients and the desire of the firm to service the non-real estate needs of its real estate clients, rather than refer the work to competing firms. Explained one partner,

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87. Interview #2, *supra* note 46, at 6.
88. *Id.*
89. *Id.* at 6–7.
90. *Id.* at 7–8.
91. *Id.* at 7.

> [Y]ou tried to find other counsel with those specialties who were in firms that didn't really compete with us, they were strictly water firms or whatever, and could really provide good advice to the client. So I think being able to do all of those things in-house is particularly helpful.[92]

That partner revealingly described some of the consequences of organic departmentalization, noting:

> [I]t brought home to me the difference between working in real estate in our firm and in a big firm, because when I worked on real estate deals those first three years, if the client was forming a partnership, I did the partnership agreement, if they were forming a corporation, I did all the corporate documents. You did everything that was ancillary to the transaction. When [a lateral hire] came in from [an established Denver firm] she was very well trained on real estate documents and the finance side, but she'd never done a partnership, a joint venture agreement, corporate documents, any of that, and she said, "Well the corporate people did those." So that kind of made me realize that not being departmentalized gave me a broader experience than you had in a large firm . . . .[93]

B. Getting Bigger While Remaining Leaner: A Client-Driven, Partner-Heavy Model

The standard story of the large law firm is lawyer-centric in the sense that it purports to account for law firm growth by reference to the firm's organization as a tournament of lawyers, which in turn explains its associate-heavy structure as well as its exponential growth. BHFS's early growth suggests a different story, shifting the emphasis from the supply side of lawyers to the demand side of clients. The firm's tale implies a client-centered growth model whereby the firm's growth is a function of organic service of client needs and, in the case of BHFS, a partner-heavy structure accompanied by lean staffing.

1. A Partner-Heavy Model

Contrary to the tournament theory prediction, BHFS has always been partner heavy and did not resort to recruiting and training cohorts of associates based on a partner-to-associate ratio. In contrast, the firm first grew by adding partners, not associates, and subsequently by recruiting partners laterally and hiring only a relatively small number of associates, many of whom were then made partners. One partner explained:

> I think a lot of our reputation in real estate was built on the fact that the most experienced people were working on the deals, [the deals] weren't delegated to somebody who didn't have experience, and things got done on time . . . . [W]e had a reputation for doing things in a timely fashion . . . and for not layering three or four lawyers reviewing

92. Interview #3, *supra* note 48, at 27.
93. *Id.* at 18–19.

> everything. The client knew who was doing their work and was dealing directly with the people who were doing their work . . . .[94]

The firm thus followed a partner-heavy model, staffing deals leanly, with its top partners assuming primary responsibility for many of the transactions and working with only a handful, or often only one additional junior person, and sometimes a partner rather than an associate.

Recent literature on large law firms emphasizes client displeasure with the so-called standard staffing patterns of large firms. Clients reportedly refuse to pay for first-year associates, both because they resent being billed for what they perceive to be the training costs of junior associates, and because their needs demand the attention and actual work of senior firm partners.[95] The scholarship suggests that such developments strain the ability of large law firms to train and mentor junior associates, and questions the ability of large law firms to adapt to these supposed new realities.[96]

The experience of BHFS, however, questions the insights of the literature. Contrary to the assumptions of the standard story, some law firms, BHFS included, have always utilized a partner-heavy model, ensuring the actual participation of their most senior partners in the transactions handled by the firm. Moreover, the experience of the firm suggests that large law firms can grow by hiring significantly fewer associates, retaining and promoting a higher percentage of them, and training them effectively even under leaner staffing constraints. It further implies that a partner-heavy model may not be a temporary adjustment made by large law firms after the Great Recession, in acknowledgment of the increased power of entity clients and their in-house legal departments. Rather, partner-heavy lean staffing may be a viable long-term model of competing for and retaining clients' business.

2. "Hands-on Partners" Model

A second theme developed by the literature is the increasingly more competitive, even hyper-competitive ideology and culture of large law firms. To be sure, large law firm lawyers have always worked very hard.[97]

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94. *Id.* at 14–15.

95. David B. Wilkins, *Team of Rivals? Toward a New Model of the Corporate Attorney-Client Relationship*, 78 FORDHAM L. REV. 2067, 2108 & n.168 (2010).

96. Susan Saab Fortney, *Soul for Sale: An Empirical Study of Associate Satisfaction, Law Firm Culture, and the Effects of Billable Hour Requirements*, 69 UMKC L. REV. 239, 246–47 (2000); Wilkins & Gulati, *supra* note 7, at 1644–57, 1665–73.

97. For example, a "24/7" workweek has been common among elite firms for a while. With regard to the Cravath firm, Swaine recalled that

> much of Cravath's work with the associates was at night . . . . Many nights young lawyers from the office sat [at his home] awaiting his return, spent an hour or two past midnight going over papers or discussing a question of law with him, and then returned to the office with instructions to be back at eight o'clock in the morning with a new draft or the answer.

2 SWAINE, *supra* note 11, at 124. Partners worked equally hard.

Yet historically, senior partners could reasonably expect, over time, to enjoy greater leisure time and flexibility, reaping the benefits of their elevated status within the firm.[98] The traditional story thus suggests that adjusting to a hyper-competitive model might be a challenge to many large law firm lawyers.[99]

Once again, however, the experience at BHFS questions both the accuracy and the interpretation of the standard account, as the firm's most senior partners have always worked around the clock in the service of their clients' interests. One partner shared a revealing story regarding the work ethos and commitment of the firm's attorneys to their clients.

> [T]here was a movie years ago called Star Wars, you may remember it, and when Star Wars came out it was impossible to get tickets, but the four of us were going to go to the movie. Norm . . . was having dinner with our biggest client at the time . . . probably actually the first big institutional client that we ever had . . . . So I said, "Norm, I'll go ahead to the theater, stand in line, get tickets." . . . Norm and [his wife] show up with [the client] . . . and Norm pulls me aside and he says ". . . [the client] wants to see the [movie], would you mind if I took him and you and [your wife] give me your tickets?". . . [T]hat's just a tiny example of the extraordinary things that we did. . . . Norm is a force majeure in that regard, and what he does for our clients is staggering, and it's just been a growth of that concept of a willingness to do what's necessary and way more than what's necessary. . . I find it hard to believe that most firms go that extra mile personally as well as professionally to take care of their clients like we do; it's been a huge part of the culture of this firm.[100]

Another partner observed

> I had associates who told me, . . . "I [have] never seen a firm where the partners work as hard as they do here" . . . . [On] Saturday mornings [it was] understood [that] everybody was in the office in those early years . . . my first year [1980,] Jack Hyatt was here every Saturday morning and so was I, it was just an accepted way of doing things.[101]

In contrast with the picture depicted by the standard story—one that portrays senior partners as supervising the work of a team of lawyers, coming in to "close the deal" and reaping the benefits of their status within the firm—the practice realities at BHFS suggest a different model: a partner-heavy structure with lean staffing in which the most senior partners are intimately involved with every transaction and display a 24/7 commitment to clients, in both the professional and personal realms. As in the case of adopting a partner-heavy model, BHFS's commitment to having

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> The story, doubtless apocryphal, has long been told that when some of his partners urged that the office was under such pressure as to make additions to the staff imperative, Moore replied: "That's silly. No one is under pressure. There wasn't a light on when I left at two o'clock this morning."

Id. at 143.

98. Galanter & Henderson, *supra* note 7.

99. *See id.*

100. Interview #2, *supra* note 46, at 5–6.

101. Interview #3, *supra* note 48, at 14.

partners be intimately involved with every aspect of a client's representation may be more than a reflection of recent competitive practice realities, suggesting an alternative model of large law firm organization, different from the standard story's emphasis on associate-heavy attorney pool with partners serving primarily in a supervisory role.

