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New Sources of Managerial Authority in Large Law Firms

Elizabeth Chambliss

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I. INTRODUCTION

How should we understand Shearman & Sterling's recent ouster of its general counsel, John Shutkin?[1] Was the firm unhappy with Shutkin's performance? Did he clash with top partners? Or was Shutkin a casualty of a change in the firm's management philosophy, along with other lawyers who were "restructured" out of their executive positions?[2]

Certainly there was a change in Shearman & Sterling's management philosophy. Shutkin was hired in 2004 to fill the firm's newly-established position of law firm general counsel[3]—seemingly part of a trend toward large law firms' treatment of the position as a dedicated, professional position.[4] Indeed, in 2004, Shearman & Sterling was leading this trend, by hiring an experienced general counsel from outside of the firm rather than relying on increasing service from a practicing partner.[5] Shearman & Sterling also took care to promote the professional independence of the position, by hiring Shutkin as an employee rather than a partner of the firm.[6] According to then-senior partner, David Heleniak, "we thought it made sense to have an independent and fresh look at things, and we wanted to have somebody who was not otherwise engaged in the firm's business to do it."[7] But Heleniak left for Morgan Stanley less than a

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1. Julia Berris & Kian Ganz, *Shearman Ditches Global GC in Rejig*, THE LAWYER, Apr. 28, 2008, http://www.thelawyer.com/cgi-bin/item.cgi?id=132389&d=415&h=417&f=416 (reporting that Shearman & Sterling had eliminated Shutkin's position as part of a management reorganization).

2. *See* Jeremy Hodges, *Shearman to Shake Up Top-Level Management Structure*, LEGAL WK., Apr. 18, 2008, http://www.legalweek.com/Articles/1117266/Shearman+in+top-level+management+shake-up.html (reporting that Shearman & Sterling also reduced its executive committee from six members to three).

3. Mary Mullally, *Analysis: The Adviser to the Advisers*, LEGAL WK., May 8, 2004, http://www.legalweek.com/Articles/Article.aspx?liArticleID=120987 (reporting Shutkin's appointment).

4. *See* Elizabeth Chambliss, *The Professionalization of Law Firm In-House Counsel*, 84 N.C. L. REV. 1515, 1517-20 (2006) (discussing law firms' increasing reliance on full-time in-house counsel and the organization of law firm in-house counsel into distinct professional networks).

5. *See* Lisa Lerer, *A Safe Pioneer*, AM. LAW., Oct. 1, 2004, at 32 (reporting Shutkin's appointment). Shutkin previously was general counsel at KPMG International. *Id.*

6. Mullally, *supra* note 3.

7. Lerer, *supra* note 5, at 32 (quoting Heleniak).

year after Shutkin's appointment,[8] and his successor, Rohan Weerasinghe, has instituted a series of organizational and management changes at the firm.[9] Now, three years later, Shutkin is out, and Shearman & Sterling has eliminated the position of law firm general counsel altogether.[10]

Many large law firm partners would argue that Shutkin was doomed from the start; that the basis of managerial authority in large law firms is "credibility as a practitioner."[11] The conventional wisdom is that "lawyers want to be managed by a lawyer,"[12] meaning someone actively engaged in private practice or not too long removed. This view suggests that dedicated managers rarely will be effective within law firms—especially those who are appointed from outside of the firm. Most law firm general counsel are practicing partners with longstanding ties to their firms.[13]

The academic literature on large law firms also emphasizes the limited authority of professional managers and the ability of rainmaking partners to sidestep formal management controls.[14] Research suggests that bureaucratic management structures, such as dedicated, professional managers, tend to be weak or unstable in law firms, where compensation and status are tied to control over clients.[15] As Robert L. Nelson argued in his classic, 1988 study, "a position of managerial authority in the firm, whether it be membership on the governing committee, a position at the head of a department, or managing partner, will always be subordinate to the power of the lawyers controlling the largest bloc of clients."[16] Thus, while many commentators point to the potential competitive

8. Susan Beck, *Shearman Eliminates General Counsel Post*, AM LAW DAILY, May 2, 2008, http://amlawdaily.typepad.com/amlawdaily/2008/05/shearman-elimat.html.

9. Bloomberg, *Shearman Chief Bets on Asia Clients, Litigation to Lift Profit*, Feb. 14, 2006, http://www.xak.com/main/newsshow.asp?id=56651 (discussing Weerasinghe's strategy for increasing firm profits).

10. Beck, *supra* note 8.

11. Nathan Koppel, *Big Law Firms Try New Idea: The True CEO*, WALL ST. J., Jan. 22, 2007, at B3 (quoting Evan Chesler, presiding partner of Cravath, Swaine & Moore).

12. Tom Schoenberg, *Getting Down to Business*, LEGAL TIMES, Oct. 19, 1998, at S56 (quoting Michael Nannes, then-deputy managing partner of Dickstein Shapiro Morin & Oshinsky).

13. Chambliss, *supra* note 4, at 1525-31 (describing the characteristics of in-house counsel in a sample of 47 law firms). *See also* Leslie A. Gordon, *Law Firm GCs Continue to Multiply*, GC CAL. MAG., Mar. 10, 2006, http://www.law.com/jsp/ihc/PubArticleIHC.jsp?id=1141898562122 (stating that "law firm GCs tend to come from the senior partner ranks" and "continue to work as active partners").

14. *See* ROBERT L. NELSON, PARTNERS WITH POWER: THE SOCIAL TRANSFORMATION OF THE LARGE LAW FIRM 224-28 (1988) (discussing "client control as a constraint on managerial authority"); Elizabeth Chambliss, *Organizational Determinants of Law Firm Integration*, 46 AM. U. L. REV. 669, 715 n.174 (1997) (discussing the ability of powerful partners to sidestep formal assignment systems ["poaching"]); Douglas N. Frenkel, Robert L. Nelson & Austin Sarat, *Bringing Legal Realism to the Study of Ethics and Professionalism*, 67 FORDHAM L. REV. 697, 704 (1998) (reporting the "irrelevance of formal mechanisms to lawyers' daily discretionary judgments"); Marc C. Suchman, *Working Without a Net: The Sociology of Legal Ethics in Corporate Litigation*, 67 FORDHAM L. REV. 837, 858 (1998) (reporting that "formal . . . controls on ethicality . . . are remarkably weak").

15. *See* NELSON, *supra* note 14, at 224-28 (case studies of four Chicago law firms).

16. *Id.* at 224.

benefits of professional management[17]—or, what typically is referred to as the "corporate"[18] model—most analysts are skeptical that U.S. law firms will embrace such a model any time soon.[19]

This Article stakes out a contrary view. I argue that dedicated executive management is inevitable in large law firms and, with it, the development of distinct cadres of professional lawyer-managers, such as law firm general counsel and chief executive officers (or chairs). In fact, this process is well underway.[20] The more interesting question is the likely relationship between dedicated executive managers and other constituents of the firm, particularly equity partners. Nelson and others have argued that truly autonomous management is unlikely in law firms due to partners' ideology and/or economic power.[21] I argue, however, that the current conditions of competition among large law firms—that is, the AmLaw 200[22]—create new incentives for strong central management and new sources of managerial authority within firms. Thus, I predict that partners increasingly will embrace autonomous management.

My arguments grow out of my research on the position of law firm general counsel.[23] As I explain below, the structural evolution of the law firm general

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17. *See* Deborah K. Holmes, *Learning from Corporate America: Addressing Dysfunction in the Large Law Firm*, 31 GONZ. L. REV. 373, 403-06 (1996) (discussing the shortcomings of the partnership model and the benefits of professional management); Frederick L. Trilling, *The Strategic Application of Business Methods to the Practice of Law*, 38 WASHBURN L.J. 13, 14 (1998) (noting the "enormous potential for competitive advantages" by firms that adopt basic business techniques, such as full-time, strategic management); David A. Bradlow & Murray Silverman, *Managing the Law Firm—Is Democracy Obsolete?*, LEGAL ECON., July-Aug. 1989, at 28, 29 (arguing that "the traditional partnership form of organization is incompatible with the successful formulation and implementation of strategy"); Carl A. Leonard, *The Coming of Age of the Managing Partner as a CEO*, MANAGING PARTNER, Mar. 1 2000 (discussing the advantages of strong centralized management).

18. *See* Holmes, *supra* note 17, at 406 (urging the adoption of a "corporate structure" with professional managers); Matthew S. Winings, *The Power of Law Firm Partnership: Why Dominant Rainmakers Will Impede the Immediate, Widespread Implementation of an Autocratic Management Structure*, 55 DRAKE L. REV. 165, 176 (2006) (contrasting a "partnership model . . . based on consensus" with a "corporate model" with strong centralized leadership); Bradlow & Silverman, *supra* note 17, at 30 (defining the corporate model as the centralization of management authority in the hands of a single individual such as "a president, [C]EO or executive director").

19. *See* Winings, *supra* note 18, at 185-93 (discussing obstacles to the implementation of the corporate model); James R. Faulconbridge & Daniel Muzio, *Reinserting the Professional Into the Study of Globalizing Professional Service Firms: The Case of Law*, 7 GLOBAL NETWORKS 249, 250-54 (2007) (questioning the emergence of a managerial archetype in transnational law firms); Jonathan E. Smaby, *Kicking the Habit of a Reactive Approach*, NAT'L L.J., Aug. 16, 2004, at S3 (discussing lawyers' resistance to centralized management and strategic planning).

20. *See* Chambliss, *supra* note 4, at 1517-21 (discussing the professionalization of law firm in-house counsel); LAW FIRMS YELLOW BOOK (Summer 2008) (listing "who's who in the management of the leading U.S. law firms").

21. *See infra* Part III.

22. The AmLaw 200 are the 200 top-grossing U.S. law firms, as measured by the *American Lawyer*. *See* John O'Connor, *A Guide to Our Methodology*, AM. LAW., Aug. 2005, at 89.

23. *See* Elizabeth Chambliss & David B. Wilkins, *The Emerging Role of Ethics Advisors, General Counsel, and Other Compliance Specialists in Large Law Firms*, 44 ARIZ. L. REV. 559 (2002) (exploratory study of the

counsel position provides a valuable window into the dynamics of law firm management, particularly changes in the bases of managerial authority. My research also suggests a number of specific mechanisms for change, such as industry consolidation, the development of professional networks among managers, and generational change among partners.

My analysis draws specifically on four sources of data: a study of the emergence of in-house counsel in a non-random sample of 32 law firms, based on focus groups and interviews conducted in 2001 and 2002;[24] a follow-up study of the original sample plus an additional 15 firms, based on interviews and fieldwork conducted in 2005;[25] and 12 interviews with law firm general counsel and executive managers conducted in 2008.[26] Altogether, the three waves of interviews cover 55 firms. Respondents are identified by the year of the interview and a unique number (e.g. 2001-1).[27] I also draw on a national, non-random survey of 76 law firm in-house counsel conducted in 2008.[28] The survey was sponsored by the American Bar Association Section of Business Law Firm Counsel Project and the Association of Corporate Counsel (ACC), and was administered by open invitation from the Firm Counsel Project.[29]

Part II describes the "professionalization"[30] of law firm general counsel—that is, their increasing specialization and organization into professional networks—

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emergence of ethics and risk management specialists in 32 law firms); Chambliss, *supra* note 4 (follow-up study emphasizing the increasing specialization and professional organization of law firm in-house counsel).

