The Ties That Bind: The Relationship Between Law Firm Growth and Law Firm Survival

*Alan James Kluegel**

For the better part of the twentieth century, law firms hired, trained, and grew through a stable and predictable pattern: hire new law school graduates, monitor and evaluate their work, and pick promising attorneys from among their ranks and elevate them to partner. Rinse, lather, repeat. A combination of professional norms and organizational inertia made this approach the dominant method of growth among large corporate law firms until changes in legal market broke down these customary practices, ushering in a new era of lawyer mobility. Now, it has become commonplace for lawyers to leave for greener pastures as more law firms seek to grow their practices through lateral hiring.

The question that this Article seeks to answer is: what (if any) effect has this change had on the stability of these law firms? Conventional wisdom holds that law firms that grow through entry-level hiring and training young attorneys (a practice long associated with the most prestigious "white shoe" firms) are more stable in the long run than law firms that poach attorneys from other firms via lateral acquisition. But why should hiring inexperienced and untested lawyers result in greater success for the firm than hiring lawyers that are proven to be competent and successful?

This Article presents a comprehensive analysis of the relationship between law firm profits, firm growth strategy, and the life course of large American corporate law firms. I draw on an original longitudinal dataset to provide new insights on the determinants and effects of firm growth over a quarter of a century, from 1985 to 2011. I hypothesize that (1) "organic" growth, which relies on entry-level hiring and internal promotion, helps successful firms protect

* Assistant Professor, University of Kentucky J. David Rosenberg College of Law. The author would like to thank Nicholas Sim, Heather Haveman, Sophia Rabe-Hesketh, Maya Peterson, the Multilevel Model Working Group at the University of California, Berkeley, Cal Morrill, Laurie Edelman, KT Albiston, and my former colleagues at the University of Illinois College of Law who provided invaluable feedback on an earlier draft. Luca Provenzano and the editorial team at the *Seton Hall Law Review* have made this Article immeasurably better. All errors were included deliberately to annoy you, the reader.

their positions by creating dense firm networks that allow the firm to survive threats to the organization, while (2) "mimetic" growth, which relies on firm merger or mass lateral hiring fails to create these dense networks and thus fails to provide long-term benefit to these firms.

Ultimately, my findings both corroborate and complicate the conventional wisdom, with special resonances for what predicts the longevity of corporate law firms. I find that less profitable firms pursued mimetic growth in response to the organic growth of their more successful peers. In addition, controlling for observed potential confounders, those firms that grew organically in response to organizational need were at lower risk for dissolution than firms that intentionally pursued a growth strategy involving mergers and acquisitions. Furthermore, the increase in risk associated with this mimetic growth strategy hits low-status law firms the hardest. I conclude that mimetic growth has the potential to damage firm cohesion and upset the unique internal dynamics of law firms, thus fraying the professional ties that bind clients and lawyers alike to the firm.

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I. INTRODUCTION

> "Now, everyone has become a free agent. It has changed and destabilized the nature of the legal profession."
>
> – Stuart Saft, partner at Dewey & LeBouef LLP, on the cause of Dewey & LeBouef's collapse, May 4, 2012[1]

> "We're delighted to have someone with Stuart's expertise and reputation join the firm's already formidable real estate practice."
>
> – Steven H. Davis, chairman of Dewey & LeBouef LLP, on hiring Stuart Saft away from his previous firm, May 10, 2007[2]

From the 1920s through the 1960s—a so-called "Golden Age" of legal practice[3]—elite law firms were the very model of stability. Partners were loyal to their firms, firms were loyal to their partners,

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[1] James B. Stewart, *Dewey's Fall Underscores Law Firm's New Reality*, N.Y. TIMES (May 4, 2012), https://www.nytimes.com/2012/05/05/business/deweys-collapse-underscores-a-new-reality-for-law-firms-common-sense.html.

[2] Angelo Kakolyris, *Stuart Saft Joins LeBoeuf, Lamb, Greene & MacRae*, BUS. WIRE (May 10, 2007), http://www.proquest.com/wire-feeds/stuart-saft-joins-leboeuf-lamb-greene-amp-macrae/docview/445036167/se-2?accountid=13793.

[3] Marc Galanter, *Lawyers in the Mist: The Golden Age of Legal Nostalgia*, 100 DICK. L. REV. 549, 554–55 (1996).

and norms of professionalism and collegiality kept the bonds between lawyers and law firms strong.[4]

Beginning in the 1980s, however, the business environment for law firms changed dramatically. Corporate consolidation reduced the pool of clients, while the rise of finance created more lucrative legal work.[5] Firms that were initially successful in navigating this changing landscape were rewarded with increased business, which created opportunities for growth via expanded entry-level hiring.[6] Other firms, however, pursued an alternative method of growth in which they brought on established lawyers by hiring lateral partners and/or practice groups from rival firms, acquiring a smaller firm, or merging with a peer firm.[7]

At the same time that corporate law firms were expanding through these two methods, legal practice—once characterized by organizational stability, predictable career paths, and conservative management—became more volatile and dynamic. As lawyers moved between firms, clients followed "rainmaker" partners to new firms, and the firms left behind suddenly collapsed. This period thus offers an important site from which to analyze the determinants of firm expansion and firm mortality.

In this Article, I use insights from organizational theory to analyze the internal dynamics of law firms, review how professional legal ethics rules shape firm behavior, and examine why changes in a firm's network of client ties could affect the firm's mortality risk. I propose the theory that (1) "organic" growth—growth through entry-level hiring and internal promotion—helps successful firms protect their positions by creating dense networks between firms and clients that allow the firm to survive threats to the organization, while (2) "mimetic" growth—growth through firm merger or lateral hiring—fails to create these dense networks and thus undermines the firm's long-term stability.

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[4] Robert L. Nelson, *Of Tournaments and Transformations: Explaining the Growth of Large Law Firms*, 1992 WIS. L. REV. 733, 735 (1992) (reviewing MARC GALANTER & THOMAS PALAY, TOURNAMENT OF LAWYERS: THE TRANSFORMATION OF THE BIG LAW FIRM (1991)).

[5] *See generally* James W. Jones, *The Challenge of Change: The Practice of Law in the Year 2000*, 41 VAND. L. REV. 683 (1988).

[6] *See* MARC GALANTER & THOMAS PALAY, TOURNAMENT OF LAWYERS: THE TRANSFORMATION OF THE BIG LAW FIRM 88–89 (1991).

[7] Robert W. Hillman, *Law Firms and Their Partners: The Law and Ethics of Grabbing and Leaving*, 67 TEX. L. REV. 1, 2–3 (1988).

To examine the factors that lead firms to adopt different strategies, and test whether growth strategy contributes to firm mortality, I compiled a longitudinal dataset that tracks the most prominent American corporate law firms from 1985 to 2011. I collected and synthesized information from industry periodicals, contemporaneous news reports, and the law firms themselves to create a dataset with detailed law firm headcounts, partner and associate numbers, profits per partner, growth rates, profit trends, lateral hiring events, acquisitions, and dissolutions. Armed with this unique dataset, I examine the potential causes and consequences of law firm growth and law firm mortality.

I proceed in this Article as follows: in Part II, I introduce the recent phenomenon of rapid law firm expansion and explain why that expansion has been so difficult to theorize. I conclude Part II by introducing a broader perspective that incorporates the environment in which firms are situated and examining the different types of firm growth as a response to changes in the organizational ecology that law firms inhabit. In Part III, I examine the regulations that shape professional organizations and the complicated internal dynamics of the law firm that are, in part, a consequence of that legal regime. I conclude Part III by hypothesizing that a firm's growth strategy can impact a firm's internal dynamics in ways that fortify or attenuate its stability. In Part IV, I examine longitudinal data on law firm growth and suggest that mimetic growth may be an organizational response to loss of status. I then examine the relationship between a firm's method of growth and its likelihood of dissolution. Part V concludes by noting the implications of these results for our understanding of the legal profession.

II. LAW FIRM GROWTH

The most dramatic change in the law firm as an organizational form has been the precipitous and seemingly unstoppable rise over the past half-century in the headcount of the nation's top corporate law firms. In the early 1960s, the largest firm in the country had 125 lawyers, and only twenty law firms had more than 50 attorneys.[8] In 1983, the average size of the top 100 law firms was roughly 217

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[8] RAISE THE BAR: REAL WORLD SOLUTIONS FOR A TROUBLED PROFESSION 34 (Lawrence J. Fox ed., 2007) [hereinafter RAISE THE BAR]; ERWIN O. SMIGEL, THE WALL STREET LAWYER, PROFESSIONAL ORGANIZATION MAN?, 34–35, 43 (1964).

attorneys.[9] In 2004, America's largest law firm had 2,992 lawyers.[10] Today, the largest law firm employs a truly staggering 4,700 lawyers.[11] While general growth in the market for legal services can explain why there are more lawyers now than there were in 1960, scholars have struggled to explain precisely why the size of the most prominent law firms continues to swell at an almost exponential rate, as I will explain in the following section. I argue that the traditional explanations that have been proffered for the growth of law firms are inapt and suggest that instead we should look to the broader environment in which law firms are situated to explain the pressures on law firms to grow.

A. *Structural Explanations of Firm Growth*

Traditional economic explanations for large-scale organizational growth—the benefits derived from economies of scale or the monopolization of a market—are inapplicable to the largest law firms, as (1) large law firms do not achieve any kind of cost savings vis- à-vis their smaller competitors (in fact, they generally charge much more for the same work),[12] (2) the cost of monitoring attorneys to avoid malpractice is higher in larger law firms given the complexity of the work and the specialized nature of firm practice,[13] and (3) complicated conflict of interest rules actually make administration of larger firms more costly than smaller firms.[14] Other structural theories of growth have been advanced, but they each have their flaws.

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[9] 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, 314 n. 3 (1984).

[10] RAISE THE BAR, *supra* note 8, at 34.

[11] *See The NLJ 500: Ranked by Head Count*, NAT'L L.J. (June 23, 2021), https://www.law.com/nationallawjournal/2021/06/23/the-nlj-500-main-chart-3 /?tokenvalue=6DC955D2-936F-4B77-A645-2618009D1C29 (showing the largest law firm, Baker & McKenzie, actually shrunk year-over-year).

[12] *See* Peter D. Sherer, *Leveraging Human Assets in Law Firms: Human Capital Structures and Organizational Capabilities*, 48 IND. & LAB. REL. REV. 671, 685–86 (1995).

[13] Arleen Leibowitz & Robert Tollison, *Free Riding, Shirking, and Team Production in Legal Partnerships*, 18 ECON.INQUIRY 380, 388 (1980); Robert E. O'Malley, *Preventing Legal Malpractice in Large Law Firms*, 20 U. TOL. L. REV. 325, 327–28 (1989); David B. Wilkins & G. Mitu Gulati, *Why Are There So Few Black Lawyers in Corporate Law Firms? An Institutional Analysis*, 84 CALIFORNIA LAW REVIEW 493 (1996).

[14] SUSAN P. SHAPIRO, TANGLED LOYALTIES: CONFLICT OF INTEREST IN LEGAL PRACTICE 368 (2002); *see* Richard A. Epstein, *The Legal Regulation of Lawyers' Conflicts of Interest*, 60 FORDHAM L. REV. 579, 586 (1991).

1. Tournament Theory

Galanter and Palay's "tournament theory" holds that law firm growth is a product of the law firm's internal labor market.[15] According to the theory, associates are hired to perform the work that the partnership generates and are put through a promotion-to-partner tournament (otherwise known as the "up-or-out" system) as a means of maintaining associate loyalty and effort.[16] A certain percentage of associates must be made partner as a reward for winning the tournament to keep the structure credible for the remaining associates who would otherwise have incentive to shirk or take work for themselves—this system of ongoing hiring and promotion creates a geometric rate of growth.[17]

Yet contrary to Galanter's theory, neither law firm growth nor promotion occur automatically. Despite the theory's accurate reflection of the mechanism by which associates advance to partnership—and its evocation of the cutthroat atmosphere such a tournament creates—law firms, nonetheless, often vary considerably in their partnership promotion rates.[18] Another problem is that law firm structure is more flexible than Galanter's theory might admit. More recently, Galanter acknowledged that multiple alternatives to partnership have become available to losers of the tournament—"of counsel" positions (permanent associates), non-equity partnerships, etc.—and that the tournament is therefore not strictly a tournament after all.[19] Furthermore, there is no evidence that the credibility of the associate promotion tournament is at all a consideration for law firm partners. Indeed, immediately following the financial crisis in 2008, law firms laid off several thousand associates and all but reneged on agreements to hire thousands more new law school graduates, apparently oblivious to the fact that these moves would clearly violate the terms of the "tournament."[20]

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[15] GALANTER & PALAY, *supra* note 6, at 100–03.

