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### Three Generations of U.S. Lawyers: Generalists, Specialists, Project Managers

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## THREE GENERATIONS OF U.S. LAWYERS: GENERALISTS, SPECIALISTS, PROJECT MANAGERS

WILLIAM D. HENDERSON\*

As this Essay is being written, the legal services industry is in the midst of a significant economic recession. In response to harsh economic conditions, the nation's corporate clients have tightened their legal budgets and altered their spending habits. As a result, large law firms, who in recent years hired roughly twenty-five percent of all law school graduates, have dramatically cut the sizes of their incoming associate classes.<sup>1</sup> In turn, highly qualified law school graduates have expanded their job searches to markets and to employers that are normally reserved for the broad middle tier of law school graduates. As the downturn cascades through the entire entry-level market, a disturbingly large number of recent law school graduates are either unemployed or underemployed. Although many of us who are middle aged or older can remember prior economic recessions (for example, the early 1980s, the early 1990s, and right after September 11th), there is a palpable sense among legal employers and legal educators that this particular recession feels different.

Does the "Great Legal Recession" that commenced in the fall of 2008 mark the beginning of a true sea change for traditional corporate law firms and, by extension, U.S. law schools? The answer to this question is yes. This short Essay will walk interested readers through some of the essential supporting data. The story follows a relatively simple narrative in which successive generations of U.S. corporate lawyers have evolved from generalists, to specialists, to someday, in the not too distant future, project managers. Further, the story's analytical lens is primarily one of supply and demand gradually shifting over time.

What I think will surprise readers—particularly legal academics and law firm partners, and less so law students and recent law school

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1. See, e.g., Ben W. Heineman Jr. & David B. Wilkins, *Big-Firm Associates: Why They Go and How to Keep Them*, LAW.COM (Feb. 29, 2008), <http://www.law.com/jsp/article.jsp?id=1204212425546> (reporting that twenty-five percent of students began their careers at the 250 largest law firms).

graduates<sup>2</sup>—is my conclusion that existing hierarchies of legal employers and legal education are vulnerable. The U.S. legal profession is exiting a period of profound economic prosperity. This prosperity was set in motion by a handful of innovations in law firm structure and lawyer training that occurred several decades ago. These simple innovations gave American lawyers the tools and the platform to help create and grow a highly dynamic, regulated global economy.

Unfortunately, those of us who have benefited—senior law firm partners, elite law school graduates, and the professoriate—are prone to attribute our success to a natural ordering that flows primarily from our perceived intelligence and merit. Because we do not understand the history, we underestimate the role of luck and how much we owe to the innovations, risk taking, and sacrifice of others. So, we are the last to see the end of an era. The story fits the old adage, “nothing fails like success.”<sup>3</sup>

## I. THE GENERALIST

In the United States circa 1900, the great industrialists and financiers were building empires. At the same time that economies of scope and scale suggested boundless opportunities for expansion and growth, federal and state governments were beginning to grapple with the need for regulation in order to curb some of the unwanted or unintended consequences of the modern industrial state.<sup>4</sup> The world was becoming more complex. Unfortunately, sophisticated business lawyers were in short supply.

For a variety of interconnected reasons, the typical lawyer at the turn of the twentieth century possessed only the skills of the generalist. Sophisticated business lawyering was—and is—largely a product of experience. Until the late nineteenth century, most economic ac-

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2. In a recent book, Michael Lewis claims that young people got the most traction out of the opportunities provided by the Internet because they had not yet become invested in their own professional identities. *See generally* MICHAEL LEWIS, *NEXT: THE FUTURE JUST HAPPENED* (2002). Lewis suggests that this investment in our own identities makes us blind to the opportunities around us. *Id.* If true, the young and the disenfranchised will tend to see the possibilities better than the rest of us.

3. I have heard this adage too many times over the years to properly locate its original source. It may have passed into modern parlance through the work of Arnold Toynbee. *See* I ARNOLD J. TOYNBEE, *A STUDY OF HISTORY* 327 (Oxford Univ. Press 1946) (quoting GERALD HEARD, *THE SOURCE OF CIVILIZATION* 67 (1935)).

4. *See, e.g.*, Robert L. Rabin, *Federal Regulation in Historical Perspective*, 38 *STAN. L. REV.* 1189, 1218–19 (1986) (“Roosevelt thought that federal regulation of big business was essential in order to maintain a necessary distinction between ‘good’ and ‘bad’ trusts. Thus, he strongly advocated governmental monitoring of large-scale enterprise to ensure that industrial growth occurred ‘naturally’ rather than through predatory practices.”).

tivity was small in scale and local in origin, so the opportunities for on-the-job learning were fairly limited. In addition, legal education was making only slow inroads into the informal apprenticeship system. The small number of elite institutions that provided systematic training in legal doctrine made no attempt to go beyond a generalist legal education.<sup>5</sup> Indeed, one of the primary benefits of law school was better preparation for state bar examinations, which tested a broad range of legal knowledge.<sup>6</sup>

When the need for more sophisticated business lawyers presented itself—because businesses were becoming larger, more complex, and more heavily regulated—law firms assumed this responsibility. Yet, before law firms could carry out this specialized training on a large scale, they had to solve a very difficult intrafirm incentive problem: Once the student became the master's equal, how should the profits be divided?