24. *See* Chambliss & Wilkins, *supra* note 23, at 561-62 (describing the study). The initial sample was a "snowball" sample, in that we asked a few bar leaders and ethics specialists known to us to recommend participants for the study, then asked these participants for more names, and so on, until we felt we had enough data to present interesting preliminary findings. *Id.* at 561-62. *See* Charles Kadushin, *Power, Influence and Social Circles: A New Methodology for Studying Opinion Makers*, 33 AM. SOC. REV. 685, 694-96 (1968) (discussing the strengths and weaknesses of snowball sampling). Most of the data come from three focus groups held at Harvard Law School in 2001. Participants included bar regulators, academics, and outside lawyers who specialize in professional liability matters, as well as law firm in-house counsel and their functional equivalents in 29 law firms. *See* Chambliss & Wilkins, *supra* note 23, at 561 n. 15 (describing the focus groups). The initial sample also includes three respondents who did not participate in the focus groups, but whom I interviewed individually by telephone. *See id.* at 561 n. 16.

25. The follow-up study was based on telephone interviews with 12 law firm in-house counsel and participant observation at meetings and conferences where panels of firm counsel discussed their roles. I also gathered some information via email. *See* Chambliss, *supra* note 4, at 1526 (describing the follow-up study).

26. The most recent interviews were conducted by telephone between April and September, 2008, and included four firm counsel whom I had interviewed in prior years.

27. This represents a slight change from previous publications. *See* Chambliss & Wilkins, *supra* note 23, at 561 n. 15-16; Chambliss, *supra* note 4, at 1525-26 n. 55-56, 59-60 (explaining the system for identifying respondents). Citations are provided for previously published remarks.

28. Elizabeth Chambliss, 2008 ABA ACC Survey Report (hereinafter "2008 ABA ACC Survey") (on file with author).

29. *See* Firm Counsel Project, http://www.abanet.org/dch/committee.cfm?com=CL290005 (providing a link to the survey) (now closed).

30. Chambliss, *supra* note 4, at 1517 (defining professionalization as "the process by which an occupational group becomes increasingly specialized, organized, and autonomous, developing distinct knowledge claims, titles, associations, and career tracks" [citations omitted]).

and ends with the questions that Shutkin's story presents. To what extent can professional firm counsel maintain credibility with equity partners? To what extent will we see the emergence of external labor markets for firm counsel? What does the evolving role of firm counsel imply for other top management positions, such as chair?

Part III examines the conventional wisdom concerning the limited authority of professional managers and argues, basically, that times have changed. Much of the academic literature about the basis of managerial authority in large law firms is grounded in market and regulatory conditions circa 1980, such as relative firm stability, passive liability insurers, and the absence of competing organizational forms.[31] Likewise, much of the ideological resistance to dedicated, professional management comes from a generation of partners who are about to retire.[32] Conditions have changed, with profound effects on the structure, if not yet the culture, of law firm management. And cultural change, I argue, is imminent.

Part IV considers the normative implications of dedicated executive management, particularly the implications for legal ethics and law firm self-regulation. Some scholars have argued that the professionalization of risk management in large law firms will induce moral apathy among lawyers and lead them to shirk their ethical duties.[33] U.S. regulators have raised similar objections to proposals for law firm discipline, arguing that entity regulation will undermine individual accountability.[34] Such concerns raise interesting empirical questions about the relationship between organizational and individual regulation, and the sources and strength of firm culture in large, multi-office firms.[35] To date, however, there is no evidence of structural determinism in this context. All law firms, whatever

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31. *See* NELSON, *supra* note 14, at 34 (stating that the fieldwork for his analysis was conducted between 1979 to 1981); 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, 314-15 (1985) (quaintly discussing "signs of serious institutional instability," such as "stories of individual partners leaving one firm to join another . . . and internal squabbles over the division of profits").

32. *See* Marc Galanter, *Old and in the Way: The Coming Demographic Transformation of the Legal Profession and Its Implications for the Provision of Legal Services*, 1999 WIS. L. REV. 1081, 1097 (noting that "large-firm practice has become a young person's game" and reporting an inverse relationship between firm size and the presence of older partners).

33. *See* Anthony V. Alfieri, *The Fall of Legal Ethics and the Rise of Risk Management*, 94 GEO. L.J. 1909, 1939-40 (2006) (arguing that firms' increasing investment in professional risk management will "induce moral apathy" among lawyers "by shifting responsibility for hard normative judgments to others inside the firm"); Margaret Raymond, *The Professionalization of Ethics*, 33 FORDHAM URB. L.J. 153, 154, 159-60 (2005) (arguing that firms' investment in ethics specialists will cause "pressured and overwhelmed lawyers" to "lack ownership of ethics principles").

34. *See* Margaret Colgate Love, *The Revised ABA Model Rules of Professional Conduct: Summary of the Work of Ethics 2000*, 15 GEO. J. LEGAL ETHICS 441, 470-71 (2002) (withdrawing the Commission's support for law firm discipline on the grounds that it might undermine the accountability of individual partners); Elizabeth Chambliss, *The Nirvana Fallacy in Law Firm Regulation Debates*, 33 FORDHAM URB. L.J. 119, 125-29 (2005) (criticizing this objection on theoretical and empirical grounds).

35. *See* Chambliss, *supra* note 34, at 145-50 (identifying empirical questions raised by the critique of professional risk management).

their management structure, face ethical and regulatory challenges that require an active investment to meet. Most research suggests that the size of the investment matters more than the management structure of the firm.[36] Moreover, most research finds that greater investment in firm-level risk management leads to greater awareness and accountability on the part of individual lawyers.[37]

I conclude by defining three questions deserving of empirical analysis and briefly reviewing recent promising research. I also offer prescriptive advice for law firm leaders, regulators, and legal ethics scholars, including a plea to support such research. From an academic standpoint, direct access to law firms and law firm leaders is essential for producing useful, grounded research. From a regulatory standpoint, it is equally important to develop a grounded, shared conversation. Large law firms are entering an era of increasing consolidation, segmentation, and competition, and U.S. regulators increasingly will be called upon to respond to regulatory developments overseas.[38] Currently, the U.S. lags well behind other jurisdictions in developing an effective regulatory model for large, multinational partnerships, not to mention alternative organizational forms.[39] Sustained interaction between law firm leaders, regulators, and researchers is essential for developing such a model.

II. THE PROFESSIONALIZATION OF LAW FIRM GENERAL COUNSEL

The emergence and structural evolution of the law firm general counsel position can be divided into three overlapping stages: first, the designation of individual partners as ethics and risk management specialists, in place of what

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36. *See* Chambliss & Wilkins, *supra* note 23, at 570-83 (examining the effects of direct compensation on the scope of in-house advising and concluding that "firms get what they pay for").

37. *See id.* at 577, 586-87; Chambliss, *supra* note 4, at 1554-55 (discussing partners' use of law firm in-house counsel); Anthony E. Davis, *Legal Ethics and Risk Management: Complementary Visions of Lawyer Regulation*, 21 GEO. J. LEGAL ETHICS 95, 113 (2008) (explaining how firm-level risk management contributes to individual ethical awareness).

38. *See* Legal Services Act, 2007, c. 29 (Eng.), available at http://www.opsi.gov.uk/acts/acts2007/ukpga_20070029_en_1 (authorizing "alternative business structures" for law practice in England and Wales); Christine Parker, Peering Over the Ethical Precipice: Incorporation, Listing, and the Ethical Responsibilities of Law Firms 6-7 (Apr. 5, 2008) (paper presented at the Georgetown Law Center Symposium on the Future of the Global Law Firm, Apr. 17-18, 2008) (on file with author) (explaining the legislation allowing "incorporated legal practices" (ILPs) in Australia); Steve Mark, The Future of the Global Law Firm: Views from an Australian Regulator (paper presented at the Georgetown Law Center Symposium on the Future of the Global Law Firm, Apr. 17-18, 2008) (on file with author) (noting that, due to the General Agreement on the Trade of Services (GATS), "all jurisdictions must now face the reality of the ILP as a very real, potentially cashed up, participant in their domestic legal services market").

39. *See* Elizabeth Chambliss, *MDPs: Toward an Institutional Strategy for Entity Regulation*, 4 LEGAL ETHICS 45, 45 (2001) (U.K.) (arguing that the U.S. "has no coherent strategy" for the regulation of law firms, much less multidisciplinary partnerships); Gillian K. Hadfield, *Legal Barriers to Innovation: The Growing Economic Cost of Professional Control over Corporate Legal Markets*, 60 STAN. L. REV. 1689, 1695 (2008) (arguing that U.S. lawyer regulation "stands as a . . . severe obstacle to the effort to meet the needs of a rapidly transforming globally competitive economy" and calling for "fundamental changes").

typically had been a collective, committee function;[40] second, the formalization of the in-house specialist's role as a lawyer for the firm[41] and the increasing use of the title "law firm general counsel" in the press and large law firms;[42] and, third, law firms' increasing reliance on full-time general counsel and the separation of the position from that of practicing partners in the firm.[43]

A. THE DESIGNATION OF SPECIALISTS

The first stage, which had occurred by the late 1990s in most large law firms,[44] was the designation of individual partners as ethics and risk management specialists, in place of what typically had been a rotating, committee function.[45] Most partners explained the change in terms of functional efficiency.[46] As firms grew, and professional regulation became more complex, the work of ethics and conflicts committees became more complicated, time-consuming, and important, such that it made sense for the same partner to chair the committee for many years. Conflicts of interest, in particular, began to require specialized attention.[47] Over time, these partners developed expertise and eventually were given formal titles, such as "ethics advisor," "conflicts partner," "loss prevention partner," and "firm counsel."[48]

In some firms, the in-house specialist replaced the original committee, but more often, the specialist served alongside the committee, which continued to serve in an advisory capacity.[49] As one partner said, "[w]e do have an ethics committee . . . but it doesn't meet . . . except under extraordinary circumstances. [Instead] there are three of us who spend a fair amount of time on ethics work. I spend almost all my time." [2001-7].[50] Another said, "[w]e have a conflicts

40. *See* Chambliss & Wilkins, *supra* note 23, at 559-65 (examining the emergence of ethics and risk management specialists in 32 law firms).

41. *See* Chambliss, *supra* note 4, at 1531-42 (discussing firm counsels' duties to the firm as an entity).

42. *See id.* at 1519 (reporting industry coalescence around the title "law firm general counsel").

43. *See id.* at 1521 (discussing the structural separation of firm counsel from partners).

44. Chambliss & Wilkins, *supra* note 23, at 564-65 (reporting that "all of the firms in our sample rely on in-house compliance specialists to some extent . . . [but] many specialists' positions have been formalized only recently").

45. *See id.* at 578-79 (discussing the move from committees to specialists).

46. *Id.* at 578. As one partner said, "[m]y position was created in the early 90s . . . . The firm had decided that committees weren't very efficient so it was going to spin off managerial responsibilities to the serious partners. . . ." [2001-14]. Another said: "we started out with a larger committee and it came down to mostly my doing all the work . . . . Efficiencies alone suggest that one person is going to end up handling much of this." [2001-27]. *Id.*

47. *See* Chambliss & Wilkins, *supra* note 23, at 566 (discussing the centrality of conflicts issues). As one partner put it: "[w]hen you talk about 'ethics,' some people are just talking about conflicts . . . ." [2001-13]. *Id.* at 567.

48. *Id.* at 565 (reporting the titles of in-house specialists in 32 law firms).

49. *See* Chambliss & Wilkins, *supra* note 23, at 568, 578-79 (discussing the relationship between specialists and committees).