[16] *Id.*

[17] *Id.*

[18] John P. Heinz, Robert L. Nelson & Edward O. Laumann, *The Scale of Justice: Observations on the Transformation of Urban Law Practice*, 27 ANN. REV. SOCIO. 337, 345 (2001).

[19] Marc Galanter & William Henderson, *The Elastic Tournament: The Second Transformation of the Big Law Firm*, 60 STAN. L. REV. 1867, 1875–76 (2008).

[20] 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, 27–31 (2011).

The larger problem with tournament theory, however, is that it mistakes lawyers for a law firm's critical resource[21] when a law firm's most important (some might argue its only) resource is its stable of clients. Promotion to partner does not occur whenever an associate has "earned" it in the tournament—it occurs when the associate can demonstrate that she is necessary to maintain a client relationship or has the capability to generate business for the law firm.

2. Portfolio Theory

Another popular theory is that law firm growth is driven by "portfolio theory"—the idea that law firms add attorneys and practice areas to hedge against the loss of a client or downturn in a sector.[22] However, this theory, too, crashes against the rocky shoals of empirical evidence, as diversification can only work within a law firm that can exercise control over its members to keep the law firm together. While high degrees of social cohesion within law firms have been shown to suppress status competition and prevent practice groups from breaking off,[23] the increased size of corporate law firms makes high degrees of social cohesion impossible; law firms lack strict controls to keep partners from electively leaving the firm.[24]

In truth, partners in large law firms can and do leave their firms for greener pastures when they overperform relative to the rest of the partners in the law firm.[25] And on the other side of this, law firms routinely shed practice areas that do not deliver high profitability to the firm. For example, white-shoe law firms traditionally had a trusts and estates practice for wealthy individual clients, but the work did not generate outsize bills or attract price-insensitive clients; the largest law firms are increasingly dropping it from their areas of practice.[26] Likewise, large law firms used to represent corporations in individual

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[21] *See* Peter D. Sherer & Kyungmook Lee, *Institutional Change in Large Law Firms: A Resource Dependency and Institutional Perspective*, 45 ACAD. MGMT. J. 102, 108 (2002).

[22] Gilson and Mnookin, *supra* note 9, at 329.

[23] EMMANUEL LAZEGA, THE COLLEGIAL PHENOMENON: THE SOCIAL MECHANISMS OF COOPERATION AMONG PEERS IN A CORPORATE LAW PARTNERSHIP 173–75 (2001).

[24] *See infra* Part II.B.2.

[25] *See infra* Part III. Law Firm Regulation and Law Firm Structure where the dynamics of this are discussed.

[26] Peter Lattman, *Debevoise & Plimpton Drops Trusts and Estates Practice*, N.Y. TIMES (Feb. 5, 2013, 9:03 PM), https://archive.nytimes.com/dealbook.nytimes.com/2013/02/05/debevoise-plimpton-drops-trusts-and-estates-practice.

product liability suits,[27] though as these suits became more common and formulaic, this repetitive work was outsourced to smaller local law firms who could provide cheaper services. Indeed, lawyers who specialize in practice areas where market competition is driving down prices are leaving large law firm practice in order to maintain business they would otherwise not be able to keep at the prices their firms charge.[28] There is little empirical support for diversification as a driver of the increased size of law firms.

A flaw common to these structural theories is that they do not take into consideration changes in the environment of the organization (either its resource base or the manner in which it is regulated) as a driver of law firm growth. Another flaw is that they assume that law firm growth occurs for the same reason for all the firms in the population. A final flaw is that these theories assume that law firm management responds rationally to major structural changes in the legal economy, even though these firms are often operating in an uncertain environment with incomplete information. A broader perspective—one that incorporates the law firm as an actor operating in a dense, highly regulated field with dependent relationships to other organizations—is necessary.

B. *The Organizational Ecology of the Corporate Law Firm*

Like all organizations, the organizational behavior of corporate law firms depends on the environmental conditions of the industry in which they are situated.[29] In addition to the environmental conditions that specifically affect the practice of law, however, law firms further depend on the demography of the organizations they service—that is, their success or failure depends not only on their environment, but also on the environment on which they are dependent.[30] In the case of law firms, that means their survival depends on the conditions of the large corporations that they serve. Understanding the growth of law

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[27] Margot Slade, *Personal-Injury Lawyer: New Era, New Image*, N.Y. TIMES (Sept. 9, 1988), https://www.nytimes.com/1988/09/09/us/the-law-personal-injury-lawyer-new-era-new-image.html.

[28] *See* Hilary Potkewitz, *Partners Flee Big Law Firms to be Masters of Their Domain*, 26 CRAIN'S N.Y. BUS. (Aug. 16, 2010), https://www.crainsnewyork.com/article/20100815/SMALLBIZ/308159975/partners-flee-big-law-firms-to-go-their-own-way.

[29] Michael T. Hannan & John Freeman, *The Population Ecology of Organizations*, 82 AM. J. SOCIO. 929, 934 (1977).

[30] JEFFREY PFEFFER & GERALD R. SALANCIK, THE EXTERNAL CONTROL OF ORGANIZATIONS: A RESOURCE DEPENDENCE PERSPECTIVE 3 (1st ed. 2003).

firms over the last twenty-five years requires an understanding of both the role of the law firm and the larger corporate ecology.

1. Changes in the Law Firm's Ecological Niche

The services that large corporate law firms provide are tailored to help successful, mature organizations navigate and succeed in their particular organizational environment. Broadly speaking, the practice areas of corporate law firms exist to achieve three goals: protect the client's market share, maintain the client's access to capital, and minimize the client's regulatory or litigation losses. As such, most large law firms offer a similar menu of practices: intellectual property and anti-trust litigation (protect market share); mergers and acquisitions, capital markets, and structured finance (access to capital); and class action/mass tort defense, tax, insurance, and securities fraud/white collar defense (minimize losses). The focus in each of these practice areas is on large-scale matters where the corporate client is less sensitive to price concerns and thus where the law firm can maximize profits—e.g., multibillion-dollar transactions, "bet the company" litigation, or securities lawsuits/government investigations where the company (or its directors and officers) are at risk.[31]

Two major structural shifts fundamentally changed corporate America beginning in the 1980s: corporate consolidation and the financialization of the economy. First, the massive wave of mergers and acquisitions that the Reagan administration's relaxed antitrust enforcement brought on had the effect of greatly increasing the amount of legal work available for large law firms.[32] Figure 1 is a graph of pre-1985 mergers and acquisitions activity, combining several data sources to show that transactions began to increase sharply during the early-to-mid-1980s. Figure 2, from the Institute for Mergers, Acquisitions, and Alliances, shows that the rise in corporate

[31] For example, in 2008, the electronics manufacturer Siemens paid over one billion dollars to a single firm, "Debevoise & Plimpton LLP, to conduct an internal investigation" of an international bribery scandal, thereby avoiding a federal criminal conviction that would have likely destroyed the company. *See* Siri Schubert & T. Christian Miller, *At Siemens, Bribery Was Just a Line Item*, N.Y. TIMES (Dec. 20, 2008), https://www.nytimes.com/2008/12/21/business/worldbusiness/21siemens.html.

[32] Jones, *supra* note 5, at 685 ("[M]ergers and acquisitions practice dominates the work of corporate lawyers. Most corporations spend inordinate amounts of time and money dealing with the current wave of takeover attempts."); ROBERT L. NELSON, PARTNERS WITH POWER: THE SOCIAL TRANSFORMATION OF THE LARGE LAW FIRM 200 (1988); Heinz, Nelson, & Laumann, *supra* note 18, at 342.

combinations continued to increase dramatically in the post-1985 period as well.

Figure 1: Golbe and White's Graph of Pre-1985 Merger Trends[33]

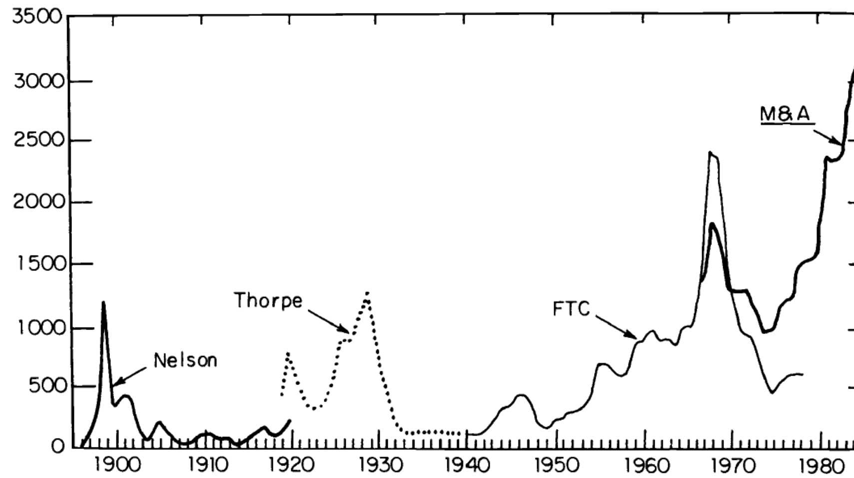


Fig. 2.6 Annual Number of Mergers and Acquisitions: Nelson Series, Thorpe Series, FTC "Broad" Series, and *M&A* "Domestic" Series

The secondary effect of this massive increase in complex corporate transactions was a net reduction in the number of large corporate clients. As a result of this consolidation, more wealth became concentrated in the hands of fewer and larger corporations—in 1955, Fortune 500 companies had revenue equivalent to 39% of GDP; in 2006, the Fortune 500 had revenue equivalent to 73.4% of GDP.[34] And as the economy became more and more centralized in the hands of a few large law firms, the pool of clients for lawyers who provide services for established companies shrunk.[35]

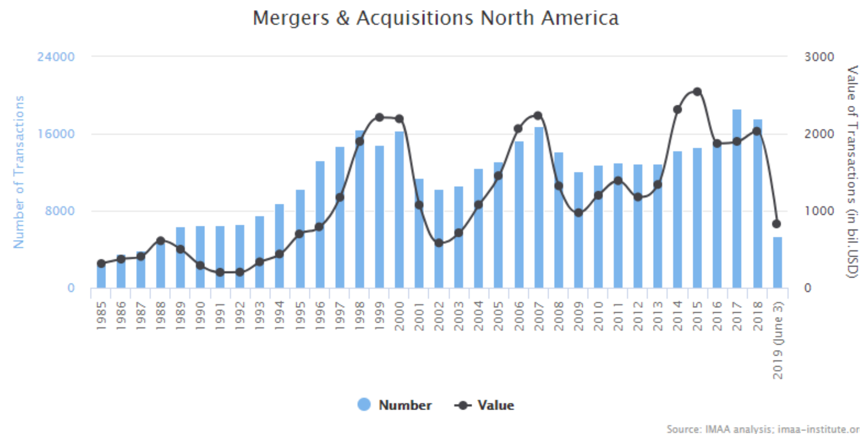
[33] Devra L. Golbe & Lawrence J. White, *Mergers and Acquisitions in the U.S. Economy: An Aggregate and Historical Overview*, *in* MERGERS AND ACQUISITIONS 25, 37 (Alan J. Auerbach ed., 1988).

[34] Ellen McGirt, *A Banner Year*, FORTUNE (Apr. 17, 2006), https://archive.fortune.com/magazines/fortune/fortune_archive/2006/04/17/8374302/index.htm.

[35] S. S. Samuelson & L. J. Jaffe, *A Statistical Analysis of Law Firm Profitability*, 70 B.U. L. REV. 185, 189–90 (1990); John P. Heinz, *When Law Firms Fail*, 43 SUFFOLK U. L. REV. 67, 74 (2009).