One of the best illustrations of the lawyer mentoring problem was the training of Paul Cravath, the brilliant business lawyer who went on to build the elite New York City law firm of Cravath, Swaine & Moore LLP. Upon graduating from Columbia Law School, Cravath joined the firm of Carter, Hornblower & Byrne.<sup>7</sup> Cravath's mentor at the firm was Walter Carter, a highly accomplished business lawyer who possessed a talent for locating and training great lawyers. During the last three decades of the nineteenth century, many of New York City's most influential lawyers began their careers under the tutelage of Carter.<sup>8</sup> And many, including Cravath, eventually became his partners.<sup>9</sup> Yet, according to one lawyer, Carter "picked his partners as

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5. *See, e.g.*, ALFRED ZANTZINGER REED, TRAINING FOR THE PUBLIC PROFESSION OF THE LAW 286 & n.1 (1921) ("A line of gap between [the law school's] work and genuinely practical training is inevitable. . . . It so happens that the schools which have committed themselves most unreservedly to the case method are precisely those schools [the 'national' law schools] in which there is the widest gap between the instruction as a whole and the immediate requirements of the local practitioner." (footnote omitted)). Reed's work was published by The Carnegie Foundation for the Advancement of Teaching and is sometimes referred to as "The Reed Report I."

6. *See, e.g., id.* at 49–50 (reporting on the role of bar examiners in "standardizing" the law school curriculum and explaining how the curricula of "leading" law schools are "copied by other schools throughout the country").

7. 1 ROBERT T. SWAINE, THE CRAVATH FIRM AND ITS PREDECESSORS 1819–1947: THE PREDECESSOR FIRMS 1819–1906, at 587 (1946).

8. *See generally* OTTO E. KOEGEL, WALTER S. CARTER: COLLECTOR OF YOUNG MASTERS (1953) (chronicling the many eminent New York City lawyers whose careers can be traced back to Carter's law offices).

9. 1 SWAINE, *supra* note 7, at 588.

Connie Mack picked ball players, usually dropping them when they demanded or earned as much as he did.”<sup>10</sup>

According to the official history of the Cravath, Swaine & Moore firm, the “Cravath system” of recruitment and training was based upon the philosophy of Walter Carter.<sup>11</sup> Carter’s practice was to recruit the top graduates from leading law schools, pay them a salary, and develop their skills and acumen through a clerkship of several years.<sup>12</sup> The major innovation of Paul Cravath was to make this training system scaleable to fit the needs of sprawling industrial and financial clients. One important part of the Cravath system was an incentive structure that rewarded lawyers for working together as a team for the benefit of clients.<sup>13</sup> A second key element was an advancement system that required lawyers to master the “art of delegation.”<sup>14</sup> A third feature was the emphasis on a structured program of training, which ensured that lawyers had someone coming up through the ranks to whom work could be delegated.<sup>15</sup>

During the 1930s, the Cravath firm was dubbed by the press as a “law factory.”<sup>16</sup> Although the firm was doing a prodigious volume of legal work, it was also creating sophisticated business lawyers. The stated purpose of the Cravath system was to create “a better lawyer faster.”<sup>17</sup> After acquiring those skills, the most remunerative place to ply those skills was as a partner at the Cravath firm. Yet, if an associate failed to make partner, the firm’s excellent training opened doors at other New York City firms. Thus, unlike Carter’s firms, in which fully trained lawyers typically left to form their own practices, the Cravath

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10. KOEGEL, *supra* note 8, at 91 & n. (noting also that Carter, at the time of his death, claimed a disproportionate share of the firm’s profits (internal quotation marks omitted)).

11. 1 SWAINE, *supra* note 7, at 587.

12. *See id.* (explaining that, after “training them for several years,” Carter encouraged his clerks to “depart[ ] to practice for themselves”).

13. *See* 2 ROBERT T. SWAINE, *THE CRAVATH FIRM AND ITS PREDECESSORS 1819–1948: THE CRAVATH FIRM SINCE 1906*, at 9 (1948) (“[A]ll the business in the office must be firm business. This means that there is no division of fees between the firm and its associates, as there is in many other offices. The problem of the firm is to do effectively the business which comes to it; by so doing that business, more comes in. Hence, business-getting ability is not a factor in the advancement of a man within the office at any level . . .”).

14. *Id.* at 5–6 (“The art of delegation in the practice of the law is difficult, requiring nicety of balance which many men with fine minds and excellent judgment are unable to attain. . . . [The more a firm lawyer can strike the right balance,] the greater his value to the firm.”).

15. *See id.* at 7 (noting that the Cravath system involved “keeping a current constantly moving up in the office”).

16. *See, e.g.,* Milton Mackaye, *Profiles: Public Man*, *NEW YORKER*, Jan. 2, 1932, at 21, 21–24 (profiling Paul Cravath and referring to his firm as “the factory”).

17. 2 SWAINE, *supra* note 13, at 4–5.