50. *Id.* at 568 (quoting a full-time conflicts partner at a 500-plus lawyer firm).

committee that meets as needed. That usually occurs when there is a need for a collective decision or people are not as willing to accept my decision." [2001-20].[51] As I discuss in Part III, this hybrid structure of specialist-plus-advisory-committee is typical of large law firm management, with implications for a theory of managerial authority.

Insurers played an important role in the initial designation of specialists, especially the Attorneys' Liability Assurance Society (ALAS), a mutual insurance company owned by large law firms.[52] ALAS requires that member firms designate one or more "loss prevention partners" to attend educational conferences and communicate about claims.[53] A number of law firm general counsel started off as ALAS loss prevention partners, including some who might not otherwise have developed loss prevention expertise.[54] As one partner observed: "Being anointed the ALAS representative does not require you to know anything about ethics . . . but once you are named . . . it's hard to avoid some involvement." [2001-4].[55]

During the first stage, there was no industry standard for the scope or structure of partners' in-house roles.[56] Instead, the in-house role developed gradually and idiosyncratically within firms. Some partners viewed themselves as in-house lawyers, whereas others viewed themselves as partners giving collegial advice.[57] Likewise, some partners provided in-house service on a volunteer basis, whereas others billed the firm for their service or were full-time in-house counsel.[58] At this stage, the main commonalities were the increasingly centralized management of ethics and risk management issues, especially conflicts of interest, and the designation of one or more specialized risk management positions within the firm.

B. THE FORMALIZATION OF THE LAWYER-CLIENT RELATIONSHIP

The second stage, which culminated in 2004 and 2005, was the formalization of the specialist's role as a lawyer for the firm and increasing industry

51. *Id.* at 579 (quoting a part-time loss prevention partner at a 375-lawyer firm).

52. *See* Chambliss & Wilkins, *supra* note 23, at 559-60, 590 (discussing the role of ALAS).

53. *Id.* at 560. In 2002, Robert A. Creamer, then Vice President and Loss Prevention Counsel for ALAS, estimated that there were over 875 loss prevention partners in ALAS member firms. *Id.*

54. *Id.* at 590.

55. Elizabeth Chambliss & David B. Wilkins, *A New Framework for Law Firm Discipline*, 16 GEO. J. LEGAL ETHICS 335, 348 (2003) (quoting a part-time in-house counsel).

56. *See* Chambliss & Wilkins, *supra* note 23, at 563-69. As one specialist said, "[g]o to any firm around the country and you'll find a different way in which the ethics function evolves in that firm. . . ." [2001-4]. *Id.* at 565.

57. *See* Chambliss, *supra* note 4, at 1534-40 (discussing the unique ambiguities of the firm counsel role).

58. *See* Chambliss & Wilkins, *supra* note 23, at 572-73; Chambliss, *supra* note 4, at 1527-28 (discussing variations in compensation structure).

convergence around the title "law firm general counsel."[59] Again, these developments were prompted in part by the functional demands of the job. Once in-house specialists were identified, firms' reliance on them increased, placing an increasing burden on specialists' outside practices.[60] As a result, it became increasingly difficult to treat in-house advising as a casual or volunteer role. As one partner said:

> I see a tension building up. When I first started doing this job it didn't take that much of my time but I have kind of expanded the role as I have learned more and become more experienced and my practice has started to shrink. It's what happens to managing partners, the exact same thing. They see their practice shrinking, they work themselves out of the market. If you are a managing partner for five or six years and you step down from that, you don't have any clients. [2005-3].[61]

Firms also became concerned about protecting the attorney-client privilege for communications between in-house specialists and other lawyers in the firm.[62] In response to several cases denying the privilege for in-firm communications,[63] many firms took steps to formally establish the in-house specialist's role as a lawyer for the firm, for instance by using a lawyer's title,[64] making the position a full-time position, and appointing firm counsel as an employee rather than an equity partner.[65] One long-term partner, who became his firm's first full-time general counsel in 1994 (a first-mover), gave up his equity status to underscore his professional independence.[66]

Around the same time, law firm management consultants began to administer

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59. Chambliss, *supra* note 4, at 1518-19.

60. *See id.* at 1554 (discussing the expanding role of firm counsel); Chambliss & Wilkins, *supra* note 23, at 574 (quoting several specialists about the burdens of uncompensated service).

61. Chambliss, *supra* note 4, at 1554 (quoting a part-time in-house counsel at a 175-lawyer firm).

62. *Id.* at 1521, 1540-42 (discussing firms' concerns about privilege).

63. *See* Bank Brussels Lambert v. Credit Lyonnais (Suisse), S.A., 220 F. Supp. 2d 283, 287-88 (S.D.N.Y. 2002) (holding that "a law firm cannot invoke the attorney-client privilege against a current client when performing a conflict check in furtherance of representing that client"); Koen Book Distribs. v. Powell, Trachtman, Logan, Carrle, Bowman & Lombardo, P.C., 212 F.R.D. 283, 286 (E.D. Pa. 2002) (holding that a law firm cannot claim the privilege for in-firm communications about a current client); VersusLaw, Inc. v. Stoel Rives, LLP, 111 P.3d 866, 878 (Wash. Ct. App. 2005) (stating that the applicability of the attorney-client privilege to in-firm communications "must be determined on a case-by-case basis").

64. *See* Chambliss, *supra* note 4, at 1526-27 (reporting that 56% of respondents in the 2005 sample have titles with "counsel" in them, compared to 31% of respondents in the 2001-02 sample).

65. *See* Lerer, *supra* note 5, at 32 (discussing Shutkin's appointment). Theoretically, such efforts should help preserve the privilege for in-firm communication about a current client. *See* Elizabeth Chambliss, *The Scope of In-Firm Privilege*, 80 NOTRE DAME L. REV. 1721, 1748-52 (2005) (proposing a structural approach to defining the scope of in-firm privilege); NYSBA Comm. on Prof'l Ethics, Op. 789 (2005) (approving a similar approach). In practice, however, courts continue to confuse the analysis. *See* Thelen Reid & Priest, LLP v Marland, 2007 U.S. Dist. LEXIS 17482 (N.D. Cal. 2007), at 20-21.

66. Chambliss & Wilkins, *supra* note 23, at 573. Several survey respondents also report reliniquishing their equity status at the same time or shortly after they took on a formal in-house role. 2008 ABA ACC Survey, *supra* note 28.

surveys and sponsor conferences for law firm general counsel, leading to increasing awareness among firms about what other firms were doing, as well as increasing convergence around the title "law firm general counsel."[67] In 2004, Altman Weil published its first survey of law firm general counsel in AmLaw 200 firms,[68] which was widely reported in the legal press.[69] In 2002, the Hildebrandt Institute began sponsoring private roundtables for law firm general counsel,[70] as well as an annual conference for law firm general counsel in New York City.[71] Since 2007, Hildebrandt has co-sponsored the New York City conference with Hinshaw & Culbertson, a professional liability defense firm and a former competitor in the risk management conference market.[72] Hinshaw also co-sponsors an annual risk management conference in Chicago.[73]

C. THE PROFESSIONALIZATION OF LAW FIRM GENERAL COUNSEL

Thus, by 2004, many firms had moved toward a professional model for law firm general counsel: that is, the treatment of the position as a full-time position with its own professional identity and networks, distinct from that of practicing partners. The percentage of AmLaw 200 firms with designated general counsel increased from 63% in 2004 to 85% in 2008.[74] The percentage of designated general counsel who are full-time in that role increased from 26% in 2004 to 38% in 2008.[75]

By 2004, some firms also had begun to experiment with the appointment of experienced general counsel from outside of the firm, such as Shearman &

67. *See* Chambliss, *supra* note 4, at 1519-20 (discussing the role of consultants).

68. Altman Weil, Inc., Results of Confidential "Flash" Survey on Law Firm General Counsel (2004) (on file with author).

69. *See, e.g.*, Jeff Blumenthal, *Survey: More Firms Using Their Own GC*, LEGAL INTELLIGENCER, June 1, 2005, at 1; Leigh Jones, *More Firms Hire General Counsel: GCs Help Reduce the Risk of Liability*, NAT'L L.J., June 6, 2005, at 1; Jaime Levy, *More Firms See Benefit of Using In-House General Counsel*, CHI. LAW., July 2004, at 28; Jane Pribek, *More and More Law Firms are Designating Their Own 'In-House' General Counsel*, MINN. LAW., Sept. 26, 2005, at S-1 (special supplement); Nancy Rubin Stuart, *A Lawyer's Lawyer: More Firms Establish In-House General Counsel Positions*, N.J. L.J., June 20, 2005, at 27; Charles Toutant, *General Counsel Posts Popping up at Large Firms, Spurred by Insurers*, N.J. L.J., Nov. 15, 2004, at 1.

70. *See* Chambliss, *supra* note 4, at 1520 n.28 (discussing the Law Firm General Counsel Roundtable).

71. *See* Hildebrandt International, The 7th Annual Law Firm General Counsels' Forum, http://www.hildebrandt.com/HDBTInstitute.aspx?WS_ID=873 (last visited Sept. 10, 2008) (announcing the 7th Annual Law Firm General Counsels' Forum, in 2008).

72. *Id.* (stating "[t]he 2008 forum, for the second straight year, joins together two highly successful annual conferences: Hildebrandt's Law Firm General Counsels' Forum and Hinshaw & Culbertson's Professional Responsibility and Risk Management Conference).

73. Hinshaw & Culbertson LLP, Events—2009 Legal Malpractice and Risk Management Conference, http://www.hinshawlaw.com/2009lmrm/ (last visited Sept. 10, 2008) (announcing the 2009 Legal Malpractice and Risk Management Conference).

74. Altman Weil, Inc., 2008 Results of Confidential "Flash" Survey on Law Firm General Counsel (Apr. 2008), http://www.altmanweil.com/dir_docs/resource/f5b642dd-99a1-423a-a6a1-16bdb67a3464_document.pdf.

75. *Id.* at 5.

Sterling's appointment of Shutkin from KPMG International,[76] and Akin, Gump, Strauss, Hauer & Feld's appointment of Richard Goshorn from Acterna, an optical equipment maker.[77] At the time of their appointments, both Shutkin and Goshorn were optimistic about their positions. Shutkin said, "I feel like a safe pioneer."[78] Goshorn said, "I've heard people say, 'there's no way you can come from outside and do this job.' That's a hugely insular perspective. Some law firms need some fresh blood to come in."[79]

As Shutkin's experience suggests, however, it is an open question whether professional general counsel can maintain credibility with equity partners. The first generation of law firm general counsel "grew up" in their firms and have long-standing ties to firm leaders.[80] Thus, even full-time general counsel tend to retain their professional identities as partners. And while one can point to a few law firm general counsel who were brought in from outside of their firms,[81] outside appointment from other industries so far has been notably unsuccessful. Like Shutkin, Goshorn left his law firm within a few years of his appointment.[82]

Thus, it may be that the professionalization of law firm general counsel has reached its limits. Most firms may continue to draw their general counsel from the partnership ranks, as historically has been the case with managing partners and chairs. Or it may be that the professionalization of law firm general counsel will continue, through the development of external labor markets and an independent professional identity, but at the price of losing the executive status that most firm counsel currently enjoy.[83] Perhaps firm counsel will come to be viewed primarily as administrators.[84] Or perhaps both models—the "insider" and the "administrator"—will coexist, but in different firms.