Figure 2: IMAA Graph of Post-1985 Merger Trends [36]

Number & Value of M&A North America



The second shift—related to the first—was the growing financialization of the American economy, signified by the rise in profit and prestige of financial services companies—including private equity firms, investment banks, and insurance companies.[37] These companies generate a greater demand for high-end legal services on a per capita basis than companies in other industries, as financial service companies rely on legally binding agreements to a much greater degree than the manufacturers of the industrial age.[38] As these financial firms came to dominate the economy, corporate legal work became more prolific and more lucrative.

2. A New Market for Law Firms

The initial effect of consolidation and financialization is that law firms that were well-positioned in the new market were able to thrive. Law firms obtained advantages in this new market by virtue of either having experienced practitioners in the needed practice areas (such as

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[36] *M&A Review 2019*, INST. FOR MERGERS, ACQUISITIONS & ALLS. (IMAA), http://imaa-institute.org/mergers-and-acquisitions-statistics (last visited Sept. 20, 2022).

[37] Greta R. Krippner, *The Financialization of the American Economy*, 3 SOCIO.-ECON. REV. 173, 180–81 (2005).

[38] Robert Bell, *Some Determinants of Corporate Use of Attorneys* 22–24 (Georgetown Univ., Working Paper No. 9926, 1991) ("Companies dealing with financial services and insurance and those in the transportation industry are the most intensive consumers of legal services."). *But see* Stewart Macaulay, *Non-Contractual Relations in Business: A Preliminary Study*, 28 AM. SOCIO. REV. 55, 62 (1963) (finding that industrial firms were reticent to rely on lawyers and contracts).

Davis Polk & Wardwell's experience in mergers and acquisitions as J.P. Morgan's longtime counsel),[39] being innovators in financial markets (such as Marty Lipton of Wachtell Lipton Rosen & Katz's development of the "poison pill" corporate takeover defense),[40] or by having strong ties to clients who themselves thrived in the new environment (such as Simpson Thacher & Bartlett's willingness to represent leveraged buyout firms during a time when such firms were outsiders on Wall Street).[41] These law firms saw an immediate increase in work, both from the mergers and acquisitions themselves and from the increased amount of legal work from newly consolidated clients.[42]

The long-term effect of these changes was increased competition among law firms. When the unrestricted movement of lawyers (discussed in Part III.A) is combined with a shrinking number of clients—who are in turn offering a larger volume of more lucrative work—conditions are ripe for both fierce competition for clients from rival firms (external threats to law firms) and the potential for their own lawyers to grab clients and leave (internal threats to law firms). Lawyers who could singlehandedly bring clients to their firms (or take clients to rival firms)—so-called "rainmakers"—thus had dramatically increased leverage over other lawyers in these firms.[43]

It is in this environment—well-positioned law firms experiencing rapidly increasing workloads, and competition among law firms for clients intensifying—that the growth of law firms into the current global mega-firms began.

C. *Types of Law Firm Growth*

The relationship between organization size and organizational change has been analyzed extensively—including studies of the

[39] Francis M. Carroll, *Review of The Anointed: New York's White Shoe Law Firms—How They Started, How They Grew, and How They Ran the Country, by Jeremiah D. Lambert and Geoffrey S. Stewart*, 56 CAN. J. HIST., 424, 42526 (2021).

[40] Martin M. Cohen, Note, "*Poison Pills" as a Negotiating Tool: Seeking a Cease-Fire in the Corporate Takeover Wars*, 1987 COLUM. BUS. L. REV. 459, 460 n.3 (1987).

[41] *See* BRYAN BURROUGH & JOHN HELYAR, BARBARIANS AT THE GATE: THE FALL OF RJR NABISCO 192–93 (Harper Bus. 2008) (1989).

[42] If Client A (represented by Firm A) merges with Client B (represented by Firm B), the surviving corporation needs only one firm to represent it, and the winning firm stands to inherit the work from both Client A and Client B.

[43] RAISE THE BAR, *supra* note 8, at 107; NELSON, *supra* note 32, at 203–04, 224–25.

relationship between size and survival,[44] between size and conformity to industry leaders,[45] and between size and formal differentiation.[46] Organization size, however, is often taken as the starting point for examining the effects of size on organization activity and organization survival, without an analysis of the *method* of organizational growth. Because of their unique regulatory regime and the importance of the lawyer-client relationship, law firms avail themselves of two methods of organizational expansion: organic and mimetic.

1. Organic Growth: The Traditional Tournament

Law firms traditionally added to their ranks by having young attorneys join them as associates directly out of law school.[47] This was the method of law firm hiring prior to the changes in the law firm environment and the increase in inter-firm competition.[48] As the sociologist Erwin Smigel saw it, the purpose of selectively hiring and intensively training attorneys over a number of years allowed law firms to signal to clients that the firm was committed to providing the client with a high standard of practice even after the current group of partners retires.[49] Hiring of lateral attorneys was rare and considered a breach of professional norms.[50] Instead, law firms hired young attorneys to handle work that senior attorneys brought to the firm—the paradigmatic exchange between a lawyer with clients but no time and a lawyer with time but no clients.[51]

To grow through this strategy requires a law firm to be patient, as many (*many*) young attorneys never advance past the associate level at

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[44] David N. Barron, Elizabeth West & Michael T. Hannan, *A Time to Grow and a Time to Die: Growth and Mortality of Credit Unions in New York City, 1914-1990*, 100 AM. J. SOCIO. 381, 382 (1994).

[45] Heather A. Haveman, *Organizational Size and Change: Diversification in the Savings and Loan Industry After Deregulation*, 38 ADMIN. SCI. Q. 20, 21–23 (1993).

[46] Peter M. Blau, *A Formal Theory of Differentiation in Organizations*, 35 AM. SOCIO. REV. 201, 204 (1970); John R. Kimberly, *Organizational Size and the Structuralist Perspective: A Review, Critique, and Proposal*, 21 ADMIN. SCI. Q. 571, 571 (1976).

[47] LAWRENCE M. FRIEDMAN, A HISTORY OF AMERICAN LAW 489 (3d. ed. 2005); Erwin O. Smigel, *The Impact of Recruitment on the Organization of the Large Law Firm*, 25 AM. SOCIO. REV. 56, 57–58 (1960).

[48] *See* Robert W. Hillman, *Law Firm Risk Management in an Era of Breakups and Lawyer Mobility: Limitations and Opportunities*, 43 TEX. TECH L. REV. 449, 450 (2011).

[49] *See* Smigel, *supra* note 47, at 62–63.

[50] SMIGEL, *supra* note 8, at 57.

[51] GALANTER & PALAY, *supra* note 6, at 108.

the firm that initially recruited them.[52] Because it is difficult to identify high-value attorneys during the recruitment process,[53] the law firm must hire large cohorts and evaluate them during the promotion-to-partner tournament (the "organic" growth strategy), thus requiring law firms to make large up-front capital investments in each cohort. While early-career associates do contribute to the firm's bottom line through their billable hours, the profit margins on their time are lower than those of more experienced attorneys, as they bill out at lower rates and require more supervision from experienced attorneys.[54]

2. Mimetic Growth: The Lateral Market for Hired Guns

The other method of growth is to acquire established lawyers or entire firms through merger with a peer firm, acquisition of a smaller firm, or by hiring lateral partners or practice groups from rival firms. While once taboo,[55] this became a popular method for law firm growth; in one sample of large law firms between 2000 and 2006, 48% of the new partners were lateral hires.[56] This method is often less expensive in the short-term than organic growth, as established attorneys bring clients with them to their new firm (or they are prominent enough in the field to attract new clients to the firm).[57] Thus, a law firm can recoup an investment in an established attorney much faster than an investment in an entry-level attorney, even though established attorneys cost more. Note that this method brings its own risk—established attorneys often bargain for guaranteed salaries in exchange for switching law firms; if revenue declines, the firm will have to cut deeply into the profit shares for the pre-existing partners. The collapse of Dewey & LeBouef was caused in part by lavish pay packages doled out to lateral partners who were unable to bring in a commensurate level of business.[58]

Because this alternative method is rarely in response to a direct organizational need—bringing aboard rainmaker attorneys with

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[52] *Id.* at 104; Sherer, *supra* note 12, at 673.

[53] Renee M Landers, James B Rebitzer & Lowell J Taylor, *Rat Race Redux: Adverse Selection in the Determination of Work Hours in Law Firms*, 86 AM. ECON. REV. 329, 335 (1996) (describing how firms screen associates through the partnership tournament after hiring).

[54] *See* Sherer, *supra* note 13, at 673.

[55] Jones, *supra* note 5; Hillman, *supra* note 7; Samuelson & Jaffe, *supra* note 35, at 185–86.

[56] Heinz, *supra* note 35, at 68.

[57] Hillman, *supra* note 7, at 12.

[58] Stewart, *supra* note 1.

established practices and clients would not necessarily help a firm meet increased client demand—I argue that this method of growth is "mimetic" and arises when a firm observes its peers growing and expands to keep up.[59]

In organizational theory, "mimetic isomorphism" refers to the phenomenon whereby organizations look to their most respected peers—in this case, the very top law firms—and adopt their structures and practices in an effort to maintain legitimacy in their field.[60] Examples of mimetic isomorphism in the legal profession are abound—from the Cravath partnership structure, to lock-step compensation systems for associates, to the wave of partner de-equitization that occurred in the early 2000s.[61] Even the physical location of offices can be mimetic. While the first major wave of overseas law firm expansion occurred at the behest of clients, the second wave unfolded as a costly scramble to maintain legitimacy in the face of peer law firm international expansion.[62] The publication and ranking of law firm size could also contribute to the desire of mid-tier firms to pursue growth—if prestige and high profits remain elusive, law firm management may consider size an attainable goal.

Aiding these law firms in their quest to mimic the growth of the leading organizations is the legal regime that allows for easy lawyer movement and the internal tensions between lawyers and their firms that generate opportunities to poach lawyers from other firms. Both are discussed in the next section.

III. LAW FIRM REGULATION AND LAW FIRM STRUCTURE

A key part of understanding the ecology in which law firms are situated is the regulatory framework that strictly controls what restrictions law firms can place on their members. Law firms are formally organized into non-hierarchical business entities, which are then subject to ethical rules limiting the power of the organization to control their members, both of which create a dynamic where the

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[59] Paul J. DiMaggio & Walter W. Powell, *The Iron Cage Revisited: Institutional Isomorphism and Collective Rationality in Organizational Fields*, 48 AM. SOC. REV. 147, 151–52 (1983).

[60] Heather A. Haveman, *Follow the Leader: Mimetic Isomorphism and Entry into New Markets*, 38 ADMIN. SCI. Q. 593, 622 (1993).

[61] Douglas R. Richmond, *The Partnership Paradigm and Law Firm Non-Equity Partners*, 58 U. KAN. L. REV. 507, 509 (2009); Fern S. Sussman, *The Large Law Firm Structure—An Historic Opportunity*, 57 FORDHAM L. REV. 969, 970 (1988).

[62] Debora L. Spar, *Lawyers Abroad: The Internationalization of Legal Practice*, 39 CAL. MGMT. REV. 8, 13 (1997).

strength of the firm's internal network—and not any legal or contractual duty—determines influences the bond between lawyer and law firm.[63]

A. *The Formal Business Organization of Law Firms*

Law firms have historically been organized as partnerships, and with the statutory creation of limited liability partnerships (LLP), the majority of large corporate law firms are organized as LLPs.[64] An LLP is a specific kind of general partnership where each partner has the power to act on behalf of and bind the partnership (absent provisions to the contrary in the partnership agreement) but enjoys limited liability protection from the debts and obligations that the partnership incurs.[65] Moreover, LLPs are taxed as pass-through entities, meaning that a law firm's earnings are not taxed at the entity level (as with a corporation) but instead are distributed directly to the partners of the firm, who pay income taxes on their distributions.[66] While some states allow any business entity to form an LLP, many states limit the use of the LLPs to professional organizations exclusively.[67]

While law firms can and do organize themselves using other kinds of business entities, including limited liability companies (LLC), professional corporations (PC),[68] or professional limited liability corporations (PLLC)—depending on state availability—the largest law firms almost exclusively avail themselves of the LLP for several reasons.