C. "Lost" Lawyers and Community-Minded Practice

Another vein of the standard large law firm literature suggests a growing dichotomy between large law firms' lawyers' private and public careers. The claim, essentially, is that large law firm partners used to more commonly cross the private–public divide—serving clients and taking public office—but that hyper-competitive practice conditions have caused them to retreat from public life and from occupying positions of leadership.[102] Moreover, not only are large law firm lawyers retreating from direct active participation in public life, but their representation of private interests has taken a client-centric turn at the expense of the public interest. Increased specialization on the one hand, and commoditization, fragmentation, and competition on the other hand, deprive large law firm lawyers of the opportunity to act as lawyer-statesmen and exercise practical wisdom. In his powerful book *The Lost Lawyer*, Anthony Kronman calls this a crisis not only for lawyers but for American society at large.[103]

To the extent that the experience of BHFS lawyers with client-driven lawyering embodies the hyper-competitive model of client-centered representation, one might have expected its lawyers to retreat from public life and concentrate on pursuing the private interests of their clients. Nothing, however, could be further from the truth. Once again undermining the simplified predictions and expectations of the standard story of large law firms, the BHFS experience suggests the effective combination of 24/7 client service alongside significant commitment to highly visible public service.

Explained one partner,

> [What] we stress more is, "be a good lawyer," and once they're on the way to being a good lawyer then be involved in the community and give back. So with that said, what this practice has also [enabled] us to do is not only give back through dollars and through commitment, but . . . help Denver really become a world class city. People ask why I did it, I really did because I thought it would be good for the city of Denver.[104]

Another partner stated,

> [T]he second most prideful part of this firm to me, other than its community and culture of care for each other, is what we've done in the

102. *See supra* note 79 and accompanying text.

103. KRONMAN, *supra* note 79, at 271–300 (discussing the decline of the "lawyer-statesman ideal" as lawyers have moved into large firm practice and have begun to place greater emphasis on monetary returns for legal services rendered); *see also* GLENDON, *supra* note 79, at 35–59.

104. Interview #12, *supra* note 45, at 6.

> community . . . . It's just been never ending and I'm sure there are skeptics or critics out there, whether motivated by reason or jealousy [who will] say, "you know, that's all just to promote business," and that is absolutely false. There can't be a group of people who share a more common commitment to give back to the community than you'll find in this firm.[105]

The standard story, relying on the conventional distinction between law and politics, suggests that increased competitive practice realities and the need to concentrate on rainmaking activities drove lawyers out of public service, politics, and leadership positions. It also argues that the same competitive practice realities have caused lawyers to become more client-centered in the sense of advocating zealously on behalf of clients with little regard to the interests of third parties and the public good, in turn making lawyers agents of private interests at the expense of acting as officers of the legal system and as public citizens.

The BHFS story casts doubt on the validity of the standard story. First, BHFS's effective combination of traditional law practice and lobbying is consistent with lawyers moving in and out of public service and government. And indeed, many of the firms' lawyers have served in elected positions.[106] Second, the BHFS experience questions the simplistic divide between private interests and the public good, implying that effective representation of clients' private interests may be consistent with the public good. And it also suggests that Kronman may have underestimated the ability of lawyers to influence their clients to pursue private interests in the public spirit.[107] Finally, while acknowledging the shift of power from lawyers to clients and, in particular, the diminished likelihood and ability of some large law firms' partners to directly assume positions of public leadership, the BHFS story nonetheless suggests that even a demanding professional practice may still be consistent with serving the public interest by undertaking significant commitments to the community in less visible direct roles, such as service on boards, volunteering, and financial support of charitable causes.

Academics often seek unified grand theories to explain complex phenomena on the ground,[108] and scholars of the legal profession have long sought, unsuccessfully, to offer a theory of firm growth that explains the organization and growth patterns of large law firms.[109] The standard story of large law firms assumes a corporate law and transactional emphasis, a large corporate entity client base, and a tournament theory model which in turn predicts associate-heavy attorney base and a lawyer-centric internal

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105. Interview #2, *supra* note 46, at 31.

106. *See, e.g.*, *supra* note 69; *infra* note 132.

107. *See supra* note 74 and accompanying text.

108. *Cf.* Andrew L. Kaufman, *A Commentary on Pepper's "The Lawyer's Amoral Ethical Role,"* 1986 AM. B. FOUND. RES. J. 651 (criticizing legal ethics theorist Stephen Pepper for debating grand theories of lawyering without being sensitive enough to the rich practice realities confronting actual lawyers). *See generally* M.B.E. Smith, *Should Lawyers Listen to Philosophers About Legal Ethics?*, 9 LAW & PHIL. 67 (1990).

109. Burk & McGowan, *supra* note 5.

growth engine. But the inability of the standard story to explain the complex and rich world of large law firms is not an indication that the growth of large law firms is chaotic and unprincipled. Rather, large law firm growth predictably follows client demand and needs. If law firms' organic growth patterns appear to defy one-size-fits-all theoretical explanations, such as the standard story, it is because context matters[110]: different firms represent different types of clients with varying needs, which change over time.

III. THE REVISED STANDARD STORY QUESTIONED: THE BHFS EXPERIENCE

Second generation large law firm scholarship recognizes the richness of actual large law firm practice realities and its diversity of approaches to firm organization and growth.[111] For example, in *The Elastic Tournament: A Second Transformation of the Big Law Firm*, Galanter and Henderson document some of the structural changes experienced by large law firms, including the introduction of new non-partnership and equity partnership tracks, and the rejection of the traditional "up-or-out" probation period.[112] Yet the scholarship insists on retaining some of the basic assumptions of the standard story, such as its emphasis on corporate law practice, non-partner-heavy structure, and role of the internal growth engine, in explaining firm growth. At its core, therefore, even the elastic or revised standard story is lawyer-centric, in the sense that it does not pay sufficient attention to the diverse needs of different types of clients, which, in turn, may give rise to different types of large law firm structures and growth patterns.

A. From Organic to Smart Strategic Growth

In its early years, BHFS followed an organic growth pattern. One partner noted, "we grew to [meet] client needs, we didn't grow because we wanted to grow."[113] As the firm grew, however, it became obvious to many of its partners that the firm reached a tipping point, a juncture in which reliance on organic growth would be imprudent. Explained that partner: "[R]eal estate is a [volatile] industry, and we needed to have other capacities that even our existing real estate clients needed, [such as] securities and corporate work."[114] He further noted, "[W]e don't want to shrink to the point where we can't take on those big transactions, but it's difficult to

110. David B. Wilkins, *Legal Realism for Lawyers*, 104 HARV. L. REV. 468, 469–70 (1990) (arguing that despite the prominence of legal realism in the "abstract realm of legal theory" and judicial interpretation, "[c]uriously neglected has been any systematic investigation of the effect of core realist insights on traditional understandings of the lawyer's role"). For a discussion of legal realism's effect on contemporary legal thought, see Joseph William Singer, *Legal Realism Now*, 76 CALIF. L. REV. 467 (1988) (book review).

111. *See supra* note 25 and accompanying text.

112. *See generally* Galanter & Henderson, *supra* note 7.

113. Interview #3, *supra* note 48, at 13.

114. *Id.* at 7.

sustain the number of people we have."[115] A second partner explicitly described the shift from organic to strategic thinking:

> [W]e kind of evolved our own self and after a while [we] kind of [got] to answer those questions: . . . what do we want to be, where are we going, what's important to us, what makes sense, are [we] happy doing what [we]'re doing, is this the thing we want to do? [We got] into all those things, but that wasn't something we did [initially]. We were just three kids, liked each other, decided to take a shot, and it worked out.[116]

As the firm grew organically, it began to experience the need to diversify its practice areas and, in particular, establish bona fide corporate and litigation departments for four interrelated reasons. First, its practice, centered around commercial real estate, entailed significant cycles that followed the ebbs and flows of the economy.[117] As a smaller law firm, under the fiscally tight regime of Jack Hyatt, it was able to withstand the cycles. But as the firm grew (and Jack retired), the need arose to diversify its practice areas to create profit centers that would be less dependent on business cycles and the economy.

Second, the firm's elite reputation in commercial real estate and lobbying created opportunities that the firm could not take advantage of without the development of robust corporate and litigation departments. Serving some of their real estate and lobbying clients' smaller corporate and litigation needs was but the tip of the iceberg—the firm was referring away work it could not handle on its own. The firm's growing standing could have allowed it to leverage its reputation and cross over to the mainstream practice areas of corporate work and litigation, if it could only build corporate and litigation departments.[118]

Third, as the firm developed a new generation of younger partners, concerns about Norm's and Steve's retirement and the survival of the firm as a large entity suggested not only the fostering of a second generation of leading commercial real estate and lobbying attorneys, but also expansion into and the development of additional profit centers, including but not limited to corporate and litigation.