Clearly, however, the demand for dedicated risk management in large law firms is increasing. Not only are firms increasingly likely to appoint full-time general counsel, but firm counsel are increasingly likely to have assistant general

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76. *See* Lerer, *supra* note 5.

77. Cathleen Flahardy et al., *Stepping Out: Partner. Law Firm GC. Consultant. Entrepreneur. Professional Poker Player. Five Options for Adventurous In-House Lawyers*, CORP. LEGAL TIMES, Nov. 2005, at 46, 50 (discussing Goshorn's appointment).

78. Lerer, *supra* note 5 (quoting Shutkin).

79. Flahardy et al., *supra* note 77, at 46 (quoting Goshorn).

80. Chambliss & Wilkins, *supra* note 23, at 581.

81. *See* Chambliss, *supra* note 4, at 1554, 1557 (noting that most outside appointees had previous ties to their firms).

82. Goshorn left Akin Gump in 2007 to become general counsel at VeriSign, Inc., an internet security firm. *See* VeriSign-Management, https://investor.verisign.com/management.cfm (last visited Sept. 8, 2008) (profiling Goshorn).

83. *See* Chambliss, *supra* note 4, at 1546-49 (discussing the potential trade-offs of the professional model, such as a shift in professional identity from partner to administrator).

84. *See id.* at 1547 (noting that the first generation of volunteer in-house counsel referred to the lawyers in the firm as "my guys," whereas professional firm counsel may be more likely to refer to the administrators in the firm as "my guys").

counsel and other specialized management support.[85] Nearly 50% of firms in the 2008 ABA ACC Survey have more than one designated risk management position.[86] Among firms with 500 or more lawyers, 64% have more than one position.[87] Moreover, most respondents expect their firms' investment in risk management to increase.[88]

At the same time, the supply of partners willing to serve as risk managers may be diminishing. The first generation of law firm general counsel is approaching retirement and some firm counsel have no obvious successor. Two firm counsel I interviewed in 2008 said they worry about what would happen if they were "hit by a bus." [2008-5, 2008-8]. Thus, the "professional project"[89] of law firm general counsel is approaching a crossroads. In the words of a full-time general counsel at one of the nation's largest law firms:

> One thing I have been thinking about is succession. When I look around at the people who hold this position, I see people who backed into it. You were there, we saw a need, you started part time, and it got to be more and more and more and more. And since it was within, it tended to be people who knew the firm and understood the firm and were respected. People with authority. And now—putting aside what happened with Shutkin and Goshorn—the next generation, where will they come from? [2008-5].

D. IMPLICATIONS FOR OTHER TOP MANAGEMENT POSITIONS

Shutkin's experience and the development of the law firm general counsel position highlight broader questions about the development of executive authority in large law firms. On one hand, firms' reliance on dedicated management is increasing. This change is reflected in the evolution of law firm management titles, which in most large firms now include a variety of titles from the "C-suite,"[90] such as Chief Executive Officer (CEO), Chief Operating Officer

85. 2008 ABA ACC Survey, *supra* note 28, at 9-10 (discussing firms' increasing investment in in-house risk management). Over 60% of firms in the survey have designated general counsel, and 15% have assistant general counsel. *Id.* at 9 (Table 8).

86. *Id.* at 10 (Table 9) (reporting the number of designated risk management positions by firm size).

87. *Id.* Among firms with 500 or more lawyers, 95% (21 of 22) have at least one designated risk management position, and 64% (14 of 22) have more than one position. Five firms have a full-time specialist plus additional specialized personnel, and six have a 75-99%-time specialist plus additional personnel. *Id.*

88. 2008 ABA ACC Survey, *supra* note 28, at 11 (Table 10). Over half of respondents report that their in-house role has expanded within the past two years, and that they expect it to continue to expand. Nearly 70% of respondents in firms with 100-499 lawyers expect the number of designated risk management positions in their firms to increase. *Id.*

89. MAGALI SARFATTI LARSON, THE RISE OF PROFESSIONALISM: A SOCIOLOGICAL ANALYSIS 66 (1977) (referring to the process of collective mobility by which occupational groups seek to enhance their authority and social standing).

90. Wiktionary, http://en.wiktionary.org/wiki/C-suite (last visited Oct. 18, 2008) (defining the C-suite as "the group of 'chief officers' of a business organization, who share nearly equal authority in their respective functional areas of responsibility").

(COO), Chief Financial Officer (CFO), and the like.[91] In many firms, the title "Managing Partner," which incorporates both practice and management roles, has been superseded by one with more executive emphasis, such as Chairman or CEO.[92]

Meanwhile, a number of firms that have embraced strong centralized management have been rewarded by dramatic increases in profitability and revenue. Bingham McCutchen "is run as close to a corporate model as any AmLaw 100 firm" with a chairman, Jay Zimmerman, who "runs the firm like a CEO . . . and makes no apologies for it."[93] Under Zimmerman, Bingham has grown from 175 lawyers in 1994 to nearly 1,000 lawyers in 2008 and has "rocketed" up the Am Law 100 list of top-grossing firms.[94] Orrick, Herrington & Sutcliffe is another firm that is committed to strong centralized management: CEO Ralph Baxter has run the firm full-time since 1992.[95] In 2004, Orrick had the highest profits-per-partner of any law firm in the Bay Area.[96]

On the other hand, partners traditionally have resisted strong centralized management, at least to the extent that it threatens to encroach upon their personal authority.[97] Law firms also traditionally have been vulnerable to top partner defections, such that individual partners effectively could veto unwelcome management initiatives.[98] What are the implications of this tension for the future of law firm management?

Part III examines conventional arguments about the limits of executive authority in large law firms and identifies several mechanisms for change. I argue there is an increasing demand for risk management and strategic planning in law firms, as well as an increasing supply of professionals—a whole industry—poised to meet this demand, complete with nascent professional institutions, such as specialized networks and training programs. Moreover, the next generation of partners will have different expectations of law firm management. Thus, I predict that executive management will become increasingly autonomous from partners, both structurally, through the institutionalization of dedicated management

91. *See* LAW FIRMS YELLOW BOOK (Summer 2008) (listing the names and titles of law firm managers).

92. *See id.* at 41, 242, 529, 843 (identifying the "Chairman" of Baker & McKenzie, the "Joint Chief Executive Officers" of DLA Piper US LLP, the "Chairman and Managing Partner" of Latham & Watkins LLP, and the "Executive Partner" of Skadden, Arps, Slate, Meagher & Flom LLP).

93. Susan Beck, *A Series of Fortunate Events*, AM. LAW., Feb. 1, 2005.

94. *Id.*

95. Koppel, *supra* note 11, at B3 (discussing Orrick's "visionary . . . McKinsey-influenced managerial techniques," in which the managing partner is a "full-time manager . . . [who is] intimately familiar with his business's operations, numbers, and marketing strategies").

96. Marie Beaudette, *Swidler in Merger Talks with Orrick*, LEGAL TIMES, May 3, 2004.

97. *See* NELSON, *supra* note 14, at 90 (arguing that top partners will thwart management initiatives that threaten their individual authority); Winings, *supra* note 18, at 189-93 (discussing top rainmakers' tendency to protect the status quo).

98. *See* Gilson & Mnookin, *supra* note 31, at 338-39 (noting that "it is the threat of leaving" that allows opportunistic behavior by top partners); Winings, *supra* note 18, at 190 (arguing that top rainmakers are capable of "dictating management decisions").

positions within firms, and culturally, through partners' increasing reliance on managers' professional expertise.

To be sure, some law firms will successfully resist this approach, particularly those that have been the most profitable under the traditional, decentralized model—such as the handful of highly-prestigious, democratically-managed Manhattan firms.[99] Such firms also have resisted two-tier partnerships and "eat-what-you-kill compensation."[100] However, these prestigious incumbents "own their market positions."[101] Among most firms, strong centralized management promises to make a competitive difference and partners increasingly are likely to support it.[102] Eventually, even the most prestigious firms may begin to suffer partner and client defections in the face of global competition from professionally-managed upstarts.[103]

Shearman & Sterling may be one such firm. Shearman's profits-per-partner have been lagging behind other firms "at the top table,"[104] and top partners have begun to jump ship.[105] Over the past several years, Weerasinghe has instituted a number of measures designed to lift profits,[106] with limited

99. *See, e.g.*, Koppel, *supra* note 11 (discussing the management philosophy at Cravath, Swaine & Moore). According to Vault, the most prestigious law firms in the U.S. are: (1) Wachtell, Lipton, Rosen & Katz, (2) Cravath, Swaine & Moore, and (3) Sullivan & Cromwell, all of Manhattan. Vault, *The Top 100 Most Prestigious Firms—2009*, http://www.vault.com/nr/lawrankings.jsp?law2009=2&ch_id=242&top100=1 (last visited Jan. 23, 2009).

100. *See* William D. Henderson, *An Empirical Study of Single Tier Versus Two-Tier Partnerships in the Am Law 200*, 84 N.C. L. REV. 1691, 1742 (2006) (finding that partnership structure is largely a function of firms' reputational capital); Andrew Longstreth, *Partners Beware: Firms are Rijiggering Compensation Schemes to Give Star Rainmakers—and Elite Laterals—a Bigger Share of the Pie*, AM. LAW., May 7, 2007 (discussing the "old-fashioned compensation systems" still in place at some prestigious Manhattan firms).

101. Peter D. Zeughauser, *Making Lemonade*, AM. LAW., May, 2008, at 61; *see also* Gilson & Mnookin, *supra* note 31, at 360-62 (discussing incumbents' competitive advantage in a market characterized by "significant problems of quality uncertainty"); Royston Greenwood & Laura Empson, *The Professional Partnership: Relic or Exemplary Form of Governance?*, 24 ORG. STUD. 909, 913-14 (2003) (discussing the cost advantages of high status); *see also* Henderson, *supra* note 100, at 1745 (noting that firms with a "large quantity of reputational capital" can be "more forgiving of firm mismanagement").

102. *See* Zeughauser, *supra* note 101, at 61 (emphasizing the economic incentives for strategic management).

103. *See* Henderson, *supra* note 100, at 1749 (arguing that the "sharing ethos of a single-tier structure" can become a source of firm instability); Longstreth, *supra* note 100 (discussing the movement of top partners from Debevoise & Plimpton, Davis Polk & Wardwell, and Cahill, Gordon & Reindel to firms with more attractive compensation systems); Dan DiPietro, *Forecast: Law Firms to Continue Bumpy Ride Through 2008*, http://www.law.com/jsp/law/sfb/lawArticleSFB.jsp?id=1202423942132 (reporting that a recent industry slowdown "is hitting the most profitable firms the hardest").

104. Bloomberg, *supra* note 9 (quoting Kenneth MacRitchie, then the firm's London managing partner). MacRitchie stepped down from that role and his position on the firm's executive committee as part of the recent realignment. *See* Hodges, *supra* note 2.

105. Bloomberg, *supra* note 9 (reporting that five partners, including the chief of the firm's asset management group, left for Wilkie, Farr & Gallagher); Longstreth, *supra* note 100 (noting that Shearman has "lost a raft of partners"); Vivia Chen, *Homecoming Queen*, AM. LAW., Sep. 1, 2005 (discussing China specialist Carmen Chang's return to Wilson Sonsini Goodrich & Rosati after only two years at Shearman & Sterling).