First, organizational status change can disrupt not only formal relationships—contracts with both clients and non-client counterparties would need to be transferred to the new entity and novated—but also relationships between attorneys within the law firm.

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[63] *See* Burk and McGowan, *supra* note 20.

[64] Robert W. Hillman, *Organizational Choices of Professional Service Firms: An Empirical Study*, 58 BUS. L. 1387, 1395 (2003).

[65] *See generally*, ALAN PALMITER, FRANK PARTNOY, & ELIZABETH PULLMAN, BUSINESS ORGANIZATIONS: A CONTEMPORARY APPROACH ch. 3 (3d Ed. 2019).

[66] *Id.* at 196.

[67] *Id.* at 188.

[68] In a development that perhaps amuses only me, the practice at the law firm Kirkland & Ellis LLP is for partners to incorporate single-shareholder professional corporations in their names, and then have those PCs join the partnership instead of the attorney. *See* Roy Strom, *How Kirkland 'Partners in Name Only' Live in Limbo*, BLOOMBERG L. (Jan. 8, 2020), https://www.bloomberglaw.com/document/X449IKHC000000. Combined with their practice of having a class of non-equity partners who are really contracted employees and not legally partners in the partnership, this means that Kirkland's partner ranks contains both people who are not partners, and partners who are not people.

The creation of a new entity would necessitate creating a new foundational document to which all attorneys would have to sign on (a new operating agreement for LLCs and PLLCs and new articles of incorporation and bylaws for PCs), a move which could potentially reopen negotiations between member attorneys and firm management over the various arrangements of power and distribution of capital among the attorneys. As such, it is often in the interest of law firm management to muddle through with the current arrangement, rather than upset the previously negotiated terms of the organization.

Second, the largest law firms almost all have multijurisdictional practices,[69] and an advantage of the LLP is that it is a form common to every state.[70] By contrast, rules for PCs vary across states (including statutory limits on the number of attorneys who can own shares in a PC), the LLC is not always available for professional practices (e.g. California bars their use for professional firms), and not every jurisdiction has established the PLLC form.[71] Moreover, large law firms generally do not structure themselves as PCs because, unlike the LLP and LLC forms, some PCs do not get the benefit of pass-through tax status.[72]

Finally, organizational inertia and path dependence are such that an organization is unlikely to make a disruptive change to their legal status unless the reward for doing so is particularly large. In this case, each of the legal forms has similar pass-through tax status, member-management structure, and liability protections, so the benefits of change can be minor compared to the costs.[73]

As a result, the historical law firm—a partnership where partner attorneys are residual claimants on firm income—remains the

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[69] Hillman, *supra* note 64, at 1396–97.

[70] Joseph A. McCahery, *Comparative Perspectives on the Evolution of the Unincorporated Firm: An Introduction*, 26 J. CORP. L. 803, 803 (2001).

[71] Thomas E. Rutledge, *The Place (If Any) of the Professional Structure in Entity Rationalization*, 58 BUS. L. 1413, 1419 (2003).

[72] S-Corporation rules limit both the number of shareholders allowed and the kinds of entities that can be shareholders. David Branham, *Has the S-Corp Run Its Course? The Past Successes and Future Possibilities of the S Corporation*, 42 J. LEGIS. 101, 107 (2016).

[73] Rutledge, *supra* note 71, at 1422; Jimmy G. McLaughlin, Commentary, *The Limited Liability Company: A Prime Choice for Professionals Commentary*, 45 ALA. L. REV. 231, 232, 240 (1993). Large law firms generally do not structure themselves as professional corporations because the LLP and LLC forms allow partners to get the benefit of pass-through taxation on the firm's revenue without restrictions on the size or kind of firm membership.

dominant organizational form,[74] with the minor tweak of extending limited liability protection to the law firm's partners such that they are personally shielded from the firm's debts and obligations.[75] The result is an organizational form where admittance to the partnership is closely guarded, but once an attorney becomes a partner in the law firm, they have weak legal ties to the organization itself, both in terms of personal liability and access to the law firm's capital. The former is because partner liability is limited to the capital contributions of each individual partner, there is no legal mechanism to bind an attorney's personal fortunes to the fortunes of the firm itself, and the latter is because, unlike with a corporation, the law firm's income is pooled and distributed on an annual basis, so there are no reserves of capital whose future distribution could induce an attorney to stay with a law firm over the long-term.[76]

B. *The Legal Environment of Law Firms*

As explained above, large law firms are primarily structured as limited liability partnerships (or professional limited liability companies, which have similar liability protections and impose similar duties on members). As such, partners owe fiduciary duties to one another by virtue of their membership in the partnership.[77] Ordinarily, such fiduciary duties would prohibit opportunistic behavior from law firm members, including self-dealing or taking of opportunities that rightfully belong to the firm itself.[78] However, ethical rules established by state bars not only modify those fiduciary duties but affirmatively prohibit law firms from adding other provisions to the partnership agreement that could effectively bind a lawyer to a law firm, as I discuss in the next section.

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[74] Douglas R. Richmond, *The Partnership Paradigm and Law Firm Non-Equity Partners*, 58 U. KAN. L. REV. 507, 507 (2010).

[75] Note that in a minority of states, partners are only shielded from claims against the partnership resulting from the negligence of other partners, and not obligations resulting from partnership contracts.

[76] Larry E. Ribstein, *The Death of Big Law*, 2010 WISC. L. REV. 749, 788 (2010) (lamenting the lack of an equity capital base in law firms).

[77] *See, e.g.*, Meehan v. Shaughnessy, 535 N.E.2d 1255, 1263 (Mass. 1989) (holding that attorneys violated their fiduciary duties by misrepresenting their intentions to other partners in their firm and misleadingly communicating with firm clients).

[78] *See generally*, Meinhard v. Salmon, 164 N.E. 545 (N.Y. 1928) (establishing the duty of loyalty owed by partners to their partnerships).

1. Prohibitions on Lawyer Mobility are Unenforceable

Mr. Saft from Dewey & LeBouef was partially correct (if a little hypocritical) when he boasted that lawyers were all free agents now. In reality, lawyers have always been free agents, at least in a formal sense, because professional regulations bar restrictions on practicing, competing, or taking clients—meaning there is no formal barrier to a partner leaving to join a rival firm or to start their own practice.

First, the ethical codes of legal practice bar non-compete and non-solicitation agreements between law firms and attorneys under the theory that such agreements infringe on a client's right to select the representation of their choosing. Specifically, the Model Rules of Professional Conduct Rule 5.6 states that "[a] lawyer shall not participate in offering or making: (a) a partnership, shareholders, operating, employment, or other similar type of agreement that restricts the right of a lawyer to practice after termination of the relationship, except an agreement concerning benefits upon retirement."[79]

In interpreting this rule, the American Bar Association Committee on Professional Ethics ("ABA Ethics Committee") initially found that post-employment covenants restricting competition were per se invalid under the Code of Professional Responsibility.[80] The ABA Ethics Committee then found that restrictions on representing former clients were also prohibited,[81] and finally found that communications from departing lawyers to firm clients were permissible so long as they were not disparaging.[82] Thus, by developing ethical guidelines for "grabbing and leaving," the ABA Ethics Committee removed legal ambiguity around partnership withdrawal, making it easier for departing partners to seamlessly transition out of their law firms.[83]

State courts have enforced and extended this principle to void both explicit non-compete provisions and any contractual provision seen to inhibit the free movement of lawyers from and between law firms.[84] Courts have also consistently voided non-solicitation

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[79] MODEL RULES OF PRO. CONDUCT r. 5.6(a) (2011).

[80] ABA Comm. on Pro. Ethics, Formal Op. 300 (1961).

[81] ABA Comm. on Pro. Ethics, Informal Op. 1171 (1971).

[82] ABA Comm. on Pro. Ethics, Informal Op. 1457 (1980).

[83] *See* Hillman, *supra* note 7.

[84] *See generally* Cohen v. Lord, Day & Lord, 550 N.E.2d 410, 413 (N.Y. 1989) (holding a non-compete provision of a partnership agreement unenforceable because of its negative effects on the ability of clients to choose their lawyers); White v. Medical

provisions restricting representation of firm clients after withdrawal.[85] Where other organizations (medical practices, accounting firms, etc.) can deter or even prevent competition from their members through contractual arrangements,[86] law firms exist in an environment where their member attorneys perpetually threaten to exit the firm and take with them their human capital, client relationships, and fellow attorneys.[87]

This threat of "grabbing and leaving"—and the increasing frequency in which attorneys act upon the threat—has led to many commentators speculating on the end of loyalty in the legal profession.[88] But, as with many shifts in social norms, it is not entirely clear how to disentangle exogenous environmental factors (the sharp increase in volume and profitability of corporate legal work and courts enforcing free movement of lawyers and clients) from an endogenous

Review Consultants, Inc., 831 S.W.2d 662, 665 (Mo. Ct. App. 1992) (holding that a non-compete provision in an attorney's employment agreement is void). Only California, which famously disfavors *all* non-compete provisions, has entertained applying a reasonableness standard to penalties for partnership withdrawal. *See* Howard v. Babcock, 863 P.2d 150, 160 (Cal. 1993) (allowing a partnership agreement that withheld certain benefits to departing partners, though the provision was found to be reasonable in part because it would not actually dissuade the partners from withdrawing).

[85] *See generally* Whiteside v. Griffis & Griffis, 902 S.W.2d 739, 744 (Tex. 1995) (determining that a non-solicitation clause restricted "the client's freedom of choice"); Cohen v. Graham, 722 P.2d 1388, 1391 (Wash. Ct. App. 1986) (voiding a partnership covenant that prohibited a departing attorney from representing firm clients).

[86] In most jurisdictions, contractual restrictions on professionals (such as accountants) are examined under a "reasonableness" standard, with an exception for non-compete provisions for physicians, which can be voided when it is in the "public interest" to do so. Serena L. Kafker, *Golden Handcuffs: Enforceability of Non-Competition Clauses in Professional Partnership Agreements of Accountants, Physicians, and Attorneys*, 31 AM. BUS. L.J. 31, 3437 (1993). Only among lawyers are non-competes per se invalid. *See* Stephen E. Kalish, *Covenants Not to Compete and the Legal Profession*, 29 ST. LOUIS U. L.J. 423, 43738 (1984).

[87] *See* Sela Stroud, *Non-Compete Agreements: Weighing the Interests of Profession and Firm*, 53 ALA. L. REV. 1023, 102728 (2002); Ribstein, *supra* note 76, at 80405.

[88] William H. Rehnquist, *The Legal Profession Today*, 62 IND. LJ. 151, 152 (1986); *see* Vincent Robert Johnson, *Solicitation of Law Firm Clients by Departing Partners and Associates: Tort, Fiduciary, and Disciplinary Liability*, 50 U. PITT. L. REV. 1, 118 (1988); Hillman, *supra* note 48, at 469; Geoffrey C. Hazard Jr., *The Underlying Causes of Withdrawal and Expulsion of Partners from Law Firms*, 55 WASH. & LEE L. REV. 1073, 1074 (1998); Leslie D. Corwin, *Response to Loyalty in the Firm: A Statement of General Principles on the Duties of Partners Withdrawing from Law Firms*, 55 WASH. & LEE L. REV. 1055, 105557 (1998) (written by a law firm partner who left her law firm while she was writing an article on the ethical implications of partners leaving law firms).

change in professional or organizational culture.[89] Regardless, the inability of law firms to discipline or punish defecting partners greatly increases the leverage of partners who can credibly draw clients to a new law firm.

2. The Client Owns the Law Firm's Work Product

In addition to the prohibition on impairing partner withdrawals, the ethical rules regarding client files give control of work product produced on behalf of the client to the client itself.[90] Unlike a standard knowledge-intensive firm—say, Google or a biotech firm—where the firm owns employees' work product, an attorney's work product belongs to the client, and the law firm must produce client files in case of the termination of the relationship. As such, a partner can decamp to another law firm, take a client with them, and then the client can retrieve that partner's work product from the original firm. A law firm cannot retain the work produced on behalf of a client, and thus they cannot leverage that work to retain the client.