Finally, for Norm and Steve, the transformation of the firm from a small walk-in law firm to one with a regional and national presence was more than they could have imagined, providing ample incentives to remain with the firm. For the second and third generation firm partners, however, the situation was potentially quite different. Especially in an era of increased mobility, defections, and reduced loyalty, the firm had to offer compelling justifications for its younger superstars to stay. It had to develop a vision

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115. *Id.* at 23.

116. Interview #10, *supra* note 66, at 9.

117. Interview #3, *supra* note 48, at 24–25 ("[R]eal estate always has been a cyclical business, we couldn't be as dependent on it as we were in the '80s and be the size we are. You can't support this many people on one industry . . . .").

118. On law firms' crossing over—leveraging expertise in narrow areas of the law to expand to more mainstream practice areas—see Wald, *supra* note 7, at 1833–41; Wald, *supra* note 31, at 914–18.

and a strategic plan beyond being a real estate boutique and a lobbying shop.

While the details may vary across large law firms, BHFS's story may be representative of large law firms more generally in terms of the inherent limits of organic growth, the growing pains of pursuing strategic growth, the shift from a first to a second generation law firm and, relatedly, transitioning from the ability to rely on the loyalty of name, founding, and rainmaking partners to the reality of the need to continuously provide compelling incentives for powerful partners to stay with the firm.

Yet growing strategically is easier said than done. The firm's experience reveals the inherent difficulties facing a law firm trying to grow strategically as opposed to organically. Indeed, it showcases that the mere decision to grow strategically is far from obvious or conflict-free. On the one hand, some of the benefits of strategic growth are apparent—for example, the diversification of practice areas reduces the risk inherent in being dependent on one practice area.[119] As one partner stated, "[T]he firm was not as dependent on real estate in the last seven or eight years as it was in the '80s and '90s, and . . . that's been very good in terms of how we've weathered this recession."[120] On the other hand, strategic growth also entails costs of its own. Explained one partner,

> [A]s we've gotten bigger and overhead has gotten bigger . . . we've raised our rates and we have gotten to the point where we're very expensive for a local developer and we're . . . pricing ourselves out of doing local work and all we can do is handle national type transactions. That's a real concern. In the old days, we'd bill attorney fees, but we would wait until the closing to get paid because there wasn't any money to be paid with; . . . that flexibility certainly existed in the '80s. I don't know how flexible we are on that these days; we're less flexible certainly. . . . [W]e really need two sets of rates, one for local clients and one for national clients. . . . [W]e haven't found an institutional solution to that, and that's a concern.[121]

Moreover, strategic growth may give rise to intra-firm conflicts of interest among and between various constituencies within the firm, over ideology, competing visions of growth and practice, and compensation.[122] Transforming ancillary departments that historically supported profit-centers within the firm into independent profit-generating units requires significant practice and personnel changes. Turning, for example, a state-law-based, trial oriented litigation department into a federal-law-based, trial and motion practice department entails not only a shift in vision but also different skills and consequently personnel and compensation changes.[123]

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119. Gilson & Mnookin, *supra* note 16, at 322–39.

120. Interview #3, *supra* note 48, at 25–26.

121. Interview #4, *supra* note 40, at 10–11.

122. *See generally* MILTON C. REGAN JR., EAT WHAT YOU KILL: THE FALL OF A WALL STREET LAWYER (2004).

123. *See, e.g.*, Heather Cole, *Shook Renews Corporate Recruiting Efforts*, MO. LAW. WKLY., Oct. 8, 2007, *available at* http://www.lawyersweekly.com/reprints/shook1.htm.

1. Strategically Growing a Large Law Firm, Federal-Court-Based, Profit-Generating Litigation Department

The firm evolved as a real estate boutique, with Norm, Steve, and Jack moving away from litigation as soon as they could afford to. In a sense, in having little interest in and regard for litigation, the firm followed the spirit of the Cravath model: just as litigation to Paul D. Cravath symbolized the failure of prudent transactional work,[124] it symbolized the failure of a successful real estate transaction to BHFS.

Under John Madden's leadership, the litigation department evolved as an informal and decentralized practice group, focused on trying state law cases, an adjunct unit to the real estate department, primarily serving the construction litigation needs of the firm's real estate clients. It was not expected to produce its own clients, nor to become an independent profit center: "[O]ur litigation group was general commercial litigation; a lot of it was real estate. [A]lmost all the cases were coming from real estate clients, but we were always looking to get into other areas of law."[125] Instead, it was focused on actual trial work, suing on behalf of, and defending, the firm's clients.

> [O]bviously, as business for the firm grew . . . a lot of it involved litigation, and litigation was always viewed around here as the . . . stepchild of the firm because it never made as much money . . . . [L]itigation started to grow . . . . One of the beauties of litigation is you get to learn about different areas with each new case, but that can become overwhelming.[126]

The litigation department grew organically for a while, primarily serving the trial needs of the firm's real estate clients.

> [O]ur first associate was a guy named Jimmy Mandel . . . . He was our first law clerk, and then our first associate, and our first associate to actually become a partner [coming up through the firm]. So Jimmy helped me [in litigation], but as it continued to grow and got out of hand . . . [we hired] John Madden.[127]

Over time, the litigation department continued to grow steadily. One partner recalled that several young litigators joined the firm during that period.[128] Such an ancillary, state-court-based model suited John Madden and his cohort at the litigation department because the lawyers in the department thought of themselves as trial lawyers.[129] The ancillary image of the litigation department also fit the position of the firm in the local and

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124. The Cravath System was explicitly built on the notion of serving the corporate client's interests in the conference room, as opposed to the courtroom. 1 SWAINE, *supra* note 11, at 573 ("Cravath had no instinct for litigation. On its merits he thought it was something to be avoided at any reasonable price; and he had neither liking nor capacity for courtroom forensics. Cravath's forum was the conference room.").

125. Interview #3, *supra* note 48, at 8.

126. Interview #2, *supra* note 46, at 14.

127. *Id.* at 14–15.

128. *Id.* at 17.

129. Interview #27, in Denver, Colo. (Aug. 4, 2010), at 22–24, 26–38.

national markets. On the national scene, the department did not see itself and was not capable of handling major business litigation and competing with the large firms on the East and West coasts. Indeed, even in Colorado, it played second fiddle to the well-established home-grown large law firms and their litigation departments: Sherman & Howard; Davis, Graham & Stubbs; Holme Roberts & Owen (now part of Bryan Cave); and Holland & Hart.

The first strategic change in the litigation department was a gradual shift from an informal structure with a nominal head, to a more hierarchical organization under a department head. Contrasting the informal managerial style of the litigation department's first chair with that of the subsequent department chair, one partner recalled that the first department chair "is a very, very smart lawyer, [he] hates preparation, he's [of] the Irving Andrews school,[130] he's good on his feet, a very quick thinker, [but] lack[s] organization and lack[s] preparation."[131] Moreover,

> Tom [Strickland][132] came, and then Tom started bringing on a lot of his [litigator] friends including Stan Garnet . . . . Well, [our chair's] lack of organization and preparation and hands on [approach] was a disaster . . . but then when Stan came along . . . Stan became the first head of litigation that was much more . . . traditional . . . and really tried to organize things.[133]

The lateral hiring of an experienced large law firm litigator symbolized a second strategic paradigm shift for the firm's litigation department. The lateral attorney had a vision of the litigation department as an independent profit center, capable of generating its own clients and developing the capacity to serve the primary litigation needs of large entity clients in state and, increasingly, federal courts. This vision entailed abandoning a commitment to the role of litigators as predominantly trial attorneys, and the development of litigators as strategic motion pleaders who, while trying cases when necessary, would settle many of their cases instead. Noted one partner, "[H]e has really changed it and brought us into the big leagues."[134]

The new head of litigation at the firm explained the paradigm shift, and the firm's explicitly strategic decision to try to build its litigation department.

> [T]he idea was that the litigation practice had always been sort of an adjunct to the real estate practice, it had really been servicing the real estate clients when they had litigation needs . . . obviously, because it was

130. Irving Andrews was a legendary Colorado trial attorney. *See* E. Michael Canges & Alfred C. Harrell, *Irving P. Andrews*, COLO. LAW., July 2009, at 31, *available at* http://www.cobar.org/tcl/tcl_articles.cfm?articleid=6117.