106. *See* Bloomberg, *supra* note 9 (discussing organizational and management changes).

success.[107] Now Weerasinghe is experimenting with a management realignment, based on a return "to the more traditional structure of partner oversight"[108] over key functions. Or, in the words of one reporter, "risk management at Shearman . . . a $921,000,000 firm spread across four continents, with 857 lawyers—will become a part-time job."[109] As this statement reflects, Shearman's ouster of Shutkin may say more about Shearman than Shutkin.[110] Part III argues that the future lies with professionally-managed firms.

III. NEW SOURCES OF MANAGERIAL AUTHORITY WITHIN FIRMS

Most commentators acknowledge the increasing demand for dedicated executive management in large law firms. One can imagine a theoretical debate about whether dedicated management actually would be better or more efficient for law firms than decentralized management by committee.[111] One can also debate the best way to measure the economic performance of firms.[112] But for present purposes, I sidestep those debates. Most commentators agree that strong centralized management would improve the economic performance of firms.[113] The claim is that partners will resist such management on ideological or individual economic grounds.

It is useful to separate the ideological and economic versions of the argument. The ideological version locates lawyers' resistance to strong centralized management in lawyers' professional training and values. For instance, the management literature argues that lawyers are trained to respect precedent and be resistant to change,[114] and that lawyers are "professional skeptics,"[115] making them prone to

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107. In 2000, Shearman & Sterling ranked 13th in profits-per-partner; in 2007, it ranked 22nd. Longstreth, *supra* note 100; *Firms A to Z*, AM. LAW., May 2008, at 172.

108. Beck, *supra* note 8 (quoting Shearman & Sterling spokesperson Ron Brandsdorfer).

109. *Id.*

110. *See* Longstreth, *supra* note 100 (stating that Shearman & Sterling "has not kept pace with its peers in the New York elite"); Matt Byrne & Catrin Griffiths, *The Contenders: The Chasing Pack*, LAWYER, May 10, 2008, http://www.thelawyer.com/cgi-bin/item.cgi?id=132752 (stating that Shearman "has blown it in recent years"); Vault Prestige Rankings, *supra* note 99 (reporting that Shearman & Sterling's prestige ranking fell from 14th to 19th in 2009).

111. *See* Greenwood & Empson, *supra* note 101, at 926 (theoretical analysis of the benefits of partnership versus corporate governance).

112. *See* Rosemarie Clancy & John O'Connor, *A Guide to Our Methodology*, AM. LAW., May, 2008 at 165 (explaining various measures used by The American Lawyer).

113. *See* NELSON, *supra* note 14, at 187 (noting the competitive advantages of bureaucratic management); Holmes, *supra* note 17, at 403 (stating that "relegating management decisions to partners all but ensures the mediocrity of those decisions"); Winings, *supra* note 18, at 185-86 (stating that it is "undeniable that large firms can become more efficient and more profitable by adopting a bureaucratic organizational structure").

114. *See* Winings, *supra* note 18, at 185-87 (identifying lawyers' resistance to change as an obstacle to the implementation of corporate-style management); S. S. Samuelson & Liam Fahey, *Strategic Planning for Law Firms: The Application of Management Theory*, 52 U. PITT. L. REV. 435, 439 (1991) (noting firms' attachment to management strategies "appropriate between 1870 and 1970").

115. David Maister, *The Trouble with Lawyers*, AM. LAW., Apr. 2006, at 98.

attack new ideas. Lawyers also tend to value their own skills above those of others[116]—hence the term "non-lawyer" which has no counterpart in other professions.[117] Such values arguably make lawyers uniquely difficult to manage.[118]

Similarly, the professions literature argues that lawyers are taught to expect significant autonomy in their work and thus are predisposed to resist strong centralized management.[119] Lawyers' demand for autonomy stems in part from the functional demands of law practice, which requires discretion and independent judgment.[120] However, some argue that lawyers—especially partners—are socialized to expect autonomy even in tasks and decisions beyond their core expertise.[121] Thus, the strong version of the ideological argument predicts that partners will value autonomy and control over income.[122]

For instance, in their recent study of the management of transnational law firms, James R. Faulconbridge and Daniel Muzio criticize arguments about the emergence of a managerial "archetype,"[123] arguing that archetype theory underemphasizes the role played by professional values.[124] Although they acknowledge evidence of "a clear departure from the democratic . . . traditions of the [partnership] form," they are skeptical about the prospects for a "wholesale, uniform and uncontested 'managerial' revolution."[125] Instead, they predict the emergence of "varieties of professionalism," based on "nationally contingent

116. *See* Holmes, *supra* note 17, at 402 (discussing lawyers' disdain for professional managers); Daniel B. Evans, *Why Lawyers Can't Manage: Thoughts From A Frustrated Lawyer*, LAW PRAC. MGMT., Oct. 1993, at 26 (same).

117. Winings, *supra* note 18, at 188 n.170.

118. Maister, *supra* note 115, at 97-98 (arguing that the same traits that make lawyers professionally successful make them difficult to manage).

119. *See* Laura Empson, *Your Partnership*, *in* MANAGING THE MODERN LAW FIRM 13 (Laura Empson, ed., 2007) (summarizing the professions literature); Faulconbridge & Muzio, *supra* note 19, at 250-54 (drawing on the professions literature to caution against over-reliance on organizational "archetypes").

120. *See* Talcott Parsons, *A Sociologist Looks at the Legal Profession*, in ESSAYS IN SOCIOLOGICAL THEORY 370, 372-74 (rev. ed. 1954) (emphasizing the importance of autonomy in lawyers' work); Talcott Parsons, *The Law and Social Control*, *in* LAW AND SOCIOLOGY: EXPLORATORY ESSAYS 63-64 (William M. Evan ed., 1962) (same). *See also* TALCOTT PARSONS & GERALD M. PLATT, THE AMERICAN UNIVERSITY 123 (1973) (observing a pattern of "institutionalized individualism" among "professionalized" faculty).

121. Bruce MacEwen, *Great Article, But It Should Be Datelined 1994*, http://www.bmacewen.com/blog/archives/2004/09/great article b-print.html (last visited Sept. 16, 2004) (arguing that law firms can no longer afford to be run by "enthusiastic amateurs").

122. Empson, *supra* note 119, at 13-14; Winings, *supra* note 18, at 191 (arguing that top partners will forgo "tremendous economic gains" in order to maintain their power).

123. *See* David J. Cooper et al., *Sedimentation and Transformation in Organizational Change: The Case of Canadian Law Firms*, 17 ORG. STUDIES 623, 631 (1996) (arguing that the traditional meaning of partnership has changed in Canadian law firms, and observing the emergence of a competing, managerial archetype). *See also* Royston Greenwood & C.R. Hinings, *Understanding Strategic Change: The Contribution of Archetypes*, 36 ACAD. MGMT. J. 1052 (1993) (explaining the use of archetypes in organizational theory).

124. Faulconbridge & Muzio, *supra* note 19, at 250-51.

125. *Id.* at 254.

work behaviours, beliefs and ideals."[126] They write:

> lawyers, as professionals, demand autonomy in their work and input into the strategic direction of the firm. This prevents most forms of hierarchical, top-down management, makes global coordination of the firm more difficult and makes negotiations cumbersome as all partners seek to contribute to decision-making .... [T]hese characteristics and effects of professionalism might ... explain the unique organizational forms used by globalizing [firms] ... [and] their often suboptimal, irrational and idiosyncratic nature.[127]

The economic explanation for partners' resistance to strong, centralized management emphasizes law firms' dependence on their top producers, and top partners' incentives to thwart the development of autonomous management.[128] The gist of the argument is that top partners have individual economic incentives to protect the status quo and will use the threat of departure to maintain it. Thus, top partners will block management changes that would benefit the firm. As Nelson writes:

> Unlike the ideal of autonomous management, in which managers develop plans to maximize organizational goals without regard to their self-interest, it is difficult for the leaders of law firms to plan objectively about the firm's practice because they are themselves so strongly identified with certain fields or clients. The efforts of the client-responsible elite to diversify the client base could threaten to dilute their power in the organization. This has retarded the development of rational managerial techniques in many firms and is a continuing source of uncertainty for partnerships in general.[129]

The economic account is not inconsistent with an ideological preference for autonomy. Presumably, we all value autonomy when we can get it. The question is, which matters most? The strong version of the ideological argument suggests that partners will forgo the promise of increased income in order to preserve their autonomy and control over firm management. But Nelson, at least, rejects this account. Nelson argues that "[p]rofessional ideology cannot be treated as a structural determinant-... [but rather] is largely created inside the law firm."[130] Thus, "elites ... can redefine professionalism to suit their own interests, including the introduction of [b]ureaucratic managerial practices ...."[131] As Nelson writes:

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126. *Id.* at 251.

127. *Id.*

128. *See* JAY W. LORSCH & THOMAS J. TIERNEY, ALIGNING THE STARS 4, 22 (2002) (arguing that the balance of power in professional service firms "tilts sharply" toward senior producers); NELSON, *supra* note 14, at 90 (arguing that law firm management "suffers an almost total lack of autonomy" from operations, in contrast to hospital and university management); Winings, *supra* note 18, at 189 (discussing dominant rainmakers' objections to changes in the status quo).

129. NELSON, *supra* note 14, at 90.

130. *Id.* at 79.

131. *Id.* at 206. According to Nelson, "bureaucratic management is defined by: (1) a specialized policy-making group that actively engages in strategic planning; (2) a developed administrative component

> My interpretation of the resilience of traditional structures in firms has very different implications from the explanation based on the value-rational character of the organization . . . . I suggest that there may not be an inherent conflict between bureaucratization and professional values. Given a cohesive managerial elite, a bureaucratic managerial ideology could become the dominant professional ideology in a law firm.[132]

Thus, while Nelson's study typically is cited as evidence of partners' tendency to resist strong centralized management,[133] ultimately the implications of his analysis depend on the nature of partners' self-interest and the balance of power within firms. To the extent that top partners would benefit from bureaucratic management—or be unable to thwart it—Nelson's analysis suggests that bureaucratic management practices will develop, because such practices promise to give firms a market advantage.[134]

Framed this way, Nelson's analysis is consistent with the archetype literature, which emphasizes how professional values are reinterpreted to make sense of structural change.[135] According to archetype theory, the introduction of strong centralized management is a defining characteristic of professional service firms in the global economy.[136] The archetype literature does not suggest that this change is "wholesale, uniform and uncontested";[137] however, neither is it necessarily thwarted by professional values.[138] Instead, change is the result of a competition between archetypes, each of which includes an interpretation of "professional" values.[139] Thus, the adoption of a managerial archetype includes the promotion of an alternative interpretive scheme.[140]

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consisting of a managing partner and a mechanism for collecting and analyzing data on the performance of individual lawyers and work groups; and (3) well-defined work groups (usually taking the form of departments) with recognized heads who supervise the group and report to the central policy-making group . . . ." *Id.* at 91-92.

132. *Id.* at 80.

133. *See* Winings, *supra* note 18, at 168-71.

134. NELSON, *supra* note 14, at 226-27 (stating that "we can expect the trend toward bureaucratization of professional firms to continue").

135. *See* C.R. Hinings et al., *The Dynamics of Change in Large Accounting Firms, in* RESTRUCTURING THE PROFESSIONAL ORGANIZATION: ACCOUNTING, HEALTH CARE AND LAW 131, 143-51 (David Brock et al., eds. 1999) (examining the dynamics of change in large accounting firms); Laura Empson & Chris Chapman, *Partnership Versus Corporation: Implications of Alternative Forms of Governance in Professional Service Firms, in* 24 RESEARCH IN THE SOCIOLOGY OF ORGANIZATIONS 139, (2006) (examining the dynamics of change in large consulting firms).