Nor can the law firm protect its legal work (or its strategies) as intellectual property under patent or copyright like a typical company could.[91] Moreover, even if the law firm could obtain the rights to specific works, much of the legal work product that does not go directly to the client is publicly filed—either with a court or a government agency—and a departing partner can easily make copies.

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[89] *See generally* Ann Mische, *Relational Sociology, Culture, and Agency, in* THE SAGE HANDBOOK OF SOCIAL NETWORK ANALYSIS (John Scott & Peter J. Carrington eds., 2014). *See, e.g.*, Neil J. Dilloff, *The Changing Cultures and Economics of Large Law Firm Practice and Their Impact on Legal Education*, 70 MD. L. REV. 341, 349 (2011); Elizabeth Chambliss, *Measuring Law Firm Culture, in* 52 STUDIES IN LAW, POLITICS AND SOCIETY 1, 3 (2010); Pamela S. Tolbert, *Institutional Sources of Organizational Culture in Major Law Firms, in* INSTITUTIONAL PATTERNS AND ORGANIZATIONS: CULTURE AND ENVIRONMENT 101, 109 (Lynne G. Zucker ed., 1988).

[90] Allison D. Rhodes & Robert W. Hillman, *Client Files and Digital Law Practices: Rethinking Old Concepts in an Era of Lawyer Mobility*, 43 SUFFOLK U. L. REV. 897, 915 (2010); Brian J. Slovut, *Eliminating Conflict at the Termination of the Attorney-Client Relationship: A Proposed Standard Governing Property Rights in the Client's File*, 76 MINN. L. REV. 1483, 1485 (1992).

[91] Andrew A. Schwartz, *The Patent Office Meets the Poison Pill: Why Legal Methods Cannot Be Patented*, 20 HARV. J.L. & TECH. 333, 366 (2007); *see* Stanley F. Birch, Jr., *Copyright Protection for Attorney Work Product: Practical and Ethical Considerations*, 10 J. INTEL. PROP. L. 255, 25960 (2003).

3. The Prohibition on Non-Lawyer Ownership Favors Powerful Partners

Finally, regulations prohibit ownership of law firms by non-lawyers (and therefore neither investors nor managers can have an equity stake in a law firm).[92] In practice, this has meant that lawyers determine the organizational form of the firm, and likewise lawyers dominate the formal managerial positions within a law firm (save the specialized positions over which other professions have made successful jurisdictional claims, like accounting or human resources). Non-lawyer managers acting in their self-interest would fight for an organizational structure that maximized managerial control over the firm; lawyer-managers, by contrast, serve a dual role, and as such have a competing incentive to promote their own autonomy and maintain a law firm structure which gives individual lawyers power instead of the firm.[93] By potentially empowering individual attorneys at the expense of the firm, these regulations shape both the structure of these law firms and the strategy of the lawyers who work within them, which is addressed next.

C. *Internal Law Firm Dynamics and the Law Firm Network*

Most theories about the internal dynamics of a law firm posit the firm as a site of individual exchange or an organization designed to optimize member contributions. According to the transactional perspective, law firms offer lawyers a place to acquire and develop human capital—both general (skills and experience) and firm-specific—while reaping the marginal value of their labor.[94] Ribstein's "reputational bonding" theory holds that law firms essentially lend their reputation to young, unproven attorneys in exchange for their labor, and that the attorneys in turn give their time to the firm to build their own reputational capital.[95] The "internal referral" theory of Burk

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[92] Jonathan T. Molot, *What's Wrong with Law Firms?: A Corporate Finance Solution to Law Firm Short-Termism*, 88 S. CALIF. L. REV. 1, 13 (2014).

[93] NELSON, *supra* note 32, at 207–09; NEIL FLIGSTEIN, THE TRANSFORMATION OF CORPORATE CONTROL 302–04 (1990).

[94] Ronald J. Gilson & Robert H. Mnookin, *The Implicit Contract for Corporate Law Firm Associates:* Ex Post *Opportunism and* Ex Ante *Bonding*, *in* THE FIRM AS A NEXUS OF TREATIES 209–13 (Masahiko Aoki et al. eds., 1990).

[95] Ribstein, *supra* note 87, at 753–54.

and McGowan, on the other hand, argues that the law firm facilitates the reciprocal exchange of skills, information, and clients among its lawyers, building valuable social capital for the individual members of the firm.[96] And Sherer identifies the law firm as a hierarchical structure designed to maximize the human capital contributions of its attorneys.[97] While all of these are persuasive descriptions of different functions the law firm performs, they all assume that a firm is either a collection of atomistic individuals or a single-minded entity.[98]

Instead, the law firm is an organization best understood as a network of integrated actors.[99] The network perspective offers a middle ground—one that allows for strategic behavior but also identifies the influence of organizational structure on individual action. Moreover, the law firm network can incorporate each of the functions—human capital development, reputational capital exchange, distribution of social capital, and the reciprocal sharing of resources—articulated in the previous paragraph.

Figure 3 below is a visualization of the network of lawyers in a representative large law firm.[100] Each node represents a lawyer (color-coded by practice area), and the edges between the nodes represent ties between the lawyers, formed when those particular lawyers work together on a project. The actors in the network are arranged according to the ties they have formed (actors who have ties to one another are placed closer together) and according to their centrality in the network (actors who serve as a bridge between groups in the firm are placed closer to the center of the network).

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[96] Burk & McGowan, *supra* note 20, at 69–71.

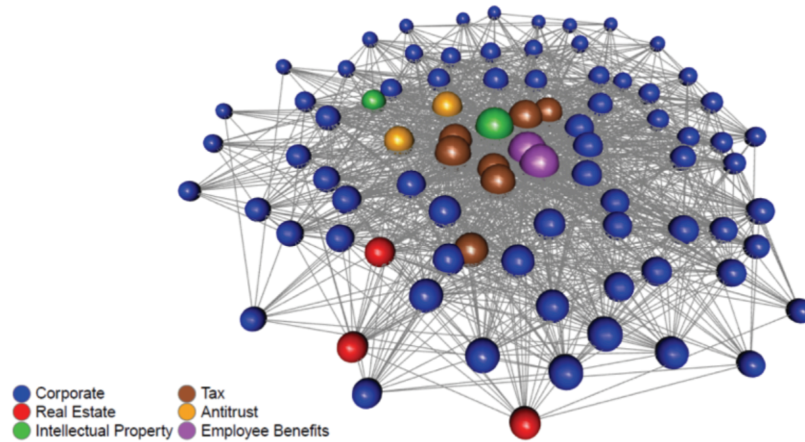
[97] Sherer, *supra* note 12, at 672.

[98] Note also that there is a certain tension in each of these accounts of the firm's dynamics, though. A law firm benefits when a lawyer acquires human capital, burnishes their reputation, and deepens their connections with clients; however, the lawyer could use each of those to take firm clients and leave. A firm is thus caught between needing to develop their attorneys and needing to constrain them.

[99] *See* Mark Granovetter, *The Impact of Social Structure on Economic Outcomes*, 19 J. ECON. PERSPS. 33, 42–43 (2005).

[100] The network was built using data collected from the press releases of a top BigLaw firm. The process of collection is described in Chapter 4 of Alan J. Kluegel, The Ties That Bind: The Internal Structures of Law Firms and the Dynamics of Law Firm Dissolution (2020) (Ph.D. dissertation, U.C. Berkeley).

Figure 3: The Law Firm as a Network of Lawyers[101]



If a law firm was a collection of atomized lawyers pursuing their own ends, the network would be sparse, with few connections between lawyers. The observed network does not support this view, however, and instead shows numerous ties among firm lawyers, particularly between specialists (clustered in the center) and generalists (on the periphery and less well-integrated). This supports the theory that the law firm is a site for resource sharing and social capital exchange, empowering its partners to strategically collaborate on complex legal matters that require repeat coordination among teams of lawyers.[102]

In addition to more accurately representing the practice of law, the network approach also allows us to theorize about why some law firms can remain stable, even given the pressures of their broader environment and the professional regulations that give their attorneys license to defect at any time. A highly networked law firm has two primary advantages: (1) the contributions of the other attorneys in the network magnify the return on investment for any attorney's human capital contribution, and (2) a strong law firm network can prevent a partner from taking firm clients.

The first advantage to a highly networked law firm is that the network allows teams to pool not only information and skills (which is particularly important when tasks require the work of specialists), but also leverage the reputational capital and client ties of the team. Lawyers who are embedded in a highly cohesive network can more

[101] *Id.* at 42.

[102] *See* John C. Coates et al., *Hiring Teams, Firms, and Lawyers: Evidence of the Evolving Relationships in the Corporate Legal Market*, 36 LAW & SOC. INQUIRY 999, 1003 (2011).

readily take advantage of the resources available through the firm; less collegial law firms do not have this advantage.[103] Furthermore, sharing client ties can minimize the likelihood of a client leaving for a rival firm, as each attorney can marshal resources from each other attorney to maintain the ties between the client and the firm.

The second advantage to a highly networked law firm is that the network structure can alleviate tensions between the lawyer and the firm. The law firm wants the lawyer to build relationships with clients, as firms whose lawyers embed themselves in client networks are more successful than those that engage in arm's-length market relationships, due to client ties fostering trust and integration.[104] The stronger the bond between the lawyer and their clients, however, the more the lawyer can leverage the threat of leaving to increase their power within the law firm.[105] Having multiple ties between lawyers and clients is key to defusing this tension so that one lawyer does not essentially control the client relationship.

The cohesiveness of the law firm's network—the reciprocal exchange between its lawyers—will determine the extent to which any single partner can create exclusive ties with a client, and thus the extent to which partners can defect from the firm. This latter advantage is particularly important, as preventing partner defections can be critical for law firm survival. Consider the major corporate law firm collapses since 1984, a list of which is attached as Appendix A.[106]

The majority of firms on this list (thirty-four out of forty-two) failed because a series of partner defections triggered a death spiral for the firm. Professor John Morley has ably documented the factors that lead to these kind of collapses and has theorized that when partners lose confidence in the firm as a continuing entity, they race for the exits in an effort to not get stuck with the liabilities of the firm at the time of dissolution.[107] Almost all of the firms that collapsed were profitable at the time of their dissolution—just not profitable enough

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[103] *See* Emmanuel Lazega, *A Theory of Collegiality and its Relevance for Understanding Professions and Knowledge-Intensive Organizations, in* ORGANISATION UND PROFESSION 1, 9–10 (Thomas Klatetzki & Veronika Tacke eds., 2005) (ebook); *see also* LAZEGA, *supra* note 23, at 147–49; Emmanuel Lazega & Philippa E. Pattison, *Multiplexity, Generalized Exchange and Cooperation in Organizations: A Case Study*, 21 SOC. NETWORKS 67, 68 (1999).

[104] *See* Brian Uzzi, *The Sources and Consequences of Embeddedness for the Economic Performance of Organizations: The Network Effect*, 61 AM. SOC. REV. 674, 694 (1996).

[105] *See* NELSON, *supra* note 32, at 224–25.

[106] Defined as those firms that were listed on either *The American Lawyer* or *National Law Journal* lists of the most prominent law firms.

[107] John Morley, *Why Law Firms Collapse*, 75 BUS. LAW. 1399, 1431 (2019–2020).

to stop the exodus of partners who could leave for more money, more control, or more stability at another firm.[108]

D. *Some Hypotheses About Firm Growth*

Drawing on these environmental, institutional, and network theories about the firm, I propose to test the following hypotheses about organic and memetic growth strategies among large corporate law firms:

1. The Initial Expansion in Firm Size is Directly Related to Increases in Firm Profitability

Hypothesis 1: There is a positive relationship between firm growth and firm profits earlier in the time-period, but this dissipates over time.

The first hypothesis uses the organizational ecology model and suggests that initial firm growth is a product of an organizational environment where certain firms benefited from consolidation of clients and the growth of finance. In other words, because all firms were not equally prepared for the changes, firms did not immediately respond to the changing environment by all growing at the same time. Under this theory, initially successful firms expanded in response to the increasing profitability of their practices, while growth in later periods is not necessarily associated with profits, as less successful firms pursued growth as a mimetic response.