131. Interview #2, *supra* note 46, at 16.

132. Tom Strickland, a former BHFS name partner, was Colorado's U.S. Attorney from 1999 to 2001. Strickland subsequently was a partner at another large law firm and served as Assistant Secretary of the Interior for Fish, Wildlife and Parks. *Assistant Secretary of the Interior for Fish, Wildlife and Parks Thomas L. Strickland*, U.S. DEP'T INTERIOR, http://www.doi.gov/archive/bio/strickland_bio.html (last visited Apr. 21, 2010).

133. Interview #2, *supra* note 46, at 18–19.

134. *Id.* at 21.

> mostly real estate practice, it was a relatively modest, state court practice. So a small part of the firm didn't really originate a lot of business, there weren't a lot clients that were attracted to the firm for its litigation, they were more real estate clients that were in the firm for the real estate representation and then have a litigation need arise, and the real estate lawyers would direct the clients to their litigation partners in the firm. [Our challenge] was to build more of a larger case, a federal court type practice . . . in the hopes that we would generate clients through our litigation practice for whom we would also provide non-litigation work, real estate work, corporate work, tax, lobbying and so we'd be a source of organic business, not just a service arm of the existing real estate business . . . .[135]

Executing such a paradigm shift was not an easy task. Recalled the same partner, "the first few years it didn't work out well . . . . [T]here were people who were invested in the way things [were], [and] had absolutely no interest in changing that . . . ."[136] The partner added that

> if we were going to build something [new] we [were] going to have to build it on our own without those [old school] guys, and on the side, and so that's what we started doing. We hired our own people, we operated completely separately, they had nothing [to] do with us, we had nothing to do with them, and so [we] basically built up [a separate, parallel litigation] practice on the sidelines and over time it eclipsed the existing, more service-oriented part of the litigation practice and people started to see that a litigator could have organic business . . . . [A]nd so then when the [old school partners] left we completed the takeover of the . . . litigation practice . . . .[137]

The push to build a litigation department in the style of a large law firm came from the upper ranks of the firm. Recalled the litigation department chair, "Norm said 'We should go hire the best guy there is,'"[138] yet the support from the top could not and did not alleviate the tension between the newly recruited lateral litigators and the existing members of the litigation department, both in terms of personality and vision for the litigation department. That partner described the personality clashes that ensued, notwithstanding the commitment of all partners at the litigation department to work together on a smooth transition and transformation:

> Where they [existing members of the litigation department] miscalculated was, and where [we] miscalculated was, that we [all] thought a collaboration like that could be among equals. [I]t didn't work out that way, egos got in the way . . . . [A]nd it created real problems for all because some of the corporate people and real estate people . . . were colleagues, they were [the] same age and they were on the committees and they were running the firm together . . . .[139]

135. Interview #21, in Denver, Colo. (June 30, 2010), at 1.
136. *Id.* at 10.
137. *Id.* at 10–11.
138. *Id.* at 12.
139. *Id.* at 12–13.

Over time, the large law firm vision of litigation won over, crowding out the ancillary model. Continued the new head of litigation at the firm:

> I came from a big firm, big case, litigation practice and all that goes with that, hard work, real commitment to the clients and to the matters, an expectation of extremely high quality work product, . . . bringing people who come from major national litigation practices where they were successful and grew up in those environments where they were inculcated with that kind of a culture and armed with a team of people like that. The vision is to go out and convince clients here [in Denver and Colorado] as well as nationally—and probably more nationally—that we can deliver the same quality litigation representation as those firms. In fact, we do it with the same people that they had at those [national] firms—not people who we say could have worked at those firms, they did work at those firms and now they're with us. So we can deliver for you the same people that you'd be hiring at those firms and we can do it more efficiently and get you the same results . . . .[140]

The strategic goals of the reconstituted litigation department were twofold. The department sought to capture the synergies created by the firm's real estate and lobbying practices, representing existing clients in major complex litigations outside of the real estate realm. Moreover, it aimed to gradually establish the litigation department as a strong local and national presence that would be able to compete with the established Colorado firms for major Denver-based litigation and with national firms for complex state and federal practice.

> So . . . that's the vision: . . . . First and foremost . . . to have the people that we could legitimately say to them [large corporate clients], we really can do this . . . . The next step . . . is to really establish ourselves as a firm that can be looked to to deliver on what that promise is. So now we're ready to take that show on the road [and develop a national practice] . . . . [O]ne of the things it depends on is having people like Norm, and there's three or four others in the firm like him who have relationships around the country. . . . [N]ational relationships so that we really have an opportunity to knock on doors all over the country and make this pitch . . . .[141]

The strategically designed litigation department began to grow and generate significant profits.[142] The success of the department allowed its proponents to further the model by making additional, high-profile lateral hires. Explained the chair of the litigation department,

> [I]t's my fervent desire that I not be the number one guy. I would love to be number eight because that would mean that we were making a pile of money and I would have lots and lots of money and so it doesn't have to [be] all about me . . . .[143]

Referring to two subsequent prominent lateral hires, he opined that

140. *Id.* at 17.
141. *Id.* at 17–18.
142. *Id.* at 11.
143. *Id.* at 15.

> the problem [was] that [the first lateral hire] got a very successful practice and so he hasn't had a huge amount of time to mine those opportunities and take advantage of them. . . . [T]he advantage of [the second lateral hire] was that he didn't have a stable of clients, he didn't have his own cases, but he is an exceptional lawyer . . . . So [the second hire] really filled the role of being able to take cases . . . ."[144]

A decade or so after it launched the reorganization and reconceptualization of its litigation department, the department has established itself as a meaningful profit center within the firm, structured according to a large law firm vision:

> [Number] one, to really institutionalize the business-getting vision . . . and really have the mechanism in place and the successes in place so that . . . it's self-sustaining; and number two, to identify, recruit, hire, and promote within the firm the next guy who's going to really be the face of . . . litigation . . . .[145]

It has also succeeded in establishing itself as a meaningful presence locally, regionally, and nationally.[146] Finally, it has positioned itself strategically for additional growth. Having cemented itself as a leading litigation department in Denver's mid-market economy as well as a competitive national actor, the department's next strategic move was to grow and compete in selective mid-market and specialty subject-matter niches, avoiding a head-on collision with established large national and global law firms on their home turf of large market cities such as New York, Los Angeles, and Chicago.

Explained one partner:

> California is tricky because we're not going to compete with Latham [& Watkins] and [O'Melveny & Myers] . . . . So like we did with the water [industry] where we have a strategic market position where we're a dominant player in that little niche market, we have to have basic commercial litigation capability in order to capture the litigation from some of the other clients that we have or we're going to have out there.[147]

Such strategic vision suggests, in turn, a particular growth model: on the one hand, avoiding the large scale, heavy-on-paperwork litigations in large markets, which are the bread and butter of associate-heavy established large law firm litigation departments, would allow BHFS's litigation department

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144. *Id.* at 15–16.

145. *Id.* at 26.

146. *Id.* at 24–25. Measuring and ranking elite litigation firms or departments is, in historical context, a recent phenomenon. Indeed, when it rose in the late nineteenth century, the elite large law firm was very much transactional and corporate-law-focused, and tended to look with disdain at litigation. *See* Wald, *supra* note 7, at 1833 n.138; *see also* GLENDON, *supra* note 79, at 42 ("The barrister ethos in the United States even today retains some flavor of the cultures of ghetto Catholics and Jews who were long excluded from elite firms. Litigation is now a respected specialty within high-status firms, but the habits and attitudes of litigators remain somewhat different from those of the transactional lawyers down the hall."); 1 SWAINE, *supra* note 11, at 554–55 (describing the prevailing understanding of transactional work as "more profitable and satisfactory" than litigation).

147. Interview #21, *supra* note 135, at 30.

to remain nimble, partner heavy, and cost-effective. On the other hand, competing in specialty niches and in cutting-edge litigation matters would enable the litigation department to generate high profit margins and attract high-quality lateral hires.

2. Strategically Growing a Large Law Firm, Profit-Generating, Corporate Law Department

The transformation of BHFS's litigation department provides a window into some of the inherent challenges facing a law firm transitioning from an organic to a strategic growth model: intra-firm conflicts over practice vision, skill, recruitment, and compensation. Yet even absent intra-firm conflict, shifting from an organic to a strategic model is a time-consuming, risky proposition that may require more than one attempt before it succeeds, as illustrated by the experience of BHFS's corporate department.