136. *See* Greenwood & Hinings, *supra* note 123; Cooper et al., *supra* note 123, at 629-30 (defining the characteristics of the managerial archetype).

137. Faulconbridge & Muzio, *supra* note 19, at 254 (criticizing archetype theory).

138. *See* Cooper et al., *supra* note 123, at 635 (stating "[t]here is no unique or changing meaning of ideas such as professionalism, or partnership").

139. *See id.* at 624 (discussing the instability that results from competing commitments to different archetypes); Hinings et al., *supra* note 135, at 143-47 ("The fact that an alternative archetype has emerged and achieved a degree of legitimacy does not mean that it will be adopted either uniformly or easily.").

140. *See* Hinings et al., *supra* note 135, at 149 (describing a "coup d'etat" in which four partners "stood together for election on a platform of taking the firm into a . . . [more managerial] mode").

> The [managerial] archetype interprets a professional as businesslike, as providing value-adding service and as being responsive to the client. The attributes which sociologists of the professions used to identify as the hallmarks of a professional, such as education, vocation, esoteric knowledge, self regulation and civility, have been replaced, or at least augmented, by an interpretation that stresses punctuality, style, dynamism, financial success and entrepreneurialism. The meaning of the term "partner" has also changed. In the [managerial] archetype, a partner is a team player, one who trusts the leadership and works for the common good . . . .[141]

Archetype theorists acknowledge that the managerial archetype is "articulated more powerfully in accounting firms" than in law firms.[142] As Royston Greenwood and Laura Empson write, law is a highly normative profession and thus may be "institutionally stick[y],"[143] such that organizational change will be delayed. However, many of the pressures on traditional partnerships that are found in other industries are also increasingly present in law, especially in large, multinational firms.[144] Moreover, as more large law firms visibly—and successfully—embrace strong centralized management, the pace of change may be expected to increase.[145] My research points to a number of specific mechanisms for change.

A. INDUSTRY CONSOLIDATION

Perhaps the most important incentive for strong centralized management is the competition for market position. All signs point to increasing industry consolidation among the AmLaw 200 and their counterparts in the U.K.[146] Merger activity among U.S. law firms has increased enormously since the late 1990s,[147] with a number of firms pursuing serial mergers to achieve a "credible size and . . . platform."[148]

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141. Cooper et al., *supra* note 123, at 631.

142. *Id.* at 631.

143. Greenwood & Empson, *supra* note 101, at 927.

144. *See* Cooper et al., *supra* note 123, at 631 (discussing the emergence of a managerial archetype in Canadian law firms); Faulconbridge & Muzio, *supra* note 19, at 254 (discussing evidence of "important changes . . . in the way that law firms are managed" and "growing commercial pressures" in large law firms in particular).

145. *See* Chambliss, *supra* note 4, at 58-59 (discussing mechanisms for the diffusion of ethical infrastructure within law firms); Paul J. DiMaggio & Walter W. Powell, *The Iron Cage Revisited: Institutional Isomorphism and Collective Rationality in Organizational Fields*, 48 AM. SOC. REV. 147 (1983) (explaining the process and mechanisms of "institutional isomorphism," by which organizations within a common environment becoming increasingly alike).

146. *See* Bruce E. Aronson, *Elite Firm Mergers and Reputational Competition: Is Bigger Really Better? An International Comparison*, 40 VAND. J. TRANSNAT'L L. 763, 793 (2007) (discussing industry consolidation among U.S. and U.K. law firms); Randall S. Thomas et al., *Megafirms*, 80 N.C. L. REV. 115, 136-53 (2001) (explaining law firm consolidation as part of a trend toward consolidation in professional services generally); Byrne & Griffiths, *supra* note 110 (reporting accelerated merger activity in the first quarter of 2008).

147. Aronson, *supra* note 146, at 773 n.16 (discussing the data on law firm mergers).

148. *Id.* at 765-66.

Merger activity has a number of consequences for law firm management. First, mergers are proactive efforts requiring dedicated strategic management and extensive planning.[149] Because of the conflicts of interest rules, mergers also require coordinated legal and risk management planning. Thus, mergers increase the functional demand for dedicated, full-time managers. Most of the first law firms to appoint full-time general counsel were large, national and multinational firms that faced the challenge of coordinating multiple, far-flung offices. Mergers only intensify that challenge. In the words of an executive manager at a serially merging firm:

> To do a merger requires a fairly significant amount of management time. You have to find the firm, negotiate terms, sell it to the firm here, sell it to the target firm, and integrate it all once it happens. So the firm has to be prepared to take me off line and spend my time doing that. The firm we merge with may have $100 million in revenues. I have a $5 million book. And the question is where is my time better spent. You need to have that mentality in the firm. [2008-6]

Mergers also disrupt the settled expectations of partners, demanding a proactive interpretive campaign.[150] Mergers require the newly-organized firm to re-establish its identity, policies, and strategic mission.[151] Thus, mergers provide an opportunity for flexing the managerial authority of the firm. As one full-time general counsel observed, following the merger of his multinational firm:

> When we went through the combination... we sat down and said well, we have [hundreds of] lawyers in [other jurisdictions] . . . all doing conflicts differently . . . . At that point, a whole lot of people got different jobs because this is going to be centralized, there weren't going to be cowboys, there couldn't be cowboys . . . . No more clearing your own conflicts. It was a huge jerk for most people . . . . We knew that conflicts was going to be the largest issue . . . and if we didn't get it right it was going to be a big, big problem. [2001-8].[152]

Industry consolidation also leads to more enduring relationships with clients,[153] thus shifting some control over clients from individual partners to the firm. The legal press is full of news about "preferred provider" arrangements

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149. June D. Bell & Aric Press, *Law Firm Leaders Have Mergers on the Mind*, LAW FIRM INC., (Jan.-Feb. 2007), http://www.law.com/jsp/article.jsp?id=1170928976695 (discussing the importance of professional managers in guiding law firm merger decisions); Anthony Lin, *Law Firm Merger Consultants Race for Booming Business*, N.Y. L. J., June 24, 2002 (describing the busy market for merger consulting).

150. *See* Aronson, *supra* note 146, at 777 n.30 (noting that mergers can be "highly disruptive" and may even lead to the dissolution of the firm); Anthony Lin, *Coudert Breakup Voted After Merger Talks Fail*, NAT'L L. J., Aug. 19, 2005 (discussing the failed merger of Orrick, Herrington & Sutcliffe and Coudert Brothers).

151. *See* Laura Empson, *Organizational Identity Change: Managerial Regulation and Member Identification in an Accounting Firm Acquisition*, 29 ACCT., ORG. & SOC'Y 759 (2004) (exploring the impact of an acquisition on organizational and professional identity).

152. Chambliss, *supra* note 4, at 1543.

153. *See* Aronson, *supra* note 146, at 793 (discussing client consolidation in U.S. and U.K. law firms).

offered by clients such as Tyco,[154] Microsoft,[155] and Pfizer.[156] Some argue that large law firms and their clients are moving toward a joint venture model.[157] To the extent that large law firms form more enduring relationships with clients, it undercuts individual partners' ability to dictate management practices in the firm.

Finally, industry consolidation means that surviving firms will be bigger, making it all the more difficult for any one partner or group of partners to disrupt the strategic direction of the firm. The sheer scale of some law firms already makes it difficult for even the top rainmakers to dominate executive management. In the words of the general counsel of a 1,000-plus lawyer firm, "a big advantage of our size is that there is not a partner who is bigger than the firm, by a long shot. No one is going to dominate our institutional structure. And that is comforting." [2008-1].

B. PROFESSIONAL NETWORKS

A second mechanism that is likely to promote the authority of executive managers is the development of professional networks among managers and management consultants. In recent years, law schools, business schools, and consultants have begun to offer formal training programs for law firm managers.[158] In 2004, Reed Smith teamed up with the Wharton School of Business to create Reed Smith University, which offers a year-long curriculum on law firm leadership, management, and business development.[159] Hildebrandt International, a law firm management consultant, offers a five-month course on law firm management that leads to a graduate certificate from George Washington University.[160] In 2007, Harvard Law School instituted an executive education program for "high-level managing partners and practice group leaders"[161] and

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154. *See* Richard Lloyd, *How Eversheds Became Tyco's Firm of Choice in Europe*, AM. LAW., Mar. 11, 2008, http://www.law.com/jsp/article.jsp?id=1205146040947 (reporting the deal between Eversheds and Tyco); Steve Hoare, *Tyco Adds New Demands in Second Eversheds Deal*, THE LAWYER, Aug. 26, 2008, at http://www.thelawyer.com/cgi-bin/item.cgi?id=132779&d=415&h=417&f=416 (reporting Tyco's renewal of the $10 million deal).

155. *See* Leigh Jones, *Microsoft to Offer Diversity Bonuses*, NAT'L L.J., July 22, 2008 (discussing Microsoft's 17 "Premier Preferred Provider law firms, which collectively receive about $150 million in fees from the technology giant each year").

156. *See* Eriq Gardner, *Pfizer Mounts Grueling Competition To Pick Preferred Law Firm Providers*, N. Y. L. J., Nov. 3, 2005 (discussing firms' competition for "20 coveted spots as preferred providers").

157. *See* David B. Wilkins, *Do Clients Have Ethical Obligations to Lawyers? Some Lessons from the Diversity Wars*, 11 GEO. J. LEGAL ETHICS 855, 887-89 (1998); David B. Wilkins, Toward a Joint Venture Model (June 1, 2008) (paper presented at the Fordham Law School Legal Ethics Schmooze) (on file with author).

158. *See* Leigh Jones, *Training Leaders a Top Priority*, NAT'L L.J., July 18, 2005, at 1 (discussing the market for law firm leadership training).

159. Jeff Blumenthal, *Reed Smith Lawyers Head Back to School*, LEGAL INTELLIGENCER, Aug. 13, 2004, http://www.law.com/jsp/article.jsp?id=1090180329489.

160. Jones, *supra* note 158, at 1.

161. HARVARD LAW SCHOOL, PROGRAM ON THE LEGAL PROFESSION, 2007 ANNUAL REPORT, http://www.law.harvard.edu/programs/pdfs/2007_PLP.pdf at 12 (last visited Jan. 23, 2009) (describing the program).

appointed a Faculty Chair of Executive Education to run it.[162]

Consultants also have begun to sponsor events and roundtables for law firm leaders. For instance, the Hildebrandt Institute offers "workshops and seminars focused on particular leadership and management topics . . . shorter breakfast briefings and seminars scheduled in cities throughout the US and the UK, [and] in-house workshops customized to meet the . . . needs of particular firms."[163] Zeughauser Group offers leadership roundtables aimed at law firm chairs and CMOs, as well as firm-level consulting on strategic planning, business development, positioning, and mergers and acquisitions.[164]

These programs and events provide opportunities for law firm managers to make professional contacts, exchange information, and develop shared professional norms.[165] Professional networks may be especially important during the initial testing period for new management ideas and strategies.[166] Several participants in our initial focus groups for law firm in-house counsel were explicitly grateful for the opportunity to discuss their duties and challenges with their peers from other firms.[167] As one fledgling in-house counsel observed, "[the previous speaker] just said about ten things I know I ought to be doing and I don't." [2001-3].[168] Interaction at conferences and roundtables also raised firm counsels' awareness of their ethical duties to the firm and the limits on in-firm privilege.[169]

Ready access to inter-firm networks and information about other firms' practices also helps to promote the authority of individual managers. Several law firm general counsel who were appointed from outside of their firms report appealing to community standards to bolster their managerial authority. The following comment comes from a full-time general counsel at a 450-lawyer firm:

> I have not grown up shoulder to shoulder with these people who are now partners in the firm. But when you come from the outside you can tell everyone "that's how other firms do it; that's how our peer firms do it" and that is like the ace of trumps . . . . Three or four times I have come in and said, we should do

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162. *Id.* at 8 (reporting Ashish Nanda's appointment as Faculty Chair of Executive Education). Nanda previously was on the Harvard Business School faculty. *Id.*

163. Hildebrandt Institute, http://www.hildebrandt.com/HDBTInstitute.aspx?WP_ID=231 (last visited Jan. 23, 2009).

164. Zeughauser Group, http://www.zeughausergroup.com/consulting/consultingservices.asp (last visited Jan. 23, 2009).

165. *See* Chambliss, *supra* note 4, at 1570 (emphasizing the importance of professional networks among law firm in-house counsel); Lauren B. Edelman & Marc C. Suchman, *The Legal Environments of Organizations*, 23 ANN. REV. SOC. 479, 498-502 (1997) (reviewing research on the role of lawyers and human resource professionals in defining organizations' responses to their legal environments).