2. Successful Firms Are Less Likely to Grow Via Merger or Lateral Hiring than Firms That are Comparatively Less Profitable

Hypothesis 2: There is a negative relationship between firm profitability and the likelihood of a firm undertaking a lateral acquisition.

The second hypothesis advances the idea that growth via lateral acquisitions by less successful firms is a mimetic response to the profit-fueled growth of more successful firms. As noted previously, lateral acquisitions are generally not pursued by firms who need to find lawyers to keep up with increased workload—they are the result of a deliberate strategy by firm leaders to expand the firm for other reasons.[109] Indeed, none of the top twenty most profitable firms (as

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[108] *See id.* at 1400.

[109] *See, e.g.*, MILTON C. REGAN JR., EAT WHAT YOU KILL: THE FALL OF A WALL STREET LAWYER 3435 (2005) (arguing that firms engaging in lateral hiring often do so to establish a practice they do not already have).

measured by profits per partner) from the initial The American Lawyer rankings in 1985 have grown through acquiring other firms. Another way to phrase this is that initially successful firms were more likely to grow organically, while less successful firms pursued growth through acquisitions.

This would also track with organizational research into mimetic isomorphism more broadly. It is generally only after successful firms adopt a particular management strategy that the strategy diffuses throughout the organizational field, as lower status firms observe the behavior of industry leaders and adopt their practices as symbols of legitimacy.[110]

3. Firms that Pursue Mimetic Growth are More Unstable than Firms that Grow Organically

Hypothesis 3: Firms that engage in lateral hiring are more likely to collapse in subsequent years than firms that grow organically through entry-level hiring.

The third and final hypothesis holds that law firms that choose organic growth have a higher chance of survival compared to firms that choose mimetic growth via acquisitions of established lawyers. The risks associated with bringing aboard new lawyers range from concrete fears about firm finances to intangible concerns about firm culture.[111] The former is the risk that offering salary guarantees to new partners can drag down the profits available to existing partners, exacerbating tensions within the firm and pushing existing partners to seek greater fortunes elsewhere.[112] The latter is the risk that a sudden influx of lawyers trained and socialized according to a different organizational ethos can disrupt the culture of the acquiring firm, impairing the sort of coordination necessary for a successful firm and generating interpersonal conflicts that damage firm morale.[113]

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[110] *See* Haveman, *supra* note 60.

[111] GALANTER & PALAY, *supra* note 6, at 105.

[112] Julie Triedman, *How Bingham Failed: The Inside Story*, AM. LAW. (Jan. 24, 2015, 12:00 AM), https://www.law.com/americanlawyer/almID/1202713087826.

[113] *See* Jesper B. Sørensen, *The Strength of Corporate Culture and the Reliability of Firm Performance*, 47 ADMIN. SCI. Q. 70, 73 (2002).

IV. An Empirical Analysis of Growth and Mortality

A. *The Data*

For this dataset, I combined information from several publicly available sources on law firms. *The National Law Journal* maintains an annual list counting the attorneys in the 250 largest law firms by size ("The NLJ 250") extending back to 1978. *The American Lawyer* has kept its own annual list ranking firm profits for the 200 largest law firms by revenue ("The AmLaw 200") since 1985. I defined the population of interest as law firms that appeared on both lists and thus represented the largest law firms in terms of both size and profitability (the firms colloquially known as "BigLaw").

I defined a lateral acquisition event to be either the hiring of an entire practice group by a firm or the absorption of another law firm through merger. For information about firm mergers and acquisitions, I searched contemporaneous news reports (including industry periodicals like the local *Crain's Business Daily* publications), state registration databases, and law firm websites. Lawyer acquisitions were also identified using the data itself: when a firm showed abrupt year-over-year growth in the number of partners accompanied by a drop in the firm's associate-to-partner leverage statistic, that was an indication that the firm had laterally acquired a group of experienced lawyers.

In addition to measures of when firms made lateral acquisitions or were themselves acquired, the dataset includes variables for total firm size, growth rate, profits per partner,[114] associate-to-partner leverage, location, and number of offices. The outcome variable for the survival analysis is firm dissolution. Because some firms were acquired by another firm and absorbed into that firm, analysis with survival as an outcome is done in two ways: first, as though the acquired firm dropped out of the dataset (right-censored), and second, with the acquired firm sharing the outcome of the firm that acquired it.[115]

In total, 253 distinct law firms appear on both of these lists at some point during this twenty-five-year period—though few of these firms appear on the list for all twenty-five years, as some firms drop off the list either through contraction, acquisition, or dissolution. Discrete

[114] "Profitability is defined as net income per partner, which is typically considered to be the best measure of business success in professional service firms, much as return on equity is for conventional enterprises." Samuelson & Jaffe, *supra* note 35, at 193.

[115] In other words, if Firm B acquired Firm A, and Firm B subsequently collapsed, Firm A would be assigned to "dissolved" because that was the ultimate outcome for the lawyers of Firm A, even if Firm A did not technically dissolve.

outcomes for the firms in the data set are given in Table 1. Approximately 58.4% of the law firms in this sample acquired one or more other law firms during this period, while 9.9% of the firms listed were themselves acquired by another firm, and 9.4% of the law firms in the sample collapsed entirely (twenty-four total firms).

Of the 253 law firms in the sample, twenty-four firms (9.4%) collapsed during the time period in question. Some firms, however, were acquired by another firm that itself subsequently collapsed. Counting these collapses, of the 253 law firms in the sample, 28 total firms (11.06%) suffered a catastrophic failure.[116]

Table 1: Distribution of Discrete Law Firm Outcomes

Law Firms	No Lateral Acquisitions	At Least One Acquisition	***Total***
Survived	83 (79.0%)	121 (81.7%)	204 (80.7%)
Acquired	16 (15.3%)	9 (6.1%)	25 (9.9%)
Dissolved	6 (5.7%)	18 (12.2%)	24 (9.4%)
Total	105 (41.6%)	148 (58.4%)	*253*

As an initial observation, while only 58% of firms in the overall sample expanded through acquisition during this period, a full 75% of the dissolved firms had expanded through acquisition—a significant difference between the groups. This suggests that, at the very least, pursuit of growth through acquisition does not increase firm stability, and that strength in numbers may be illusory for large law firms. Table 2 below describes the mortality outcomes for the firms in the dataset, including the ultimate outcomes of firms that were acquired by another firm.

[116] Ordinary measures of mortality risk generally involve living organisms and thus do not address the question of whether a merged firm counts as a single failure (only one firm went out of business) or a failure for both firms (two law firms undertook a mimetic growth strategy and both firms ultimately dissolved). In the following analyses, I have chosen to treat these cases as a dual failure for two reasons. First, from the perspective of the lawyers in the acquired firm, the dissolution of the merged firm represents a failure of their original firm as well. Second, it is not quite accurate to treat these observations as censored, as the acquired firms in the sample did not drop out of the study (the typical case for right-censored longitudinal data). Thus they should not be treated as conditionally missing for the purpose of the analysis.

Table 2: Mortality Outcomes (Including Merged Firms)

Law Firms	Organic Growth	Mimetic Growth	***Total***
Survived	83 (93.2%)	142 (86.5%)	225 (88.9%)
Dissolved	6 (6.7%)	22 (13.5%)	28 (11.06%)
Total	89 (35.2%)	164 (64.8%)	*253*

Overall, the mortality risk for firms in this sample was relatively low, both in any given year and overall for the time period in question. This should be unsurprising—the sample contains only those firms that have achieved great success, both in terms of profits that rank at the very top of the profession and in terms of attracting lawyers to join their organizations.

Additionally, large law firms are unlike typical organizations in that their fixed costs are comparatively low. Because the provision of legal services is a knowledge-based industry, equipment purchases (computers, software, coffee) are minimal, and there are no physical assets to maintain.[117] A law firm has relatively little in the way of overhead, as its primary outlays are rent (a medium-term obligation) and wages for staff and junior attorneys. Staff are generally hired at-will, and thus labor costs can be adjusted based on expected revenues. Moreover, in a partnership structure the members typically share the residual profit amongst themselves on an annual basis, freeing law firms of the need to enter into long-term contracts with their top earners, additionally lowering the risk of the firm being unable to pay their debts.[118] Thus, the mortality risk among these firms *should* be lower, both because their membership in the sample is indicative of their competence and because they are structured such that long-term liabilities are more avoidable than in other industries. But as we will

[117] William Kummel, *A Market Approach to Law Firm Economics: A New Model for Pricing, Billing, Compensation, and Ownership in Corporate Legal Services*, 1996 COLUM. BUS. L. REV. 379, 383 (1996) (defining personnel and overhead expenses for law firms).

[118] That a firm does not need to give its members guaranteed contracts does not mean that they will not do so, however. Indeed, as discussed previously, guaranteed contracts are often used by law firms to entice lawyers to switch firms. Similarly, firms could pay for capital-intensive projects (acquiring property, expanding into new markets, etc.) out of the partnership draws of the partners instead of taking on debt, but this is also no guarantee that they will do so.

see in the following sections, even though the overall mortality risk is relatively small, survival chances can vary substantially between firms.

B. *Law Firm Profits and Law Firm Growth*

To begin, I examine the relationship between firm profits and firm growth. First, I divided the sample into three time periods: the 1980s (the time of upheaval in the market of corporate clients),[119] the 1990s (the period that featured the fastest rates of firm growth),[120] and the 2000s (a period of continued firm expansion and increased lateral hiring).[121] Using the lagged year-over-year percentage increase in profits as the dependent variable,[122] and the percentage growth in firm size as the outcome variable, I fit a simple linear regression model for each period to identify the association between profits and growth in these time periods.[123]

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[119] *See* Jones, *supra* note 5, at 685.

[120] Galanter & Henderson, *supra* note 19, at 1883–84.

[121] William D. Henderson & Leonard Bierman, *An Empirical Analysis of Lateral Lawyer Trends from 2000 to 2007: The Emerging Equilibrium for Corporate Law Firms,* 22 GEO. J. LEGAL ETHICS 1395, 1400 (2009).

[122] Profit variables in this and other analyses are lagged to account for the longer lead times necessary to hire lawyers. This is true for both entry-level hiring (summer associates are hired two years in advance of their graduation, and an offer of permanent employment is typically extended a year before they can join the firm) and for lateral hires (which can involve a time-consuming process of identifying and negotiating with potential candidates). Sherer & Lee, *supra* note 21, at 111.

[123] The model was specified as $Growth_{it} = \beta_o + \beta_1 Profits_{i(t-1)} + \epsilon$, where i represents each observation of a particular firm in a particular year, with time t is lagged for the profits variable. The inclusion of other covariates in the dataset (partner: associate ratio, firm location, firm size at $t - 1$) did not meaningfully change the size or significance of the value of the coefficient β_1 on firm growth.