Initially, organic growth led to an expanded corporate client base as well as increased specialization and expertise. For example, Steve's growing reputation in Colorado landed the firm its first bank client, and the representation of complex commercial real estate clients allowed corporate attorneys to develop unique expertise in cutting-edge financing methods. Yet the department still lacked grounding in the fundamentals of business law, general corporate law, securities law, and mergers and acquisitions.

As was the case with its litigation department, the firm attempted to laterally recruit partner-level talent to establish and build its corporate law department. Whereas its litigation experience demonstrated both the challenges of pursuing a new vision and dealing with personnel committed to the old vision, the initial experience of the corporate law department illustrated another difficult aspect of pursuing strategic growth—the difficulty of recruiting and retaining successful large law firm rainmakers to build up a department, and of building a corporate client base in a competitive market for legal services. Recalled one partner,

> [W]e went through a lot of effort and interviews, and I think at that time it was very hard to get people from outside Denver to come because the firm was so small, and I think most people with corporate and securities experience got it in large firms and couldn't quite envision how they were going to continue to do that work with one or two associates . . . in a small firm.[148]

Its first attempt to grow strategically was to bring in talent from the elite law firms of Skadden Arps and Kirkland & Ellis to establish and develop the corporate department. One partner recalled that the managing partner had "been very busy with bringing in lateral transactional lawyers which is certainly the first step."[149] And another partner noted,

> [W]e started to hire ex-Skadden people when Skadden went through a period where they wouldn't bring anybody in as a partner. So we started to get into that area, took companies public, and so I started expanding

148. Interview #3, *supra* note 48, at 7.
149. Interview #21, *supra* note 135, at 31.

> beyond real estate into corporate and that was a very exciting thing for me because I got to do big deals and the firm was steadily growing.[150]

A partner recruited laterally to help build the corporate law department explained: "[W]hat Brownstein Hyatt wanted to do was grow a corporate finance department, and they decided the best way to do that was to bring in lawyers from major law firms; national law firms . . . I was about the thirty-fifth lawyer [at the firm in 1994]."[151] The department grew incrementally, initially building on the firm's existing practice and clients.

> We did a lot of . . . small private placements for people. A lot of it was relationship driven; people that Norm and Steve knew and they had never been able to do that type of work for before. They always had to refer it to other people in town. As we got bigger, we were fortunate to bring in two young partners from [Kirkland &] Ellis who were similarly looking for kind of a change of lifestyle; raise their families out here. And they brought with them some work that they were able to continue doing, principally leveraged buyout[s].[152]

The strategic buildup of a department, in contrast to organic growth was not, of course, unique to BHFS. Indeed, one of the partners laterally recruited to help build the firm's corporate law department recalled an earlier career move he made from a well-established elite law firm to another Wall Street law firm, which was engaged in the strategic transition of its limited M&A department to a full service corporate law department[153]:

> [W]e were trying to start up a new department; a new area of expertise within a firm that was already well known for certain things but not across the board. . . . I think that on the transactional side, the reputation was that the work was spotty or uneven or we weren't very experienced in that area, and so it was sort of fun to be part of the group that changed that perception of us.[154]

The partner added that his former firm's strategic growth

> started more on the debt side with the junk bonds, but gradually we got into equity, which is kind of the more prestigious, premier stuff to do; the IPOs and public offerings for existing companies . . . [the other firm, Skadden Arps's] biggest problem was we were really expensive and it was hard to break in and say, "Pay us just as much or more as you're going to pay Cravath or Sullivan & Cromwell" when they have the blue ribbon experience in this.[155]

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150. Interview #13, *supra* note 47, at 2.
151. Interview #20, *supra* note 85, at 2.
152. *Id.*
153. *See* CAPLAN, *supra* note 11, at 87–117; Wald, *supra* note 7, at 1835–36 (describing the transformation of Skadden's specialized mergers, acquisitions, and takeover practice into a general corporate law department).
154. Interview #20, *supra* note 85, at 2.
155. *Id.* at 10. Interviewee #4 also pointed out that high fees and pricing oneself out of the market is a concern. *See supra* text accompanying note 121.

Similarly, the newly constituted corporate law department at BHFS began by relying on existing firm contacts and clients and, in particular, on its expertise in commercial real estate finance to transition to both mainstream and more prestigious corporate work.

> We did some work for some very small underwriters. We did a lot of private placements for various things. A lot of them were real estate projects; real estate development projects where in the past the real estate lawyers might have done those deals but it made more sense for corporate people [to handle them]. We [corporate attorneys] understood better how to create the securities . . . . [W]e did find it very difficult to break into the investment banking underwriter's side. . . . It just came piecemeal and then, like I said, when the Kirkland & Ellis guys came two years later, that was really the watershed when we were able to break into the private equity world.[156]

Moreover, commenting on the difficulty of shifting from representing primarily developers to a more balanced corporate practice serving some lenders and corporate entities, a corporate partner noted,

> It was much more on the developer's side. . . . [D]efinitely much more development work. . . . [I]n that period of time when you represent[ed] a private equity firm, you basically . . . knew you [were] dealing with a law firm in whatever town the company that they are investing in [is located] . . . . [W]e definitely deal more with lawyers outside of Denver than in Denver overall. . . . [T]here was definitely a period where our reputation within law firms was bigger outside of Denver than it was inside of Denver. . . . [The firm] . . . wanted to really focus on getting a broader mix and trying to do more with the local clients than we do.[157]

The department grew slowly, experiencing the turmoil inherent with lateral hires. After opportunistically recruiting three Skadden Arps attorneys who "almost made partner but didn't quite,"[158] the firm laterally acquired several attorneys from Kirkland & Ellis, only to see a few of these lawyers leave in short order. Eventually, however, the new hires settled in, and one partner noted

> [that] was really where I knew this was going to work, because at that point the other two had left and I was really the only partner-level person. . . . The other Skadden people had left in the first year that I was here, and the [Kirkland & Ellis] guys came eighteen months to two years after I was here.[159]

As with its litigation counterpart, the firm's corporate department began developing into a large-firm-style full-service department within a decade or so of pursuing a strategic growth model. And just like its litigation counterpart, the corporate law department then faced the challenges of further strategic growth, as it transitioned from being an adjunct service unit

156. Interview #20, *supra* note 85, at 17–18.
157. *Id.* at 18–19.
158. *Id.* at 13.
159. *Id.* at 18.

into its new identity and role as a profit center competing in regional, national, and global markets.

> [O]ur next obvious [development] within the corporate group is to have a corporate presence in Los Angeles, probably through a lateral hire or multiple hires, and so that gives us kind of our first major city presence in the corporate arena . . . . [T]hat's . . . the next challenge and next level that we want to get to. In terms of what we're doing in Denver, we're where we want to be and I think we're positioned as the premium local firm for more complex corporate work. [W]e really compete more for business with the national firms than we do with the local firms . . . because the national firms and we have a broader practice experience in complicated M&A transactions and private equity work and that type of stuff. . . . It's just the experience of the lawyers in the group.[160]

B. The Transformation and Institutionalization of Law Firm Management

The firm's autocratic managerial style, embodied by founding partner Jack Hyatt,[161] focused on fiscal conservatism, featured informal and personal attitudes, and employed a well-intending and purportedly fair yet secretive compensation structure with due deference to the founding members of the firm. The firm's early management style relied on the fact that Jack knew what everybody else was doing, had a relationship of trust with and the backing of Norm and Steve, and was well regarded as a tough yet fair manager. That style served the small and growing firm well for nearly two and a half decades until Jack's retirement in 1991. For example, in a day and age where law was still regarded by many, both within and outside of the profession, as a vocation beyond simply a for-profit venture, and many law firms were run in a casual, relaxed manner, the young firm had an unusually explicit business perspective. Under Jack's fiscally conservative management vision, the firm stayed clear of incurring debt, was very conscientious of expenses, and created an image that was not opulent. One partner observed that at

> some of the meetings in the old days, we'd have a partnership meeting, and Jack Hyatt would go through the ledger cards and we would talk about every single client we had. We'd go to two or three in the morning and you had to say what's going on, or why isn't this bill paid. I do not miss those days.[162]

Recalled a partner involved with management,

> I wanted to make sure that on everybody's birthday, they got a check to know that the firm thought about them. I wanted to make certain that we always had the best possible pension plans, health insurance, that people

160. *Id.* at 21–22.
161. Interview #4, *supra* note 40, at 18 ("Jack ruled like [Vladimir] Putin does, I mean very much of an autocrat.").
162. Interview #2, *supra* note 46, at 32.