166. *See* Chambliss, *supra* note 39, at 57-58 (explaining institutional theories of organizational change).

167. *See* Chambliss & Wilkins, *supra* note 23, at 589-91 (reporting participants' comments about the benefits of exchange).

168. *Id.* at 577.

169. *See* Chambliss, *supra* note 4, at 1538-42.

> X, and there has been a lot of squawking, and I've said, as a kind of a gambit, let me talk to our peer firms, eight or ten firms, and find out how others do it, and I already know the answer. Or sometimes it is educational . . . I'll ask them to make the calls. I'll say, "look, why don't you call a few people and see what they do and get back to me." And we end up getting to the right answer. [2005-1].

Finally, many law firm management consultants themselves are former managing partners and thus have personal and professional incentives to promote the authority of the executive role. For instance, Ron Beard, who helps to run Leadership Roundtables for the Zeughauser Group,[170] was the Chairman of Gibson, Dunn & Crutcher from 1991 to 2001.[171] James W. Jones, Chairman of the Hildebrandt Institute and Vice President of Hildebrandt International, was Managing Partner of Arnold & Porter from 1986 to 1995.[172] Carl A. Leonard of Hildebrandt was the Chairman of Morrison & Foerster from 1984 to 1993.[173] Both Jones and Leonard have written articles urging law firms to embrace the CEO model and increase compensation for law firm chief executives.[174]

Thus, while law firms may not yet be ready to appoint executive managers from outside of the firm, many firms are willing to contract with experienced leaders for professional management consulting.[175] This consulting market promotes the legitimacy of law firm management as a distinct professional skill, separate from that of practicing partners.

C. GENERATIONAL CHANGE

A third factor likely to hasten the acceptance of professional management is generational change among partners. Already many large firm partners have no direct experience with the traditional trappings of partnership. As widely lamented, even equity partnership in large law firms is not what it used to be.[176] In place of job security, a decreased workload, and a significant voice in firm

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170. Leadership Roundtables, http://www.zeughausergroup.com/roundtable/leadershiproundtable.asp (last visited Jan. 23, 2009) (listing Beard as a contact).

171. Profile of Beard, http://www.zeughauser.com/partners/Partners_Ron.asp (last visited Jan. 23, 2009).

172. Profile of Jones, http://www.hildebrandt.com/Consultant.aspx?Ppl_ID=3856 (last visited Jan. 23, 2009).

173. Profile of Leonard, http://www.hildebrandt.com/Consultant.aspx?Ppl_ID=3868 (last visited Jan. 23, 2009).

174. *See* Leonard, *supra* note 17 (urging firms to develop "executive incentive packages for managing partners"); James Jones & Carl Leonard, *The Price of Leadership: A New Look at Setting Compensation for Managing Partners*, N. Y. L. J., Sept. 10, 2002, at 5 (arguing that "visionary and inspiring leaders are . . . essential" for large law firms).

175. Julia Berris, *White & Case Hires McKinsey for Global Review*, THE LAWYER, Jul. 28, 2008 (reporting the firm's contract with McKinsey for "a worldwide strategic review of the firm's business").

176. Marc Galanter & William D. Henderson, *The Elastic Tournament: The Second Transformation of the Big Law Firm*, 60 STAN. L. REV. 102, 128 (2008) (arguing that there has been a "fundamental shift in what it means to be a partner in a major corporate law firm"); David B. Wilkins, *Partner, Shmartner! EEOC v. Sidley*

governance, today partnership is just another stage in an unending "elastic tournament," based on "a constant focus on the real or imagined marginal product of each individual lawyer in the firm."[177] Thus, many partners may be discontented with the current meaning of partnership or at least have no investment in maintaining it.[178]

Moreover, lawyers over fifty-five are a decreasing percentage of the lawyers in large law firms.[179] Younger partners who come of age in large, multinational law firms will have different expectations of law firm management.[180] Many younger partners may think nothing of deferring to CEO-style leaders or even non-lawyer managers. As one full-time general counsel observes:

> When you talk about the corporate model: law firms are going to have to turn to that. We have to. Firms have hundreds of partners around the world and whatever you call them, it is not the same. Law firms are reluctant to do it, but when you look around and are honest about it, that evolution is already well underway. Our Chief Operating Officer has an MBA, he is not a lawyer. Our Chief Financial Officer is a CPA, not a lawyer. Is it hard for them to get respect without the JD? Well, maybe. But law firms are changing. There are people who have been in firms for 15 years and they have always had COOs and CFOs and give them respect and authority. Much more so than lawyers of another generation. [2008-5].

D. IMPLICATIONS FOR MANAGERIAL AUTHORITY

All of these mechanisms point to the declining influence of individual partners and the increasing authority and legitimacy of dedicated, professional managers. Of course, this change will not be uniform or uncontested within firms. On the contrary, most firms are likely to exhibit some measure of internal incoherence and conflict as they move from a traditional partnership to a more managerial archetype.[181] Moreover, from a structural standpoint, "professional" manage-

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Austin Brown & Wood, 120 HARV. L. REV. 1264, 1271 (2007) (stating that senior lawyers "who retain the traditional trappings of ownership . . . are rapidly becoming a scarce breed").

177. Galanter & Henderson, *supra* note 176, at 142-43. According to longitudinal data collected by Altman Weil, billable hours for partners in their 25th to 29th year of practice have climbed from 1,538 in 1985 to over 1,700 in 2003. *Id.* at 127.

178. *See* Hinings et al., *supra* note 135, at 145 (discussing the tension between young and old partners in the major accounting firms as "younger partners have shown themselves unwilling to support their older colleagues").

179. Galanter, *supra* note 32, at 1097.

180. Galanter & Henderson, *supra* note 176, at 157-64 (discussing the expectations of "millennial lawyers"); John Flood, Future Directions in UK Legal Profession: Life After the Legal Services Act 2007 (paper presented at the Georgetown Law Center Symposium on the Future of the Global Law Firm, Apr. 17-18, 2008) (on file with author) (discussing the expectations of lawyers in "Generation Y").

181. C.R. HININGS & ROYSTON GREENWOOD, THE DYNAMICS OF STRATEGIC CHANGE 28 (1988) (discussing the incoherence that can result when firms operate under two contradictory archetypes); Hinings et al., *supra* note 135, at 145 (identifying specific fault lines that have developed within accounting firms, for instance between

ment may look very similar to "traditional" management, with a top executive, drawn from practice, who—along with a committee of elite practitioners—oversees an increasingly specialized team of professional managers.[182] Indeed, this is more or less the structure of management in every large law firm.

But structural patterns are just one indicator of professional managers' authority.[183] From a cultural standpoint, a discernable shift is occurring. Large law firms increasingly are investing in dedicated executive management, and executive managers are becoming increasingly professionally independent from partners. Part IV considers the implications of these changes for large law firm culture—particularly partners' attention to (and interpretation of) legal ethics.

IV. NORMATIVE IMPLICATIONS OF PROFESSIONAL MANAGEMENT

The legal ethics literature tends to be suspicious of professional management. Part of the suspicion stems from concerns about specialization and the potential trade-off between centralized management and individual accountability. For instance, Margaret Raymond argues that the "professionalization of ethics"[184] will lead "pressured and overwhelmed lawyers" to shirk their ethical duties.[185] According to Raymond:

> The internal focus on ethics specialists . . . suggests that ethics is just another area of specialization, one in which someone else is developing expertise so you don't have to. This runs the risk of shuttling the consideration of ethics to the designated individuals, taking ethical issues out of mainstream discourse.[186]

Likewise, Anthony Alfieri argues that firms' increasing investment in professional risk management will "induce moral apathy" among lawyers, "by shifting responsibility for hard normative judgments to others inside the firm."[187] U.S. regulators have raised similar objections to proposals for law firm discipline, arguing that the regulation of law firms as entities will undermine individual lawyers' accountability for supervision.[188]

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accounting and consulting and between young and old partners); Cooper et al., *supra* note 123, at 643-44 (emphasizing the importance of "oscillations" and "unresolved excursions" as organizations work through competing commitments to alternative archetypes).

182. The archetype literature uses the geological metaphor of "sedimentation." *See* Cooper et al., *supra* note 123, at 624 ("[O]rganizational change represents not so much a shift from one archetype to another, but a layering of one archetype on another.").

183. *See* Cooper et al., *supra* note 123, at 633-34 (noting that even incremental structural change may reflect a profound shift in professional values); Empson, *supra* note 119, at 28 (noting that "formal governance structures only represent one aspect of managerial authority").

184. Raymond, *supra* note 33, at 153.

185. *Id.* at 159-60.

186. *Id.*

187. Alfieri, *supra* note 33, at 1139.

188. *See* Chambliss, *supra* note 4, at 124-27 (discussing the law firm discipline debate).

Professional management also tends to be associated with other structural characteristics that arguably make it difficult for law firms to maintain a strong ethical culture, such as large size, departmentalization, and geographic dispersion.[189] In their recent article on the elastic tournament, for instance, Marc Galanter and William Henderson argue that "culture inevitably becomes weaker as law firm partnerships become larger and more geographically dispersed."[190]

> In our discussions with lawyers, we have run across examples of large law firms that continue to share risk and inspire investment and sacrifice for the collective enterprise of the firm. Ethical lapses threaten a hallowed firm's reputation and the trust of longtime colleagues. But this ethos becomes harder to maintain (and virtually impossible to create or restore) in larger, geographically dispersed firms that are perpetually competing for clients and entry-level associates.[191]

Yet much of the criticism of professional management in the legal ethics literature stands on shaky theoretical ground. First, at least some measure of scholars' suspicion is ideological. Like practicing lawyers, legal ethics scholars tend to be influenced by a traditional archetype in which bureaucratic structures, such as professional managers, automatically are seen as interfering with and corrupting some purer form of collegial interaction and culture.[192] Thus, much of the criticism of professional management is based on a false comparison between actual, modern law firms and some nostalgic, collegial ideal.[193] Galanter himself has criticized this nostalgic approach to the field.[194]

The ethics literature also tends toward a strong structural determinism that leads it to overstate the normative implications of new structural forms—such as limited liability partnerships,[195] multidisciplinary partnerships,[196] and incorporated legal practices.[197] Yet most evidence suggests that the consequences of even

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189. *See* Galanter & Henderson, *supra* note 176, at 106-07 (stating "large law firms have grown to truly behemoth proportions, aided in part by a large cadre of professional lawyer-managers").