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firm was stable and could continue to grow in response to client demand.<sup>18</sup> Although it may not be entirely accurate to ascribe the invention of this method of workplace organization to Paul Cravath,<sup>19</sup> virtually all major business law firms organized themselves along similar principles.<sup>20</sup>

## II. THE SPECIALIST

Although the seeds for the specialist era were in place by the mid-twentieth century, in terms of sheer numbers, the legal profession was overwhelmingly comprised of solo practitioners who earned a very modest living. According to a national census of lawyers drawn from the 1949 Martindale-Hubbell directory (estimated to be ninety percent complete at the time), there were 169,489 lawyers working in the United States.<sup>21</sup> Among the roughly 152,600 working in private practice, 68.6% were identified as solo practitioners.<sup>22</sup> Of the lawyers working in law firms, roughly 40,500 were classified as partners and a mere 7,500 (or 4.9% of the private practice bar) were classified as associates.<sup>23</sup> The median salary of a lawyer working in private practice was \$5,199, which was less than the \$5,518 median salary paid to a lawyer employed by a government entity.<sup>24</sup> In contrast, lawyers working in large law firms of nine or more partners enjoyed median in-

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18. The stability of the Cravath system for all stakeholders is reflected by Professor Charles Reich's characterization of his time at the Cravath firm in the early 1950s:

[Once inside the firm, the associates learned that] making partner was not such a big issue after all. We were all told that while few associates could expect to remain permanently at the firm itself, we could all count on well-paid future employment at one of the many corporate legal offices or regional law firms that had ongoing relationships with Cravath. The message was: Excellent work is expected, but the pressure is off. Associates were safely and comfortably on the inside for life. Inclusion was more important than competition.

Charles Reich, *Cravath Veteran Recalls Law Firm Life of Yesteryear*, LAW.COM (Dec. 17, 2007), <http://www.law.com/jsp/llf/PubArticleLLF.jsp?id=1197626690782>.

19. My colleague Marc Galanter has suggested that Cravath may have been blessed with the best historian, his partner Robert Swaine. MARC GALANTER & THOMAS PALAY, *TOURNAMENT OF LAWYERS: THE TRANSFORMATION OF THE BIG LAW FIRM* 10 (1991).

20. See *id.* at 9–10 (discussing the creation and influence of the Cravath system); MILTON C. REGAN JR., *EAT WHAT YOU KILL: THE FALL OF A WALL STREET LAWYER* 20–23 (2004) (discussing the origins and influence of the Cravath firm, which “provided a structure whose influence persists to this day”).

21. Albert P. Blaustein, *The 1949 Lawyer Count: A Preliminary Statement*, 36 A.B.A. J. 370, 370 & nn.2–3 (1950).

22. *Id.* at 372 (author's calculations).

23. *Id.* (author's calculations).

24. William Weinfeld, Bureau of Foreign & Domestic Commerce, U.S. Dep't of Commerce, *Income of Lawyers, 1929–48*, SURV. OF CURRENT BUS., Aug. 1949, at 18, 21 tbl.6 & n.1. The median income for a salaried lawyer in a law firm (meaning, an associate) was \$4,986. *Id.* at 21 tbl.6.

comes 400% higher.<sup>25</sup> But their numbers were slight, as they comprised less than 1.5% of all lawyers working in private practice.<sup>26</sup> These lawyers had become relatively wealthy because their workplace organization enabled them to become specialists.<sup>27</sup>

During the early post-war period, as the U.S. industrial economy boomed, law firms with an established business clientele were in an excellent position to prosper and grow. Along with unprecedented business opportunities, clients were facing novel legal problems brought about by the scale and breadth of business operations, the need for new methods of finance, and the proliferation of state and federal regulations. Most companies relied upon lawyers from a single outside law firm to handle all the company's burgeoning legal needs. As firms reacted to the clients' need for more specialized services, they were also in a position to train the next generation of sophisticated business lawyers.<sup>28</sup> Because clients were dependent on the expertise of their outside legal counsel, and because the size and scope of the legal issues continued to grow, clients were usually willing to pay for the training of junior lawyers.<sup>29</sup>

Indeed, for much of the post-war period, the larger corporate law firms have had the wind at their backs. According to government statistics, for the last several decades, expenditures on legal services have become an increasingly larger share of our nation's gross domestic product, increasing from roughly 0.4% in 1978 to 1.8% in 2003.<sup>30</sup> Data from the Chicago Lawyers I and II studies, which examined a large random sample of Chicago area lawyers in 1975 and 1995,

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25. *Id.* at 21 tbls.6 & 7 (reporting a median net income of \$21,500) (author's calculations).

26. *Id.* at 21 tbl.7.

27. For a firsthand account of the steady movement toward specialization from the perspective of a business lawyer who began his law career in the 1920s and opined on the importance of associate training sixty years later, see generally THEODORE VOORHEES, ON TRAINING ASSOCIATES 61-70 (1989).

28. In reality, legal specialists are created by law firms and other legal services organizations, including government agencies and nonprofits. Although these opportunities are often meted out by educational credentials, law schools play virtually no role in this process.

29. *Cf.* Gene Koo, *New Skills, New Learning: Legal Education and the Promise of Technology* (Berkman Ctr. for Internet & Soc'y at Harv. Univ., Research Pub. No. 2007-4, Mar. 2007), available at <http://cyber.law.harvard.edu/events/luncheon/2007/05/koo> ("Clients are increasingly unwilling to pay for training of associates, e.g. prohibiting firms from billing for young attorneys' attendance at client-facing meetings. New lawyers' involvement in such meetings has long been an important apprenticeship activity.")