> were recognized for their service, treated like family, that everybody always felt that they were treated properly . . . .[163]

The sheer growth of the firm, its expansion to new fields of practice and new locations, called for a different kind of managerial style: strategic and flexible rather than organic, risk-averse, and conservative; transparent rather than secretive; professionalized and institutionalized rather than intuitive; and embracive and consultative, at least of the opinions and interests of powerful partners other than Norm and Steve, if still centralized.

The transition from an informal, organic managerial model, in which a powerful name partner naturally assumed the managerial helm, to a strategic model was a gradual one. One partner described the process by which the firm came to realize the need to make this shift:

> We went from three to six [lawyers, in 1972] to twelve [in 1976] to about 18 [in 1980] and we could see it coming. And after a point in time I finally recognized after being through [a] couple of these downturns that you have to have the staff when things come back because it's too late when a guy walks in and there's only 17 of you and he needs nine lawyers and you don't have them. You can say, "I'll go get them" and do it, but that doesn't work, and so you have to be a little ahead of it too. So there came a point in time when I recognized when we started to have these downturns, as I could see things would turn up a little bit I said we have an opportunity here, we can pick up four or five guys that are really good guys that are out there, we don't quite have the work here, but I think that [in] three, four, five, six months we will . . . .[164]

Relatedly, the growth of the firm made apparent the need to institutionalize and reform the firm's informal and organic compensation structure:

> [W]hen we first started—inexperienced and childlike [are the words I'll use to describe] our understanding of how partnerships operated. [W]e assumed this was a "one for all, all for one" operation, and so the three of us, every week we'll split it whatever it is and if someone works harder or does [more] . . . we never even thought about that, we just said "hey, we're together, we'll split it." When we added people, we came from that mentality where we'd like everybody to be equal . . . .[165]

Over time, however, the partners came to realize that the firm's informal compensation structure ill-fitted its new size and objectives.

> [B]ut as we added partners . . . we began to see that people have different strengths and weaknesses . . . [and that] we can't just take a piece of pie and just say, add three guys and ultimately they'll all be the same because they're not the same, there are distinctions, people are different, and then you started thinking, well there's seniority, there's hard workers, there's client getting, there's community stuff, there's whatever it involves to run the firm, and so we finally decided that we would meet as new partners as

163. Interview #10, *supra* note 66, at 7.
164. *Id.* at 12.
165. *Id.* at 18.

> we got bigger, that we would determine what partnership shares were as a group . . . .[166]

Similarly, the firm's informal approach to department structure and leadership was becoming an obvious constraint on its growth:

> We didn't have departments back then in any real organizational sense, and so there was a time when Stan and I were the co-heads of the litigation department, but that didn't mean anything, we didn't do anything. It really wasn't until a couple of years ago when [the firm's managing partner] reorganized the firm that we had any meaningful hierarchy; so I spent no meaningful time involved in management, I was really just doing my practice.[167]

C. The Challenges of Strategic Growth

The standard story of large law firms emphasizes the supply side of the market for legal services—lawyers, explaining law firm growth organically in terms of a tournament of lawyers, lawyers' social and cultural capital, attitudes toward risk and diversification and relational bonds. In the historical context of the exponential growth of large law firms, between 1945 and the mid-1980s, initially on Wall Street and over time outside of New York, the story makes ample sense. Large law firms were relatively small, and as corporate clients and their legal needs grew significantly, a focus on lawyers and their conduct (as opposed to the demand side, which the standard story assumes or takes for granted) did explain the growth patterns of law firms.

The assumptions made by the standard story, however, make much less sense in the world of large law firms since the 1980s. As clients grew in sophistication, and large law firms grew in number and in size, a model that assumed and relied on increased corporate client demand for legal services and therefore focused on lawyers and organic growth was bound to fail.

The experience of BHFS is revealing in this regard. In its early years, the firm grew organically, emerging as a real estate and lobbying boutique. By the time it came of age in the 1980s, however, it could no longer rely on robust client demand and organic growth. To survive and flourish, it had to transition to a strategic model of growth based on effective and aggressive service of client needs in an increasingly competitive market for legal services, regionally, nationally, and globally. Relying on lean staffing and a partner-heavy model, BHFS built on its niche practice areas and expertise to transform into a general practice large law firm offering high quality, cutting-edge expertise for competitive fees, taking advantage of its lower mid-market overheads and costs while laterally recruiting large-market attorneys.

While the details of strategic growth models may vary, one general conclusion does emerge: the days of passive large law firms relying on robust and increasing client demand to grow organically are over. To be

166. *Id.* at 18–19.
167. Interview #21, *supra* note 135, at 13–14.

clear, large law firms are not dead and are not dying. Indeed, relying on path dependencies and hard-earned reputations, some elite large law firms, even passive ones, may survive, even thrive for a while. Others, however, will have to abandon passive organic models and adopt strategic models in their place.

Some firms may strive to continue to grow, becoming true global actors providing services to global entities in leading capital markets such as London and New York. Others will focus on servicing international and cross-border needs, and yet other firms will highlight regional services. For some firms, growth will be a function not of geography but of services provided, focusing on large-scale litigations and transactions, or on providing cutting-edge expertise, serving essentially as high-end boutiques.

Shifting from a passive, lawyer-centric, organic model to a dynamic, service centered, strategic model may be a necessity for large law firms, but merely being committed to transition is not going to guarantee success. Indeed, the BHFS experience demonstrates some of the inherent challenges in pursuing a strategic model: intra-firm conflicts, resolving competing visions, and instability during the transition period. And while some large law firms will succeed in transforming themselves, others no doubt will fail.

IV. THE FUTURE OF LARGE LAW FIRMS: SMART, MULTI-DIMENSIONAL, STRATEGIC GROWTH

The BHFS experience contrasts in many ways with the standard story of large law firm growth. This part compares the conventional wisdom with the alternative model for growth that BHFS followed, and which may prove a valuable model for other growing law firms.

A. The Conventional Wisdom

The revised standard story literature offers three types of insights into the future of large law firms. Some argue that the large law firm is a dying breed, others assert that it must grow organically in order to survive, and yet other commentators believe that the future of the large firm is inherently unstable and uncertain.

1. The Death of the Large Law Firm

In *The Death of Big Law*, Larry Ribstein predicted the decline of large law firms. Ribstein argued that “these firms need outside capital to survive, but lack a business model for the development of firm-specific property that would enable the firms to attract this capital.” He concluded that

> [t]hese basic problems have left Big Law vulnerable to client demands for cheaper and more sophisticated legal products, competition among various providers of legal services, and national and international

> regulatory competition. The result is likely to be the end of the major role large law firms have played in the delivery of legal services.[168]

Professor Ribstein's analysis relied both explicitly and implicitly on the standard story of large law firms and, in particular, on the prevalence of the tournament theory as the dominant and unique model for law firm organization and on its organic growth characteristic. For example, it assumed that large law firms would need to grow or would perish, and that in order to finance such growth, firms would require outside capital. It also assumed that large law firms were organized pursuant to the tournament theory, and that while that model was a plausible one for law firm governance, it lacked a compelling business justification.

Yet as the experience at BHFS demonstrates, some of the very assumptions necessary for the conclusion of Big Law's death are inaccurate, both descriptively and normatively. Fundamentally, large law firms do not need to grow in order to survive; they do not need to rapidly add new cohorts of associates to support a growing number of partners. Rather, what they need is a paradigm shift, from a unitary, organic model of growth to a diverse array of strategic ones.

2. Organic Growth and Globalization

The standard story of large law firms predicts that as corporate entities grow and become global actors, their law firms would need to grow globally in order to effectively serve their clients' interests. Moreover, the model suggests the means for such global growth: just as large law firms outgrew their local offices and became true national firms with offices all over the country, so will they grow globally. Indeed, a few global law firms have emerged that appear to follow and validate the predictions of the standard story.[169] And if that was the extent of the experience of large law firms, perhaps Professors Galanter and Palay's prediction would have, in time, proven true.