Figure 4: Relationship between Firm Growth and Firm Profits

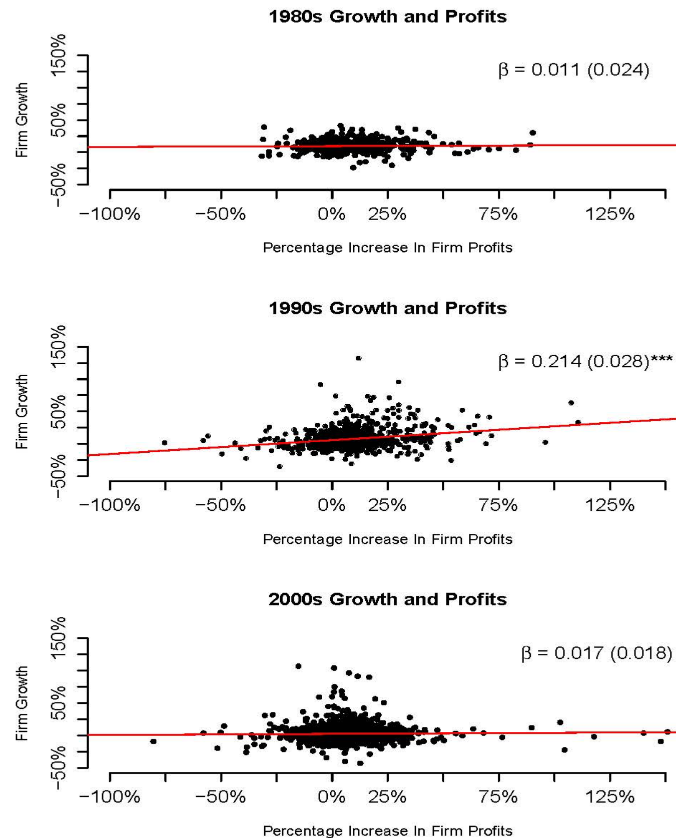


Figure 4 presents scatter plots of profit increases and growth rates for each of the three time periods, with a line of best fit from the linear regression superimposed on the plot in red. The regression coefficients for firm profits are listed in the corner of each graph and show a distinct pattern in the relationship between profit and growth.[124]

In the 1980s, increases in firm profits do not predict future growth, as the regression coefficient is small and not statistically significant. In the 1990s, by contrast, there is a strong and significant

[124] I further fit a random intercept model— $Growth_{ijt} = \beta_o + \beta_1 Profits_{ij(t-1)} + \zeta_j + \epsilon_{ij}$ – with each individual firm j given its own cluster-specific intercept to control for potential unobserved variance between firms. *See* SOPHIA RABE-HESKETH & ANDERS SKRONDAL, 1 MULTILEVEL AND LONGITUDINAL MODELING USING STATA: CONTINUOUS RESPONSES 123–38 (3d ed. 2012). Again, however, the size and significance of β_1 did not meaningfully change. As such, this Article presents the results of the simplest and most straightforward model.

relationship between the year-over-year increase in profits and the rate of firm expansion. During this period, a 10% increase in profits would have been roughly associated with a 2% average increase in firm size the following year. Finally, in the 2000s, the relationship disappears, and the rate of firm growth becomes untethered from firm profitability even as year-over-year firm growth rates spike. These models support the hypothesis that the growth of law firms was in part the result of a mimetic strategy rather than a response to firm need.

I next tested whether changes in *relative* profits were significantly related to firm growth during the full time period to allow for the possibility that hiring decisions were based on a firm's status relative to its peers. Thus, instead of using the firm's prior profits as the baseline, a firm's profitability was measured relative to the group mean for that year. Using a hierarchical linear model with a random intercept for each year in the sample,[125] I again regressed firm growth on lagged firm profits.[126] A second model included lagged firm size as a control variable to account for a potential dependence between growth rate and size.[127] The results are displayed in Table 3.

Table 3: Hierarchical Model of Firm Growth and Firm Profits

	Firm Growth	
Lagged Variables	(1)	(2)
Relative Profits	-0.004	-0.004
	(0.005)	(0.005)
Firm Size		-0.000
		(0.000)
Observations	3,174	3,174

$^{*}p<0.05$ $^{**}p<0.01$ $^{***}p<0.001$

Neither model returned a significant relationship between relative firm profits and firm growth, indicating that after accounting for time-specific effects, firm growth is not a direct function of a firm's

[125] Clustering by year allows us to account for unobserved factors unique to each year that might influence the outcome variable (for example, changes in broader economic conditions).

[126] Varying the lag time for the profits variable between one and three years did not change the results.

[127] Jan Bentzen, Erik Strøjer Madsen & Valdemar Smith, *Do Firms' Growth Rates Depend on Firm Size?*, 39 SMALL BUS. ECON. 937, 937–38 (2012).

relative success, lending support to the theory that mimetic isomorphism accounts for part of law firm growth during this period.

To test the second hypothesis—whether less profitable firms might be more likely to choose mimetic growth—I fit a structural equation model using a variable representing whether the firm in question had made a lateral acquisition that year as a mediating variable, while keeping firm growth as the outcome variable and relative profits as the independent variable.[128] The structural equation model was thus simultaneously testing the relationship between profits and lateral hiring and profits and growth, while accounting for the mediating effect of lateral hiring on growth.

The results are shown in Table 4 and visualized in Figure 5.

Table 4: Structural Equation Model of Firm Growth

	Dependent Variables	
	Firm Growth	*Lateral Acquisition*
Lagged Variables	(1)	(2)
Relative Profits $(t-2)$	0.010* (0.004)	-0.055** (0.011)
Lateral Acquisition $(t-1)$	0.182** (0.007)	

$^{*}p<0.05$ $^{**}p<0.01$ $^{***}p<0.001$

In this model there is a significant negative relationship between relative firm profits and the choice to build the firm through lateral hiring, suggesting that less successful firms are more likely to engage in lateral hiring. Accounting for that relationship, I now also find a significant and positive (though relatively small) relationship between relative firm profits and firm growth, indicating that firms with increasing profits tend to slowly expand their firms without resorting to mergers or acquisitions.

[128] Structural equation models can be used to disaggregate direct and indirect effects in models where there are multiple causal pathways. *See* James P. Selig & Kristopher J. Preacher, *Mediation Models for Longitudinal Data in Developmental Research*, 6 RES. HUM. DEV. 144, 144–45 (2009); ANDERS SKRONDAL & SOPHIA RABE-HESKETH, GENERALIZED LATENT VARIABLE MODELING: MULTILEVEL, LONGITUDINAL, AND STRUCTURAL EQUATION MODELS 75–80 (2004).

Figure 5: A Path Diagram of Profits, Lateral Hiring, and Growth

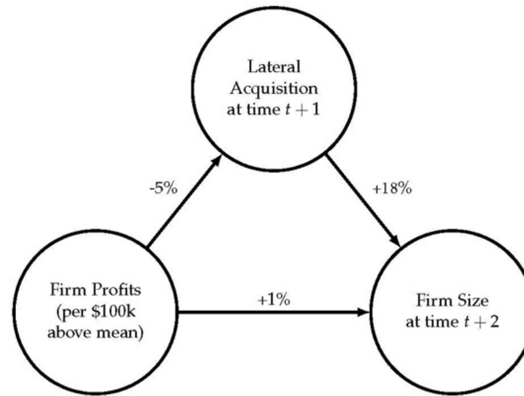


Figure 5 is a simplified path diagram of the structural equation model, and it shows the direct and indirect relationships between profits and growth, with interpretable coefficients to the paths in the model. The coefficients on the edges between the nodes in the diagram give the approximate percentage increase associated with that node. Roughly speaking, for every $100,000 that a firm's profits per partner is above the group average, a firm can expect to expand its size by about 1% while simultaneously decreasing its chances of engaging in a future lateral acquisition by about 5%. Meanwhile, a firm that engages in a lateral acquisition directly increases the size of the firm by about 18%. The net effect of an increase in relative firm profits is thus to directly increase predicted firm growth but indirectly decrease predicted firm growth by lowering the probability of a lateral acquisition.

These results explain why we do not observe a significant relationship between relative profits and firm growth, as less successful firms adopt a mimetic strategy to functionally match the organic growth of more successful firms. These findings together support Hypothesis 2, suggesting that a lateral hiring strategy does not occur in response to increased demand but instead less profitable firms pursue it as a mimetic response to the growth of its peers.

C. *Law Firm Growth and Law Firm Survival*

Finally, in order to test the third hypothesis—that mimetic growth through lateral hiring increases the risk of firm dissolution—I use three models to estimate how the odds of dissolution change for firms using a lateral growth strategy. First, I fit survival curves using the non-parametric Kaplan-Meier estimator, estimating different curves for organic growth firms and mimetic growth strategy firms in question engaged in lateral acquisition, and testing to see if the difference in curves is significant. Next, I use a finer-grained Cox Proportional Hazards model to estimate the increase in risk to a firm during the three-year period after a lateral acquisition, controlling for both static and time-varying covariates.[129] Lastly, I run a generalized linear model for each firm, regressing their dissolution status at the end of the time period on their use of a lateral acquisition strategy. The results of these models show a strong relationship between mimetic growth and an increased risk of firm mortality.

1. Kaplan-Meier Survival Curves for Firm Growth Strategies

As a first cut at estimating the impact of firm growth on survival, I generate survival curves using a Kaplan-Meier estimator for each type of growth strategy. Kaplan-Maier is a non-parametric method for estimating the probability of a subject surviving each unit of time in the dataset, conditional on surviving the previous unit.[130] For this sample, the survival curves in Figure 6 represent the cumulative probability of survival over time for any given firm, differentiated by method of firm growth. Here, the survival curve for mimetic growth firms deviates significantly[131] from the survival curve for organic growth firms.[132]

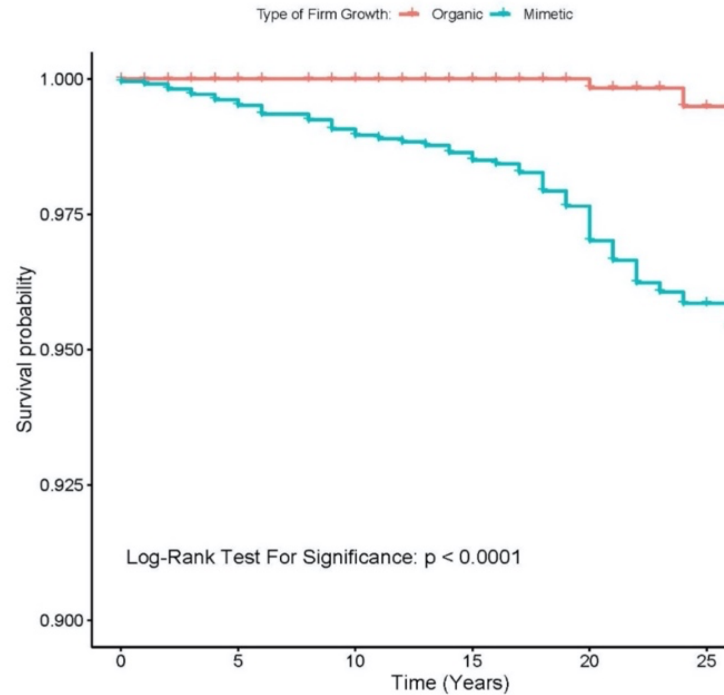
[129] For more on the choice between parametric regression, non-parametric survival curves, and the Proportional Hazards Model for longitudinal data with time-varying covariates, see generally Bradley Efron, *Logistic Regression, Survival Analysis, and the Kaplan-Meier Curve*, 83 J. AM. STAT. ASSOC. 414 (1988); Lloyd D. Fisher & D. Y. Lin, *Time-Dependent Covariates in the Cox Proportional-Hazards Regression Model*, 20 ANN. REV. PUB. HEALTH 145 (1999).

[130] Jason T. Rich et al., *A Practical Guide to Understanding Kaplan-Meier Curves*, 143 OTOLARYNGOLOGY—HEAD AND NECK SURGERY 331, 331 (2010).

[131] P-values are calculated using the logrank test, which is used to test the hypothesis that there is no difference in survival between the subgroups at any point in time. J. Martin Bland & Douglas G. Altman, *The Logrank Test*, 328 BMJ 1073 (2004).

[132] Although, the overall survival probability remains high for both types, for the reasons noted *supra* Part IV.A.

Figure 6: Survival Curve for Firms Based On Growth Strategy



2. Cox Proportional Hazard Time-Varying Model

After establishing that there is a significant difference in mortality risk between the two kinds of firm growth strategies, the next step is to account for the possibility that other factors could explain the difference in risk. For example, if firms that are already failing tend to seek out mergers with other firms (and we have already established that less profitable firms are more likely to engage in lateral hiring), then a mimetic growth strategy might be a sign that a firm is in trouble, rather than the cause of that trouble.

In order to address this possibility, a Cox Proportional Hazards model allows us to estimate the change in the hazard rate for a given subject after an event has occurred, while controlling for the pre-existing characteristics of that subject.[133] Here, the subject is any given firm, and the event is the period after a firm engages in a lateral acquisition (a period that I set for the three years following an

[133] Fisher & Lin, *supra* note 129, at 146.

acquisition).[134] In addition, a Cox Proportional Hazards model allows us to control for both static and time-varying covariates that might confound estimates of the effect on the odds of mortality that are associated with a merger.[135]

In this particular model, the covariates include the three-year trend in firm profits prior to the merger (to control for the possibility that less profitable firms are more likely to seek out lateral moves), relative firm profits (to control for the possibility that firms declining in status are more likely to seek out lateral moves), lagged firm size (to control for the possibility that smaller and weaker firms are more likely to seek out lateral moves), attorney-to-partner leverage (to control for the possibility that top-heavy firms are more likely to seek out lateral moves), and number of offices (to control for the possibility that geographically-stretched firms are more likely to seek out lateral moves).