30. Marc Galanter, *Planet of the APs: Reflections on the Scale of Law and Its Users*, 53 *BUFF. L. REV.* 1369, 1378 & fig.1 (2006). Professor Marc Galanter also compared the growth of GDP and receipts of legal services industry between 1967 and 2002, finding that legal services grew nearly three times faster than the overall economy. *Id.* at 1379 & fig.2.

strongly suggest that virtually all the corresponding gains in real income went to lawyers working in large law firms of 100 lawyers or more.<sup>31</sup> The importance of luck and timing in allocating these spoils is evidenced by the fact that among the 100 largest U.S. law firms based on revenues (the Am Law 100), the average “name partner” was born in 1895 and died in 1964.<sup>32</sup> In general, a precondition to being a large firm today is the existence of a business clientele several decades earlier.<sup>33</sup> Thereafter, the advantage compounded over time. Over the last three decades, the 250 largest firms based on size (the National Law Journal 250) have grown by more than 500%.<sup>34</sup>

Despite the longevity and prosperity of these large firms, the background economic conditions have gradually shifted, thus changing the relative payoffs of all participants. With the rise of the general counsel position in the 1970s, in-house lawyers assumed the position of trusted advisors to the company’s owners or senior executives while outside law firms were called upon for their specialized skills and technical expertise.<sup>35</sup> The advent of a vibrant legal press, which seemed to come into being immediately after the United States Supreme Court’s decision in *Bates v. State Bar of Arizona*,<sup>36</sup> chronicled the successes of individual lawyers and the accomplishments of firm practice groups.<sup>37</sup>

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31. See JOHN P. HEINZ & EDWARD O. LAUMANN, *CHICAGO LAWYERS: THE SOCIAL STRUCTURE OF THE BAR* (1982); JOHN P. HEINZ ET AL., *URBAN LAWYERS: THE NEW SOCIAL STRUCTURE OF THE BAR 99* (2005) (reporting that between 1975 and 1995 large law firms were the “clear winner in the market for legal services” as the “income share declined in every practice setting except firms with one hundred or more lawyers”).

32. Marc Galanter & William D. Henderson, *Understanding Corporate Law Firms by Reading the Shingle* (unpublished manuscript presented at the 2010 Law & Society Annual Meeting in Chicago, IL) (on file with authors).

33. Only one firm (Quinn Emanuel Urquhart & Sullivan, LLP) has name partners who are baby boomers. In general, the large, highly profitable young firms have benefited from the rise of the legal press, which could report the successes of their name partners, who have the advantage of being alive.

34. See 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, 1396–97 (2009) (providing statistics on the growth of the nation’s largest law firms).

35. See, e.g., JAMES C. FREUND, *ABA SECTION OF BUS. LAW, SMELL TEST: STORIES AND ADVICE ON LAWYERING* 203 (2008) (observing “the power that inside general counsel started to exercise in the 1970s, especially in terms of such matters as selecting outside counsel” and noting that “[t]his power was greatly expanded in the ‘80s, ‘90s, and beyond”); John P. Heinz et al., *The Scale of Justice: Observations on the Transformation of Urban Law Practice*, 27 *ANN. REV. SOC.* 337, 347–48 (2001) (describing how the bureaucratization of the in-house lawyer role reduced the role of outside law over corporate decision making).

36. 433 U.S. 350, 384 (1977) (holding that Arizona’s ban on lawyer advertising was a violation of the First Amendment).

37. William D. Henderson, *Law Firm Strategies for Human Capital: Past, Present, Future*, 52 *STUD. L. POL. & SOC’Y* 73, 84 (2010) (“The surge in demand for corporate legal services



With this flood of new information, general counsel increasingly adopted the perspective that they were shopping for individual lawyers rather than law firms.<sup>38</sup> In turn, partners with a strong client base capitalized on this change by demanding a larger share of their billing as they moved laterally among law firms. Partners in marquee practice areas, such as mergers and acquisitions, private equity, venture capital, white collar crime, securities enforcement, and intellectual property litigation, have fared the best.<sup>39</sup>

This vibrant market for specialized lawyers, however, also has consequences for junior career lawyers and recent law school graduates. In reality, the specialized technical skills young lawyers have learned from their large law firm training have gradually lost their “resale value” as the number of associates who fall off the partner track has increased relative to supply.<sup>40</sup> As the size of the corporate bar has expanded over the last several decades, the total volume of technically sophisticated lawyers (specialists) is at an all-time high.<sup>41</sup> This reality strongly reduces the incentive of clients to subsidize the training of entry-level lawyers, particularly at inflated pay scales that are disconnected from the value provided to clients.<sup>42</sup>

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also coincided with the rise of the legal press in the late 1970s, which reported on high-profile legal cases and transactions, created a limelight for star lawyers, and facilitated comparisons of law firm size and economic fortunes.”)

38. See, e.g., REGAN, *supra* note 20, at 33 (noting that “companies are more concerned with retaining individual lawyers than specific firms”); 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, 385 (1985) (“The catchphrase now is: ‘Shop for a lawyer, not a law firm.’”).