However, the experience of large law firms has proven much richer than the one predicted by the tournament theory. The experience of BHFS, for example, with its shift from organic to strategic growth, demonstrates one possibly bright future for large law firms, which does not entail explosive growth. More generally, it suggests that the future of large global law firms lies in moving away from a simplistic model of organic growth and adopting client-driven strategic models. Indeed, preliminary evidence suggests the emergence of a multitude of global growth models.[170]

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168. Ribstein, *supra* note 6, at 813.

169. *Baker & McKenzie Tops Skadden*, AM. LAW., May 2010, at 137; *see supra* note 30 and accompanying text. Coudert Brothers, another leading global law firm that grew organically pursuant to the standard story, collapsed in 2005. *See* Jonathan D. Glater, *Law Firm that Opened Borders Is Closing Up Shop*, N.Y. TIMES, Aug. 30, 2005, at C1.

170. Etherington & Lee, *supra* note 30, at 99–100 (distinguishing between "tru[ly] global players" and mere cross-border super-national law firms); Flood, *supra* note 30, at 36–37 (examining the world of a subset of global American and English law firms that dominate global capital markets); William D. Henderson, *An Empirical Study of Single-Tier Versus*

3. Big but Brittle

Large law firms that follow a traditional organic growth model may find themselves, in the words of Burk and McGowan, big but brittle.[171] Such firms, functioning as internal reciprocal referral networks in which powerful rainmakers refer work to each other and utilize the non-equity partner workforce to mine their own human capital, are brittle because in their "eat what you kill" culture, rainmakers will tend to leave whenever attractive lucrative opportunities present themselves elsewhere.

Once again, BHFS's experience suggests an alternative, more stable model. Having grown strategically, the firm attempts to offer its attorneys opportunities that are unique in the large law firm world. The firm's smart growth and dominant positions in diverse practice areas, such as commercial real estate, gaming, and water law, offer lawyers in these departments experiences that might be hard to replicate elsewhere; and offers attorneys in other departments, such as litigation and corporate, the ability to mine the firm's diverse clients base. BHFS's lobbying practice presents additional opportunities to take advantage of synergies that would be less likely to exist at firms without such a practice, and to attract clients by offering a comprehensive package of representation, legislative solutions included. Finally, the firm's entrepreneurial and community-oriented culture tends to attract similar-minded attorneys who are less committed to the eat what you kill ethos, and who are therefore less likely to leave the firm solely for the pursuit of more lucrative opportunities.

Smart strategic growth patterns will vary, of course, from firm to firm. The BHFS story, however, does suggest a more general lesson: large law firms that replace a passive, organic growth model with a creative, strategic approach stand a better chance of creating a more stable foundation for the future.

B. Smart Growth

Even after it established more robust litigation and corporate law departments, BHFS faced only limited prospects for growth. The litigation department faced significant competition in the local Denver market from the entrenched elite large law firms in town, and while many of its clients were national clients, its ability to compete effectively outside of Denver was limited, even with its lower rates and lean staffing. Similarly, the corporate department's ability to enter the already-crowded market for large corporate entities' legal services, especially outside of Denver, was limited.

Resisting what some have characterized as large law firms' reluctance to adopt forward-looking strategic thinking,[172] the firm explicitly decided to

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Two-Tier Partnerships in the Am Law 200, 84 N.C. L. REV. 1691, 1742–44 (2006) (documenting increased large law firm segmentation, between elite and semi-elite firms).

171. Burk & McGowan, *supra* note 5.

172. *See* Anthony E. Davis, *Legal Ethics and Risk Management: Complementary Visions of Lawyer Regulation*, 21 GEO. J. LEGAL ETHICS 95 (2008); Milton C. Regan, Jr., *Risky Business*, 94 GEO. L.J. 1957 (2006).

abandon its reliance on organic growth models and pursue smart strategic models.

> And as we've gotten bigger . . . [w]e [have] had lots of consultants come in and look, especially [after we switched from a management committee to a managing partner model. Our managing partner] . . . was very good about really getting expert viewpoints on how to grow wisely, and so then what we learned from more than one of these people was that when we hit about seventy, eighty lawyers that for a city our size, that's kind of a critical juncture and that the vast majority of firms that size don't survive forever. Once their founding partners retire, it tends not to replace itself [while] smaller firms continue and much larger firms continue, statistically. So we made the decision [that] we need to get bigger, we can't grow indefinitely just in Denver; we need to look outside. So really very methodically and [in a] very business-like way, [we] looked at other markets and Las Vegas did seem to be a logical place for us to expand, so that was the first one. [T]here was a lot of thought put into the integration effort and nothing [is] ever perfect, but I think really for the size firm we were and kind of the experience we had of never merging with anybody before, I think we did a really good job on the integration there and continue to do that, and I think the expansions since then have built on that. I guess before we did Las Vegas, we [had] a small office in New Mexico. That was actually first and that was a good trial run because it was a small number of people with a single practice, so you weren't trying to integrate lawyers in multiple disciplines all at once.[173]

Consequently, the firm turned its attention to various avenues of smart strategic growth. First, it concluded that its success in commercial real estate and lobbying could be built upon and replicated. Viewed more broadly than subject-matter expertise, the firm's success in bringing together commercial real estate and lobbying was an example of creating a synergy between a traditional practice area and government relations to offer clients a more complete array of legal solutions that other law firms could not offer. The firm set about to find other law firms following the same model and merged with Las Vegas-based Schreck Brignone.[174] Schreck Brignone featured a similar model of creating synergies between a traditional practice area—gaming law—and government relations.[175] BHFS also attempted to replicate its past success and growing reputation by establishing a state-level government relations presence in other jurisdictions, such as New Mexico and Nevada.[176]

Second, now featuring full service litigation and corporate law departments, the firm was strategically positioned to take advantage of its

173. Interview #20, *supra* note 85, at 3.

174. *Fact Sheet*, BROWNSTEIN HYATT FARBER SCHRECK, http://www.bhfs.com/News/FactSheet (last visited Apr. 21, 2012); *see also* Jeff Simpson, *Mega-law Firms to Join Forces*, LAS VEGAS SUN (Dec. 3, 2006, 7:42 AM), http://www.lasvegassun.com/news/2006/dec/03/mega-law-firms-to-join-forces/.

175. Interview #3, *supra* note 48, at 25 ("[T]he Las Vegas merger was an effort to take better advantage of the relationships we had with people in the gaming industry, with clients in the gaming industry, which we had developed over a long period of time.").

176. Interview #2, *supra* note 46, at 11.

government relations and lobbying practice and use it to expand existing client relationships by crossing over to traditional law practices. It therefore set about systematically trying to mine its existing strengths and relationships to cross over to the mainstream practice areas of corporate law and litigation.[177]

> [T]here's something that we have now that no firm in the western U.S. has . . . because Washington is so important to every[one,] business people want the access that we have, people want to hire us for general legal work knowing that we can help them on stuff in Washington, it's really been quite astonishing. . . . [W]hen somebody needs you to help them [lobbying] with a $20 billion problem, I can assure you I have leverage on getting some [traditional] legal work from them, guaranteed. As a matter of fact that's what I do best, we're not going to solve their [lobbying] problem and just pay us a monthly retainer, that's not going to happen.[178]

Successful crossover, and leveraging the firm's strength in being able to offer effective holistic representation inclusive of lobbying, calls for careful building and evaluation of the firm's capabilities. Explained one partner,

> we're still recognized as a real estate powerhouse, and I think that our corporate practice has come way up, but is not at that same level, and . . . our litigation practice has come way up, but is not at that same level, and . . . our natural resources practice has come way up, and is not at that level in Denver. [A]nd so we have made the transition from a real estate and lobbying firm primarily into a full service firm.[179]

Importantly, effective crossover calls for not over-selling to clients the firm's current capabilities, outside of its traditional areas of strength. As noted by one partner,

> I think it's good for the brand that there be some things that we are known, are preeminent in, and that in the other things, it's important that we be known as right in the mix, very high quality up there with the others, but we don't have to be viewed in my mind as a litigation firm.[180]

Third, the firm focused its attention on strategic growth in particular practice areas in which it had or thought it could develop a comparative competitive advantage. Building on its government relations expertise and its subject matter expertise in water law, an important area of practice in the Mountain West region of the country, with significant overlay to local government interests (both state and municipal), the firm sought out and merged with the largest water law firm in California,[181] creating valuable

177. *See* Wald, *supra* note 7; Wald, *supra* note 31 (describing the experience of Jewish law firms in New York that established dominant positions in niche pockets of practice such as mergers and acquisitions, corporate takeover, and bankruptcy, and subsequently used their positions to cross over to the more mainstream arenas of corporate law).