Table 5: Cox Proportional Hazards Model

Cox Proportional Hazard Model (Log Odds Ratio)

	Dependent variable:
	Firm Dissolution
Acquisition Within Prior 3 Years	3.023 (0.720)***
Profits (Lagged)	-0.000 (0.000)
Growth Rate	-0.014 (0.016)
Overall Size	-0.008 (0.003)***
Associate-to-Partner Leverage	1.723 (0.643)***
Offices	0.154 (0.055)***
Observations	572
Wald Test	28.260*** (df = 6)
	*p<0.1; **p<0.05; ***p<0.01

[134] This model relies on what appears to me to be the reasonable assumption that the effects of lateral hiring dissipate over time. Results for a five-year risk window (assuming a longer effect on the firm of a lateral acquisition) were not meaningfully different than the three-year window.

[135] Fisher & Lin, *supra* note 129, at 152.

The results, given in Table 5,[136] show that even after controlling for potential confounders such as prior firm profitability and prior size, the likelihood of firm dissolution increased during the period of time after a lateral acquisition. This suggests that the choice to engage in mimetic growth still significantly increases the risk of firm failure, even though the kind of firms that choose mimetic growth strategies start out in a less advantageous position to begin with.

3. Regression of Dissolution on Lateral Hiring Strategy

Table 6: GLM Estimation of Firm Failure Based On Lateral Hiring Strategy

	Dependent variable:	
	Only Original Firms	Including Acquired Firms
	(1)	(2)
Lateral Hiring Strategy	2.585 (0.786)***	2.328 (0.710)***
Average Profits Per Partner	-0.000 (0.000)***	-0.000 (0.000)***
Average Leverage	3.021 (0.566)***	2.806 (0.517)***
Average Size	-0.004 (0.002)**	-0.004 (0.002)**
Observations	253	253

[136] The coefficients in Table 5 can be interpreted as the change in the log odds of dissolution given a one unit change in the covariates. Note that because the starting probability of dissolution is relatively low, the coefficient—which suggests that chances of dissolution increase dramatically during the period after a lateral acquisition—does not necessarily translate into a large absolute change in the overall probability of dissolution.

Log Likelihood	-54.950	-63.590

$^{*}p<0.1$; $^{**}p<0.05$; $^{***}p<0.01$

The final model, given in Table 6, is a straightforward regression model, which evaluates the overall risk of firm dissolution during the time period in question as a function of the firm employing a lateral hiring strategy, controlling for the observed characteristics of the firm over the entire time period (including a firm's average profits, size, and leverage). As with the previous models, the coefficient on lateral hiring strategy is positive and significant, which indicates a strong association between mimetic growth and an increased likelihood of firm dissolution. Interestingly, the coefficient on average leverage is also large and significant, suggesting that excess associate-to-partner leverage may also be a warning sign of a firm in trouble. Each of these results provides evidence to support Hypothesis 3, and together they support the ultimate conclusion of law firms that grew organically were more likely to maintain or build on their initial level of success than firms that chose mimetic growth as a strategy.

V. DISCUSSION

The results of this empirical analysis support and reinforce the idea of the firm as a network of strategic actors, and the internal dynamics unique to law firms helps explain why mimetic growth undermines firm stability. The data confirmed each of the hypotheses: (1) increases in firm profits drove early expansion, unlike later expansion; (2) the relatively less profitable firms were more likely than their market-leading peers to choose a mimetic method of growth and hire through lateral acquisition; and (3) the firms that pursued mimetic growth were more likely to collapse than those that pursued organic growth.

For the firm that chooses organic growth, hiring a class of attorneys and having them advance through the firm together builds social ties between future partners—ties which allow for better organizational communication and shared internal goals.[137] In addition, organic growth necessarily involves hiring a large number of incoming associates with the expectation that not all will advance to partner.[138] Existing partners will be more comfortable sharing business

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[137] Sørensen, *supra* note 113, at 75.

[138] *See* GALANTER & PALAY, *supra* note 6, at 100–02.

(and thus ties to clients) with these cohorts of younger attorneys as compared to lateral hires (who are more established, and thus represent clearer threats to grab and leave). Finally, one of the more overlooked consequences of the "promotion-to-partner" tournament is the potential for placement of associates (the tournament losers) as in-house counsel at current firm clients—especially valuable because in-house attorneys gain more power over corporate decision-making.[139] This is a commonly accepted practice, as clients get an attorney already familiar with their business, and firms get to establish another tie with the client.[140]

This dense network of ties works to bind the firm together, as the overlapping ties create an interdependency among partners and practice groups in a firm. Each tie is important in maintaining the client relationship, and each tie also acts as a leash preventing the other tied actors from leaving with the client. In this way, multiple ties reinforce each other and generate new ties. Lawyers with client ties gain from sharing a client with other lawyers at the firm, both by leveraging the human capital of other attorneys to build a stronger relationship with the client, and also as a way of preventing the other lawyers from dominating the relationship with the client and gaining leverage against them.

By contrast, the firm that chooses mimetic growth is unlikely to generate multiple ties between attorneys and clients. A lateral attorney is likely to be hired because she has ties with clients that the existing firm attorneys do not have—if the existing firm attorneys had ties to the lateral attorney's clients, they would have exploited them already. In the mimetic growth firm, the relationship between the connected lawyer and the client is the connected lawyer's only currency within the firm. Each tie is a source of leverage against the other actors—and the only source of value to rival firms—and thus cannot be shared without diminishing its value. In addition, because lateral attorneys do not have pre-existing ties with firm attorneys—and because they need to avoid damaging their relationship with their clients by referring them to a low-quality attorney—they will be less likely to participate in the internal network that builds multiple ties between firm and clients. The result of building a firm out of lateral hires is a more balkanized firm, one that is less likely to pool resources and more likely to fracture.

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[139] *See* Galanter & Henderson, *supra* note 19, at 1896.

[140] Abram Chayes & Antonia H. Chayes, *Corporate Counsel and the Elite Law Firm*, 37 STAN. L. REV. 277, 297–98 (1985).

VI. CONCLUSION

There are several lessons to be learned from the history of law firm growth and its consequences for law firm stability. The most immediately relevant lesson for practitioners is that the lateral hiring of established lawyers may not pay off for either the firm or the lawyers. While not every attempt to grow through lateral acquisition will end in catastrophic failure—the continued success of acquisition-happy firms like Kirkland & Ellis[141] is one of several lateral hiring success stories—the results indicate that there is a real risk to lateral acquisition as a strategy.

Moreover, this analysis confirms that bringing the sociology of organizations into the study of the legal profession can deepen our understanding of the nature of legal practice. Organizational theory expands our view of law firms to include the broader environment in which they operate, the clients on which they depend, the rules and norms that structure their interactions with their competitors, and the drive for status and legitimacy that shapes organizational behavior. While the tie between a lawyer and a client constitutes the core of the practice of law, the study of the legal profession requires scholars to go far beyond that foundational relationship.

A final lesson that this analysis makes clear is that there is no shortcut to create the conditions for law firm success. This is particularly true for firms that do not have a strong base of institutional capital and are pursuing growth only to keep up with peer firms. While organic growth is more costly upfront, and there is no guarantee that the hires will be a good long-term fit, that strategy is more likely to strengthen and expand the firm's network ties and increase firm stability. Mimetic growth through lateral hiring, on the other hand, can end up reinforcing the belief among members of the firm that hoarding client opportunities and maximizing one's individual leverage is the appropriate strategy for success.

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[141] Sara Randazzo, *Being a Law Firm Partner Was Once a Job for Life. That Culture Is All but Dead.*, WALL ST. J. (Aug. 9, 2019, 10:53 AM), https://www.wsj.com/articles/being-a-law-firm-partner-was-once-a-job-for-life-that-culture-is-all-but-dead-11565362437. Note, though, that defections from Kirkland & Ellis are also very common, as the firm's lawyers have internalized the "free agent" perspective that guides the firm's acquisition strategy. Mark Cohen, *Perspective: What Kirkland Departures Signal About Law Firm Branding*, BLOOMBERG L. (Mar. 16, 2016, 11:16 AM), https://biglawbusiness.com/perspective-what-kirkland-departures-signal-about-law-firm-branding; Roy Strom, *Will Kirkland's Lateral Hiring Streak Continue Under New Leader?*, AM. LAW. (Dec. 11, 2018), https://www.law.com/2018/12/11/will-kirklands-lateral-hiring-streak-continue-under-a-new-leader.

This weakening of firm cohesion—the fraying of the ties that bind—may not be visible, but even the largest law firms can be surprisingly fragile.

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APPENDIX A. DISSOLVED NLJ 350 LAW FIRMS (1987–2017)

Name	Office	Date	Reason for Dissolution	Expanded via Acquisition
Finley Kumble	New York	1987	Partner defection	Yes
Isham Lincoln & Beale	Chicago	1988	Partner defection	Yes
Wyman, Bautzer, Kuchel & Silbert	Los Angeles	1990	Partner defection	No
Gaston Snow	Boston	1991	Partner defection	Yes
Wood Lucksinger & Epstein	Houston	1991	Partner defection	No
Webster Sheffield	New York	1991	Partner defection	No
Frank, Bernstein, Conaway & Goldman	Baltimore	1992	Real estate bubble	Yes
Shea & Gould	New York	1994	Partner defection	Yes
Lord Day and Lord Barrett Smith	New York	1994	Partner defection	Yes
Bower & Gardner	New York	1994	Partner defection	No
Pettit & Martin	San Francisco	1995	Mass shooting	No
Mudge Rose	New York	1995	Partner defection	No
Popham, Halk, Schnobrich & Kaufman	Minneapolis	1996	Partner defection	Yes
Keck Mahin & Cate	Chicago	1997	Partner defection	No
Hannoch Weisman P.C	New Jersey	1997	Partner defection	Yes
Donovan Leisure	New York	1998	Partner defection	No
Butler and Binion	Houston	1999	Partner defection	No
Bogle Gates	Seattle	1999	Partner defection	No
Graham & James	San Francisco	2000	Disputed merger	Yes
Holleb and Coff	Chicago	2000	Partner defection	No
Smith Helms Mulliss & Moore	Charlotte	2002	Partner defection	Yes
Peterson & Ross	Chicago	2003	Partner defection	Yes
Pennie & Edmonds	New York	2003	Partner defection	No
Brobeck Phleger	San Francisco	2003	Dot-com bubble	No
Arter & Hadden	Cleveland	2003	Partner defection	Yes
Altheimer & Gray	Chicago	2003	Disputed merger	Yes

Name	Office	Date	Reason for Dissolution	Expanded via Acquisition
Swidler Berlin	Washington	2004	Partner defection	Yes
Testa, Hurwitz	Boston	2005	Dot-com bubble	No
Coudert Brothers	New York	2006	Partner defection	Yes
Jenkens & Gilchrist	Dallas	2007	Civil tax liabilities	Yes
Heller Ehrman White & McAuliffe	San Francisco	2008	Partner defection	Yes
Thelen	San Francisco	2008	Partner defection	Yes
Thacher Proffitt & Wood	New York	2008	Real estate bubble	No
Wolf Block	Philadelphia	2009	Partner defection	Yes
Adorno and Yoss	Miami	2011	Embezzlement	Yes
Ruden McClosky	Ft. Lauderdale	2011	Real estate bubble	No
Howrey	Washington	2011	Partner defection	Yes
Dewey & LeBouef	New York	2011	Partner defection	Yes
Bingham McCutchen	Boston	2014	Partner defection	Yes
Dickstein, Shapiro & Morin	Washington	2015	Partner defection	Yes
Kenyon and Kenyon	New York	2016	Partner defection	No
Sedgwick LLP	San Francisco	2017	Disputed merger	No