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39. For a detailed discussion of the rise of the lateral marketplace, including a breakdown of movement by practice area and geography, see generally Marc Galanter & William Henderson, *The Elastic Tournament: A Second Transformation of the Big Law Firm*, 60 STAN. L. REV. 1867 (2008), and Henderson & Bierman, *supra* note 34.

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40. See PAUL HOFFMAN, *LIONS OF THE EIGHTIES: THE INSIDE STORY OF THE POWERHOUSE LAW FIRMS* 216–21 (1982) (explaining that specialized legal skills no longer guaranteed employment unless a lawyer was able to use those skills to bring business into a firm in the early 1980s).

41. See Henderson & Bierman, *supra* note 34, at 1396 (describing the increase in the number of partners and associates in large law firms between 1978 and 2008); see also Kimberly Kirkland, *Ethics in Large Law Firms: The Principle of Pragmatism*, 35 U. MEM. L. REV. 631, 659–60 & n.157, 690 (2005) (conducting detailed interviews with partners in National Law Journal 250 firms and noting that all “agreed that being a good lawyer is not enough to make equity partner in today’s large firms, and in a number of firms, it is also not enough to make non-equity partner”). Kirkland also commented that “[l]arge firms view good lawyers as expendable. As one equity partner put it, ‘You can’t swing a dead cat in New York without hitting a good lawyer.’” *Id.* at 690.

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42. See, e.g., Attila Berry, *Closing in on \$200K*, LEGAL TIMES, Dec. 24, 2007, at 1, 1 (reporting comments made by Susan Hackett, “senior vice president and general counsel of the Association of Corporate Counsel,” that “many clients see the salary war as having

The end of the specialist era is the flipside of the same dynamic that gave rise to it in the first instance: The relative supply of sophisticated business lawyers has increased relative to demand, thanks to the growth of large law firms and the training they provided over a period of several decades (albeit at the clients' expense). Now, however, the amount of money spent on legal services by large corporate clients is vast. And, this purchasing power is disproportionately centralized among a few hundred general counsel.

Although formally trained as lawyers, these general counsel are effectively senior corporate managers whose goal is to optimize the benefit of a fixed legal budget—indeed, it is typically a key element of their remuneration. The end of the specialist era is marked by general counsel's use of the overcapacity of specialists to drive down overall costs to their corporation.<sup>43</sup> The beginning of the project manager era—which I believe is now dawning—is marked by sophisticated corporate counsel looking for methods of workplace organization and process that will deliver higher quality legal inputs and outputs (a bundle of both services and products) for a predictable fee. Further, as the project manager gains momentum, the legal service market will begin to behave like other sectors of the economy—the cost of these inputs and outputs will decline over time.

### III. THE PROJECT MANAGER

It is hard to decipher the end of one era and the dawning of another when all the relevant ideas and data come from books, articles, and a computer screen. I doubt that I would be willing to make this call if I had not wandered outside my office to listen to a wide range of industry participants talk about their businesses.<sup>44</sup> Further, I would be more reluctant to stake out a bold theory of industry change if I personally had not witnessed a transition of similar magnitude. But, I grew up in Cleveland, Ohio during the 1970s and early 1980s, when the U.S. automotive industry peaked and then headed into de-

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reached an insane level and feel that the value-to-cost ratio of new associates is edging on untenable”).

43. See, e.g., Roy E. Hofer, *Reflections on the Legal Profession*, EXPERIENCE, Winter 2008, at 30, 32 (quoting the name partner of a large firm specializing in intellectual property as remarking that “[m]any corporate clients now consider their outside lawyers as a fungible commodity. They pit firms against each other in beauty contests. They assume that the quality of the legal work is equal, and therefore in these contests look for discounts, fixed fees, knowledge of the client's business, [and] how fast phone calls will be returned . . .”).

44. See generally Susan Helper, *Economists and Field Research: “You Can Observe a Lot Just by Watching.”* AM. ECON. REV., May 2000, at 228 (discussing the value of fieldwork to economic research).

cline. At the time, it would have been hard to imagine how quickly the industry would unravel. As a region, we believed that things would rebound or stabilize. We were wrong.

In this final Part, I relate two concrete examples of how the traditional pyramidal law firm is being undercut by innovations—one by a client and another by a legal services firm—using innovative technology, project management, and process improvement. These examples reflect modes of problem solving that are completely foreign to the training and socialization of most successful corporate law firm lawyers—and that is why they are so disruptive to established hierarchies.<sup>45</sup> In addition, drawing upon my observations of the automotive industry, I suggest that the supplier relations of the Japanese versus U.S. automakers during the 1980s and 1990s provide law firms with relatively simple, albeit stylized, blueprints for success or failure in the years to come.

My first example comes from the in-house legal department at Cisco Systems, Inc., a Fortune 100 technology company.<sup>46</sup> The company has a relatively large legal budget (approximately \$160 million), but the General Counsel, Mark Chandler, is expected to contain costs on par with any other department in the organization. One strategy the legal department has used to contain costs is to bring in-house legal work that is core to the company's competitive advantage (meaning, build rather than buy). As the legal department grew, the General Counsel and his staff wanted to capture the full learning of each matter so that each similar, subsequent matter could build upon it as a starting point. One of the company's licensing attorneys, Steve Harmon, who has an information technology background, was asked to help architect a new legal automation and knowledge management platform. The goal of the project was to better archive information, capture the full context of prior work, facilitate information sharing, develop internal expertise, save time, and obtain better legal outcomes.