178. Interview #13, *supra* note 47, at 7–8; *supra* note 118.

179. Interview #21, *supra* note 135, at 21.

180. *Id.*

181. Ian Elkins, *The New Law of the Land*, GLOBAL WATER INTELLIGENCE, Nov. 2007, at 23 ("The merger of Brownstein and Hatch Parent is designed to create the first truly national US water law firm."); Martha Sadler, *Hatch & Parent to Merge with Major Colorado Firm*,

subject matter expertise spanning the region. Similarly, it tried to build on its expertise in the area of the oil and gas industries, to develop as a leader in natural resources, renewable energy and green energy—fast-growth industries with important connections to federal and state government relations. Observed one partner, "I think that getting into different practice areas has really helped us not be as dependent on real estate and it will continue to be a good source of revenue, but it's not going to be as high a percentage of the firm's revenue."[182] That partner added,

> [J]ust over the last three or four years, looking at the numbers, we have probably 15 or more partners generating very significant revenue for the firm, and so spreading [rainmaking capabilities] out and not being as dependent on one or two people as we were say 10 years ago [has been a positive development].[183]

Fourth, as many large law firms became preoccupied with the trend of going global, BHFS instead secured its local and regional footing.

> [The managing partner] just wanted the firm to be recognized regionally as one of the premier firms, and for that to happen, all the departments had to have real visibility and presence in the major cities that we had markets in and offices in. . . . [I]t was the idea that if the firm as a whole is going to [have] a full service, all-departments-are-strong kind of reputation within the region, that in itself is obviously good economically. But I think that was primarily what was driving the push for more local business.[184]

Of course, BHFS is not unique in choosing to emphasize and build up its regional presence in the face of global pressures,[185] yet its commitment and success illustrate the importance of not accepting without scrutiny simplified predictions about large law firms' means of globalization.[186]

Finally, the firm employed strategically opportunistic thinking with regard to hiring, promotion, and retention of its associates and lateral partners. Explained one partner, "historically we always wanted to; we didn't really look to bring groups of lawyers in. It was much more one-on-one kind [of] recruiting. I think that was partly because we were smaller. We really wanted to make sure the personality fit."[187] A second partner observed,

> [w]e wanted to make sure people had some other ties here before we hired them for a summer job, because you didn't want them just for the summer, you wanted to make sure they were somebody that would potentially come full-time . . . and there was a lot of lateral hiring over the

SANTA BARBARA INDEP. (Oct. 25, 2007), *available at* http://www.independent.com/news/2007/oct/25/hatch-parent-merge-major-colorado-firm/; *Fact Sheet*, *supra* note 174.

182. Interview #3, *supra* note 48, at 25.

183. *Id.* at 28; *see also* Interview #4, *supra* note 40, at 19 ("I think the big struggle for a firm like us is transitioning from a first generation law firm to more of an institution.").

184. Interview #20, *supra* note 85, at 20.

185. *See supra* notes 30–34 and accompanying text.

186. Flood, *supra* note 30, at 52–53 (arguing that global American law firms depend on their positions in the U.S. domestic market).

187. Interview #20, *supra* note 85, at 3.

> years and some of them stayed and some didn't, but we were just trying to bring in different skill sets . . . . [W]e were always very interested in people from large firms who wanted a change and wanted to come to Denver, and so we brought some people like that and also people from government.[188]

The firm's strategy evidenced a departure from the standard story's feature of hiring a large incoming class of junior associates, with the expectation that most would depart, in two ways:[189] it did not rely on creating an associate-heavy entry-level pool; and it resorted to lateral hiring early on. A third partner explained the firm's approach to hiring and promotion:

> [F]or a while there, we didn't hire young associates because lots . . . drop out . . . the chances of success with a young associate are . . . not great . . . . But we've also gone through a lot of lateral hires; . . . those people haven't been successes a huge majority of [the] time, so you know it's a difficult dilemma as to how you staff it. . . . [T]his concept of "I'll be a partner and largely uninvolved and I'll get my young associate to do all the documents," frankly leads to not as great representation in my mind.[190]

The standard story of large law firms laments the decline of mentoring and training of young associates, and cautions that increasingly competitive market conditions, and clients' increasingly common explicit refusal to pay for junior associates' time, may undermine the future of associates, and over time, of large law firms themselves.[191] The experience of BHFS suggests otherwise. "I assume that we'll continue to have young associates,"[192] noted one partner, explaining that associates are needed because as attorneys within the firm grow professionally, they need junior lawyers below them who can help utilize their human capital. And while the firm would prefer to laterally recruit third-year associates from large law firms, it has also trained its own associates in leanly staffed representations.

BHFS's specific use of a variety of smart, strategic growth and management tools is, of course, explained in great part by its own unique circumstances. Nonetheless, its experience suggests that large law firms committed to moving beyond organic growth and management models—firms that refuse to adopt generic and simplified growth strategies such as "go global or perish"—but rather put in place smart, strategic models, stand a good chance of defying predictions about their imminent demise. Concluded one partner, "[W]e are really coming into our own."[193]

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188. Interview #3, *supra* note 48, at 8.
189. Wald, *supra* note 7, at 1806–10.
190. Interview #4, *supra* note 40, at 14.
191. *Supra* note 96 and accompanying text.
192. Interview #21, *supra* note 135, at 19 (discussing large law firms' self-interested incentive to train associates).
193. *Id.* at 27.

CONCLUSION

> [W]e have [a] national firm experience with local firm rates and staffing. I think that's the other place where we try to distinguish ourselves is that partners do your work and senior lawyers do your work and it's not shuttled off to a third or fourth year associate. . . . [C]lients like it. They love being able to have access to the senior lawyer . . . . One of the things you [have] to balance with that is your associate training and growing lawyers because you don't want a situation where the partner is doing all the work and all the young lawyers are doing is diligence and xeroxing . . . and we end up a lot of times having young lawyers participate in phone calls even though we don't bill their time . . . .[194]

Throughout the twentieth century, a rule of thumb for large law firms was "grow or die," or, more accurately, "grow or risk losing prestige and market share." Large law firms served predominantly large entity clients which, faced with increasingly complex bodies of regulation, had growing legal needs. To serve these clients effectively, large law firms needed to grow so they could address increased demand for legal services, add specializations, and serve their clients around the clock.

In the twenty-first century, as the business world, if not the entire world, has become flatter, one might be tempted to think that a similar rule of thumb might apply, something along the lines of "grow globally or go away," at least judging from the websites of large law firms that increasingly declare the global reach of their subjects.[195]

Yet it would be premature to conclude that the nationalization and globalization of large law firms in the organic sense of growing to establish a worldwide presence and workforce is an inevitable and necessary step for survival. Whereas the organic growth of early elite large law firms in the twentieth century was, in many ways, a function of increased demand for corporate legal services by large entity clients, it is not at all clear that similar demand will persist, or that it necessitates the organic growth of large law firms. Some large law firms would find it effective and profitable to grow globally by opening offices and by recruiting attorneys from around the world with the goal of targeting the business of global entity clients. Others will remain (or become) international in the limited sense of serving clients all over the world from only one main location in the United States or outside of it, with or without the use of a global lawyer workforce via out-sourcing and off-shoring. Yet others will remain mid-size, big enough to offer high-end, specialized legal services in complex transactions nationally, and perhaps even super-nationally, but not large enough to offer worldwide global services of all sorts. And yet others will choose to remain

194. Interview #20, *supra* note 85, at 22–23. "[Part and p]arcel to our growth is we kind of position ourselves at the premium end of the local market but below the national ones. I used to tell people that if we were a car we'd be an Audi. We're sort of in between a Volkswagen and BMW. Now Audis are too fancy so my analogy doesn't work that well." *Id.* at 28.

195. Carole Silver, *The Variable Value of U.S. Legal Education in the Global Legal Services Market*, 24 GEO. J. LEGAL ETHICS 1, 2 n.4 (2001) (arguing that claiming global status on their websites has become the standard for large law firms).

or become regional actors, offering more localized expertise, within and outside the United States. Ultimately, the fate of large law firms depends not on a generic commitment to grow organically, but rather on their ability to develop and implement smart strategic growth plans attractive to their clients and attuned to their needs.