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45. For a broader theory of how industry leaders fail to adapt to disruptive technology, see CLAYTON M. CHRISTENSEN, *THE INNOVATOR'S DILEMMA: WHEN NEW TECHNOLOGIES CAUSE GREAT FIRMS TO FAIL* (1997). As law professor and technology expert Richard Susskind has stated: "It is not easy, of course, to convince a roomful of millionaires that their business model is ultimately misconceived or that their practices face greater threats to prosperity than ever before' . . . 'They will cling dearly to the old economy until there are overwhelming reasons to do otherwise.'" Mark Voorhees, *Tech's Prince of Darkness Strikes*, NAT'L L.J., Jan. 22, 2001, at B8.

46. This first example is based on my own experience and conversations with the lawyers in Cisco's legal department.

Most interestingly, Cisco's legal department promises to provide an answer to any legal question asked by any other corporate department "as long as it is asked in the proper form [i.e., inside the tool]." Answering a question via phone may be convenient for a Cisco employee in another department, but working outside the knowledge management tool undercuts the legal department's ability to generate better, faster, and less expensive answers in the future. One of the most effective ways to improve service to all internal stakeholders is to make sure that company lawyers are not solving the same legal problem multiple times. Further, the work of outside legal counsel gets integrated into the platform. Younger attorneys build their profile in the department by updating and annotating content and serving as ad hoc problem solvers to others in the organization.

By faithfully following this approach, virtually all of the company's core legal functions are at the fingertips of the company's entire in-house legal department. The more the tool gets used, the more valuable it becomes. Although the system already has enormous internal network benefits, it requires remarkably little high-level supervision. Its management and updating are diffused through the organization, thus becoming organic to the overall work flow.

When I was walked through this process, several questions came to mind. I asked one of the in-house lawyers whether, after working in this environment, she could ever imagine herself billing 2,000 hours per year in a conventional law firm. "No," was the reply. She continued, "This place has ruined me for law firms. I now need collaboration and efficiency to be happy in my job." Hearing the answer to that question, I asked Steve Harmon, the lawyer charged with developing the platform, whether the company considered turning it into a commercial product for other in-house legal departments. His reply surprised me:

I wish I did not have to build tools. They are not core to our business. I would prefer to work on licensing agreements for our company's core products [his primary area of expertise as a lawyer]. But the law firms are not interested in building tools for us. So we had to build them.<sup>47</sup>

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47. The basic framework developed by Cisco has been turned into a commercial product utilized by other large legal departments. Some of these innovations are discussed and utilized through Legal OnRamp's online community. *See generally* LEGAL ONRAMP, <http://legalonramp.com/> (last visited Jan. 25, 2011) (describing Legal OnRamp's "[c]ollaboration system for in-house counsel and invited outside lawyers and third party service providers," which contains "a rapidly growing collection of content and technology resources").

In my opinion, the key takeaway from this exchange is that when legal expenditures become sufficiently large, the company is going to treat them like any other variable expenses—the company will focus on controlling them. Further, if enough money is on the table, even a legal department may be willing to vertically integrate noncore aspects of its business. This will only happen, however, when no supplier steps up to offer the desired product and service. Cisco, not surprisingly, is a pretty demanding client. Mark Chandler expects the company's outside law firms to help with the goal of doing more with less. Some law firm partners might argue that they would prefer to work for clients who are less demanding and focus less on cost containment. I can understand this sentiment, but it does not belong in any long-term business plan. Like water running downhill, best practices eventually get adopted by companies that want to stay in business.<sup>48</sup>

My second example of game-changing innovation came to my attention when two principals of Novus Law LLC visited my Project Management class to talk about their business.<sup>49</sup> Novus Law, which was started less than five years ago, specializes in reviewing, managing, and analyzing documents for litigation, investigations, and transaction-based due diligence. Prior to that, the principals (who have M.B.A. degrees, not law degrees) led the business process outsourcing practice at PricewaterhouseCoopers. There they spun-off and reengineered the nonstrategic work processes of several Fortune 500 companies, making them much more efficient and profitable using the exact same workers that would have otherwise been laid off. When those spinoffs were eventually sold, the principals looked for another promising business opportunity. After two years of patient evaluation, it took them one day—yes, one day—to commit to using those same reengineering techniques in the legal industry. Why? Because in their review of industry data, never before had they witnessed such an enormous disconnect in perceived value between clients and service providers.

In just a few short years, Novus Law has enjoyed considerable success in partnering with major corporate legal departments and Am

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48. Through reading and observation, I have gradually concluded that efficiency is often at odds with comfort and familiarity of settled opinion. Efficiency, however, generally fares better in the long run. *Cf.* MICHAEL LEWIS, *MONEYBALL: THE ART OF WINNING AN UNFAIR GAME* 88–96 (2003) (documenting in painstaking detail how the ability to win more baseball games through the use of statistics—“sabermetrics”—was summarily ignored by the baseball establishment for nearly twenty years before it became mainstream virtually overnight).

49. This second example is based on the visit of two principals from Novus Law LLC to my own Project Management class.

Law 200 law firms. Their work has been relied upon in complex civil, white-collar criminal, and major class actions and multidistrict litigation in federal courts. What is the value proposition for clients? Sixty percent lower cost than a traditional law firm and near perfect quality—far better than any large law firm with an army of top law school graduates.<sup>50</sup>

Although a small portion of the cost savings comes from using less expensive lawyers in the United States and abroad, the efficiency and quality is entirely a function of world class project management and process engineering. At Novus Law, reviewing, managing, and analyzing documents has been broken down into nearly 1,000 decision points, which are arrayed in an optimal order and collapsed into a smaller number of highly efficient steps using business practices found in accounting, aviation, healthcare, manufacturing, and other industries. In addition, the lawyers doing the work are given an engineered work environment that is optimized for comfort, efficiency, and mental accuracy. The heavy reliance on process is not just about speed and accuracy—customized knowledge management and intelligence gathering tools enable lawyers to better identify fact patterns that can drive the outcome of a case. Every aspect of cost and quality, including team communication and collaboration, is captured by a system of statistically driven metrics. Lawyers are exposed to a constant feedback loop on their own performance, which enables them to continuously improve. As they progress, they enjoy higher compensation. Remarkably, lawyers with as little as three years of experience have become shareholders in the firm.

With the advent of e-discovery, which has exploded the scope of discoverable information, many large law firms have responded by building out litigation units that rely on either staff or contract attorneys, who are cheaper than the traditional associates paid on the

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50. This claim of quality is documented by taking a statistically-based random sample of work product and having a law firm redo it in an effort to identify errors. This firm's accuracy rate vacillated between 99.8% and 100%, whereas the typical Am Law 100 law firm hit 78% to 91%. E-mail from Ray Bayley, Chief Exec. Officer, Novus Law LLP, to William Henderson, Professor of Law, Ind. Univ. Sch. of Law (Feb. 2, 2011, 5:51 PM) (on file with author) (work product accuracy confirmed in e-mail). Because ethical sanctions often turn on erroneous claims of privilege during discovery, the benefits to the client or the lead outside counsel can be enormous.

\$160,000 plus pay scale.<sup>51</sup> From a distance, this BigLaw model looks safer than “sending your documents to India.”<sup>52</sup>

If the value proposition is just labor arbitrage, that argument may have staying power until all of the economies of using less expensive labor are realized. But Novus Law’s real comparative advantage is a project management and process orientation that dramatically increases quality. Its process, quality, and knowledge management system, which recently won a global InnovAction Award from the College of Law Practice Management, enables its attorneys to collaborate on factual theories at the same time that privilege review is being performed. This one-touch, multifaceted approach to processing information can supply the client with a basis for an early resolution or dismissal, which can further reduce the cost of litigation.

The fact that Novus Law can measure and warrant quality, and offer price certainty, endears it to large corporate clientele. This model does not require the pay scale of a developing country to be competitive. Yet, the fact that measurable quality is identical between U.S. and overseas attorneys suggests that more work is likely to head overseas in the years to come. These dynamics have enormous implications for traditional law firms, which will reduce the number of entry-level hires. This produces a general “graying” of the corporate bar and a large cohort of lawyers who will be less inclined to reinvent themselves. And this, unfortunately, reminds me of Cleveland.

During my undergraduate days at Case Western Reserve University, I was part of a team of field researchers studying the automotive supply chain in Northeastern Ohio. At the time, the Japanese car companies were building cars in the United States using lean production methods that emphasized teamwork, collaboration, and information sharing to continuously improve process, quality, and efficiency.<sup>53</sup> The evidence was overwhelming that lean methods produced superior results, but adoption was slow and episodic among the

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51. See, e.g., Gina Passarella, *Outside Shot: In-House Departments, Law Firms Rely More on Project Attorneys*, LEGAL INTELLIGENCER (July 6, 2010), <http://www.law.com/jsp/pa/PubArticlePA.jsp?id=1202463299917> (discussing how many “corporate law departments” have begun to use “project- or contract-based attorneys to help handle an increased workload on a shrunken budget”).

52. See, e.g., Michelle M. Harner, *The Value of “Thinking Like a Lawyer,”* 70 MD. L. REV. 390, 414 (2011) (“[C]lients with a short-term perspective may favor more outsourcing . . . but [that] development[ ] might not be in the long-term best interests of clients. The use of . . . alternative business forms . . . should be guided by the goal of improving both the efficiency and the quality of legal services.”).

53. For a comprehensive overview of the lean production methods in the automotive industry, see JAMES P. WOMACK ET AL., *THE MACHINE THAT CHANGED THE WORLD* (1990).

Big Three automakers. In Northeastern Ohio, virtually all the parts makers supplied Ford, Chrysler, or General Motors.

We started this research with a long list of questions regarding how environmental risks were being allocated between buyer and supplier. We hoped to hear examples of how information sharing produced innovative solutions to difficult problems. Instead, we heard a steady stream of stories in which powerful buyers—starting at the top with the Big Three—imposed annual reductions in the amount they were willing to pay for their automotive components. Because low wages achieved through union busting tactics were often given as the company's primary competitive advantage, we were not surprised to learn that one of their biggest challenges was finding enough tool and die makers to keep the factories operating smoothly. The low wages and the emphasis on cost control meant that neither the employers nor the unions wanted to bear the cost of training. So, the number of highly skilled tradesmen evaporated, weakening the ability of the entire region to compete on the basis of quality.

I now see the same adversarial dynamics setting in between many large U.S. corporations and their outside counsel. Rather than setting up long-term relationships in which information and the benefits of innovation will be shared between supplier and buyer, many general counsel are pressuring their law firms for discounted fees.<sup>54</sup> Clients are also refusing to pay for first- or second-year associates.<sup>55</sup> Law firms can attempt to prop up profitability by slashing entry-level hiring and by cutting costs on professional development along with other nones-

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54. See, e.g., Amy Kolz, *Capitalism's Next Frontier*, AM LAW., Nov. 2010, at 84, 87 (reporting an ex-managing partner's frustration that "[c]lients were hell-bent on ever-increasing discounts"); Claire Zillman, *The New Normal*, AM. LAW., Dec. 2010, at 66, 68–69 (noting that almost half of the large corporations surveyed in the Association of Corporate Counsel study reported that ninety-five percent of their legal spending on outside law firms in 2010 will be based on the billable hour, but also noting that eighty-five percent of the corporations reported that more clients are requesting discounted rates); Michael Kozubek, *Alternative Fee Arrangements Vary in Effectiveness, Experts Say*, INSIDECOUNS., (Apr. 1, 2010), <http://www.insidecounsel.com/Issues/2010/April-2010/Pages/Alternative-Fee-Arrangements-Vary-in-Effectiveness-Experts-Say.aspx> (quoting John Weber, the general manager of CT TyMetrix, a large e-billing company that analyzes payment to law firms, as stating that "[t]he most widely-used AFA, the volume discount, is not particularly effective in reducing cost" (internal quotation marks omitted)).

55. See, e.g., Nate Raymond, *State Bar Launches Task Force to Examine Changes in Profession*, N.Y. L.J., June 25, 2010, at 6 (quoting a partner of a large New York firm as stating that "my own clients . . . say they don't want first- and second-year lawyers on their matters" (internal quotation marks omitted)); Zillman, *supra* note 54, at 68 (reporting on a recent survey of law firm leaders, in which "nearly 47 percent of respondents said that clients have refused to pay for work done by first- or second-year associates" and noting that this refusal was a "part of clients' strategy to shift economic risk back to law firms").



sential expenses. But in the long run, an organization—or, worst yet, an industry—cannot credibly compete on the basis of quality when it underinvests in its most important asset—legal talent.

A better outcome for the clients and the U.S. legal profession would be a movement toward continuous improvement (meaning, lower costs, faster cycle time, better leveraging of technology, and higher quality).<sup>56</sup> Creating the required risk-sharing relationships, however, takes time, ingenuity, and effort. Similar to the U.S. automotive industry, the prosperity of the last several decades makes it extremely difficult for law firms to make this transition. Rather than invest in an uncertain future or change ingrained work habits to embrace tools such as project management and process improvement, the temptation for most law firm partners is to believe that the current downward pressure on fees is merely cyclical. And without the buy-in of partners, law firm leaders are powerless to create a different future.

My analogy to the U.S. automotive industry is meant to suggest that the American legal profession is subject to the same laws of supply and demand (and inertia and complacency) as every other sector of the nation's economy. It is not difficult to imagine that the opportunities for growth are likely to flow disproportionately to a new generation of legal service organizations. These organizations may look more like vendors than professionals. Moreover, they may not necessarily employ U.S. lawyers. Then, the structural problems that are currently putting stress on U.S. law firms will soon become a threat to the survival of at least some U.S. law schools. Law schools can respond by reinventing themselves to help mitigate the challenges of legal employers. If they can pull it off, they are likely to find themselves at the top of a brand new hierarchy.

#### IV. CONCLUSION

This Essay has sketched out a simple historical continuum in which the typical U.S. lawyer has transitioned from a generalist working as a solo practitioner to a specialist working in a law firm with other specialists. The law firms themselves created a system of workplace organization that effectively created more specialists in order to service the business needs of their rapidly growing business clients. As the clients grew and prospered throughout the twentieth century, so

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56. *Cf.* RICHARD SUSSKIND, *THE END OF LAWYERS? RETHINKING THE NATURE OF LEGAL SERVICES* 33–39 (2008) (arguing that the natural pull of all markets, including legal services, is toward greater automation and commoditization because companies who are the first to move down this road, or continuously innovate, enjoy enormous profit-making opportunities, thus forcing their competitors to compete to survive).

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did U.S. law firms. Yet, because the amount of money flowing to U.S. law firms has become so large and the supply of sophisticated technical lawyers now exceeds the demand, corporate clients are pressuring their outside counsel to do more with less. This requires U.S. lawyers to adopt a more systems- and process-oriented approach to legal problems.

Thus, over the next several years, lawyers working for large corporate clients will increasingly layer the skills of project manager on top of their specialized legal knowledge. To the extent that lawyers resist this gravitational pull, they will lose their seat at the economic table. Amidst the coming economic tumult, we can expect to see many exciting innovations in legal education and in the provision of legal services. At least some of us will figure out how to do more with less. In the process, old hierarchies will fall and new hierarchies will be created. For the alert and ambitious young lawyer, law student, or law professor, the next several years could provide you with your big break. My advice is simple: pay attention, and most importantly, learn to think for yourself.