190. *Id.* at 133.

191. *Id.*

192. *See* Chambliss, *supra* note 34, at 119-36 (discussing the "nirvana fallacy" in law firm regulation debates).

193. *Id.* at 121.

194. *See* Marc Galanter, *Lawyers in the Mist: The Golden Age of Legal Nostalgia*, 100 DICK. L. REV. 549, 550-52 (1996) (criticizing "nostalgia for the good old days" in "contemporary discourse about law practice"). This tendency is not unique to American lawyers. *See* John Leubsdorf, *On the History of French Legal Ethics*, 8 U. CHI. L. SCH. ROUNDTABLE 341, 346 (2001) (noting that discussions of legal ethics in France are pervaded by nostalgic historical narratives).

195. *See* Allan W. Vestal, *Special Ethical and Fiduciary Challenges for Law Firms Under the New and Revised Unincorporated Business Forms*, 39 S. TEX. L. REV. 445, 475 (1998) (arguing that partners in an LLP "have less incentive to supervise than they would in a general, nonlimited liability partnership setting").

196. *See* Lawrence J. Fox, *Accountants, the Hawks of the Professional World: They Foul Our Nest and Theirs Too, Plus Other Ruminations on the Issue of MDPs*, 84 MINN. L. REV. 1097, 1097 (2000) (arguing that MDPs "threaten[] to destroy the foundation of professional independence, loyalty and confidentiality that the lawyers of America have always promised the public").

197. *See* Steven Mark, *Harmonization or Homogenization? The Globalization of Law and Legal Ethics - An Australian Viewpoint*, 34 VAND. J. TRANSNAT'L LAW 1173 (2001) (summarizing the objections to incorporation).

radical structural change are contingent on a host of local and environmental factors, including cultural variation among firms.[198] Thus, there is little reason to assume that structural change will have uniform, uncontested results.

To be sure, the increasing centralization of law firm management and the growing professional distance between managers and practicing partners pose challenges for managers, partners, and firms. Coordination and cultural integration, in particular, are likely to be continuing challenges.[199] But these challenges, in some form, are present in all large, multi-office firms. If anything, the increasing authority and legitimacy of executive managers should help to facilitate an effective response.[200]

A. FALSE COMPARISONS

Nostalgia tends to lead ethics scholars to overstate the differences between prior and current conditions of practice in large law firms. For instance, Raymond's concern that firms' increasing reliance on in-house ethics specialists will "tak[e] ethical issues out of mainstream discourse,"[201] implies that ethical issues otherwise would be part of mainstream discourse in large law firms.[202] Likewise, Alfieri's argument that "morally lethargic"[203] lawyers will not contribute to the maintenance of centralized risk management systems suggests that lethargic lawyers would contribute to collegial, decentralized efforts.

Yet most research finds that the baseline level of ethical awareness and dialogue in large law firms is relatively low—even without the introduction of ethics specialists or professional risk managers.[204] Meanwhile, ethics specialists and risk managers report begin bombarded with questions from "pressured and overwhelmed" lawyers who are delighted to have a resource when ethical questions arise.[205] As one full-time firm counsel reports, "People call me at home,

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198. *See* Cooper et al., *supra* note 123, at 624 (characterizing organizational change in Canadian law firms as "a complex and historical process of faults and disruptions . . . for example from local crises and conflicts").

199. *See* LORSCH & TIERNEY, *supra* note 128, at 125 (discussing the importance of organizational matrices to "blend[] the management side of the firm with the client-oriented side"); Wilkins, *supra* note 157, at 1277 (stating "it is necessary to articulate a vision of what it means to be a partner in a major law firm that acknowledges, but ultimately transcends, both partner self-interest and the economic value that senior lawyers must bring to their firms").

200. *See* Empson, *supra* note 119, at 33 (stating "it is up to the managers of the professional service firms to insure that the partnership [ethos] *evolves* rather than simply becoming *extinct*" [emphasis in the original]).

201. Raymond, *supra* note 33, at 159-60.

202. *See* Chambliss, *supra* note 34, at 134 (criticizing Raymond's analysis).

203. Alfieri, *supra* note 33, at 1940.

204. Chambliss, *supra* note 34, at 134 (arguing that the conditions that Raymond fears are already present in many firms); Suchman, *supra* note 14, at 858-59 (reporting that large law firms conduct "very little routine ethical evaluation"); Robert W. Gordon, *The Ethical Worlds of Large-Firm Litigators: Preliminary Observations*, 67 FORDHAM L. REV., 709, 717 (1998) (reporting that large firm lawyers are overburdened and there is "no time to think").

205. Chambliss, *supra* note 4, at 1565.

and everything is an emergency. I was going to wallpaper my office with those little yellow message slips, all of them say 'it's an emergency, please call me within the next five minutes.' I could work 24 hours a day." [2002-2].[206] Thus, there is no empirical basis for portraying the "professionalization of ethics"[207] as the source of the problem of ethical shirking. Instead, firms' investment in professional risk management is one potential response to that problem.[208]

A false comparison also underlies some of the skepticism about the authority and effectiveness of professional managers. For instance, the argument that professional managers will not have sufficient authority with partners implies that professional managers rely on fundamentally different sources of authority than practicing partners who manage on the side. Skeptics tend to equate professional management with "hierarchical, top-down"[209] management based on bureaucratic controls.

Yet research finds that professional managers—in both corporations and professional firms—tend to rely on the same techniques as traditional managing partners; that is, listening, negotiation, and consensus building.[210] For instance, most law firm general counsel, regardless of the structure of their position, report that their authority stems primarily from personal credibility and the ability to persuade partners of the merits of their advice.[211] The process they describe is largely educational, not hierarchical. One full-time general counsel explains his strategy as follows:

> To be most effective, you have to go through a process of convincing your colleagues that "I'm not saying no, I'm just telling you all these things because eventually you are going to say no, and we are going to get where we want" . . . . Standing up in front of a group and saying "thou shalt not"—it tends not to work very effectively when you have 600 owners of a firm and each one believes he or she is autonomous [2001-7].[212]

Many firm counsel attribute their credibility to long-term relationships with partners;[213] but even firm counsel from outside of the firm can establish the necessary credibility over time. As one in-house counsel explains:

206. *Id.*

207. Raymond, *supra* note 33, at 153.

208. *See* Chambliss, *supra* note 4, at 1559-68 (finding that firms' investment in in-house counsel has significant positive effects); Davis, *supra* note 37, at 113 (arguing that "the relationship between [individual] ethics and risk management is entirely complementary").

209. Faulconbridge & Muzio, *supra* note 19, at 251.

210. *See* LORSCH & TIERNEY, *supra* note 128, at 178 (quoting one chief executive who refers to himself as "chief listening officer"); Andrew Jones, *The Global City Misconceived: The Myth of "Global Management" in Transnational Service Firms*, 33 GEOFORUM 335, 346 (2002) (arguing that "[g]lobal corporate strategy is a negotiated and fluid phenomenon that emerges . . . from a continual process of discussion").

211. *See* Chambliss, *supra* note 4, at 1549-58 (discussing the nature of firm counsels' authority).

212. Chambliss & Wilkins, *supra* note 23, at 588.

213. Chambliss, *supra* note 4, at 1550.

> I was kind of dropped in from outside. I was the director of the state lawyers' board. And it did take some time both to get to know people and for me to get to know, particularly—I was a trial lawyer . . . [and] I remember somebody talking about, "I have a securitization question," and [thinking], "that sounds like a security. What is it?" That type of thing. It took a while to get up to speed. But I think that's manageable over a period of time. [2001-14].[214]

This is not to suggest that there are no normative implications of professional management or that concerns about professional managers' authority and effectiveness are misplaced. Rather, it is a matter of emphasis. The professionalization of law firm management—and the growth and bureaucratization of law firms more generally—is an incremental process. Thus, the selection of benchmarks is critical. To the extent that analytical benchmarks are based on nostalgia, or untested assumptions about the actual conditions of practice, both empirical and normative analysis will suffer.

B. STRUCTURAL DETERMINISM

The ethics literature also tends toward a crude structural determinism that assumes that changes in formal structure will have unmediated normative impact.[215] For instance, much of the debate about the ethical implications of alternative organizational forms, such as limited liability partnerships, multidisciplinary partnerships and incorporated legal practices, assumes that such forms present qualitatively different ethical challenges from traditional forms.[216] Yet most of the ethical challenges associated with alternative forms already are to some extent present in the traditional partnership form.[217] And though research is scarce, what research there is offers little support for form-of-practice effects.[218]

Likewise, most commentators assume that the structure of law firm management positions—that is, part-time versus full-time, or inside versus outside appointment—will have predictable consequences for managers' authority and effectiveness. But this assumption, too, lacks empirical support.[219] In most firms,

214. *Id.* at 1554.

215. *See* Parker, *supra* note 38, at 29 (discussing lawyers' tendency toward "moral panic"). "There are always those who say that whatever is the latest development in professional practice . . . marks the point at which legal practice has finally ditched all the ethical ideas of professionalism and careened over the precipice." *Id.*

216. *See supra* notes 195-197.

217. *See* Chambliss, *supra* note 39, at 45 (arguing that many of the problems identified by opponents of multidisciplinary partnerships already exist in single-discipline firms); Parker, *supra* note 38, at 4 (arguing that "the ethical dangers that commentators worry will come with incorporation and listing are a formalisation and accentuation of existing ethical pressures on legal practice, rather than a fundamental change").

218. *See* Scott Baker & Kimberly D. Krawiec, *The Economics of Limited Liability: An Empirical Study of New York Law Firms*, 2005 U. ILL. L. REV. 107, 110 (finding that the move from a general partnership to a limited liability partnership had no significant effect on partners' relationships with each other, including their willingness to pitch in on matters or monitor each others' work); Parker, *supra* note 38, at 18-28 (case study of Slaters & Gordon, the first law firm in the world to be listed on the stock exchange).

219. *See* Chambliss, *supra* note 4, at 1551 (questioning the structural theory of firm counsels' authority).

the formal structure of management is significantly path-dependent.[220] As a result, the formal title and structure of a particular management position may have only a loose correspondence with the actual scope and authority of the role.[221]

Moreover, regardless of their structural position—or their own views about the importance of structure—firm counsel agree that the primary determinant of their effectiveness is the level of management support.[222] As one firm counsel put it, "none of this stuff works unless you have the power of the firm behind you. Whether or not you have individual power or how you get things done, whether it's because you are a big rainmaker or have a pleasing personality, you need [top management support]" [2001-13].[223] Or, in the words of another firm counsel:

> Leadership matters. It sounds like a cliché but it is true. If you have support at the top, from management, you've got it, and if you don't, you don't. And some guys with big books are team players and that really changes things. . . . If Cal Ripken is the first to practice and helps pick up the bats, it is hard to be a prima donna on that team [2008-2].

Thus, while it is important to be attentive to structural change within firms, as well as to the potential effects of new organizational forms, it is also important not to make a fetish of traditional structures and forms. Research on the structural evolution of the law firm general counsel position shows that formal structure is a weak predictor of managerial authority and the ethical culture of the firm.[224] Instead, the key variable is the level of overall management investment.[225] In most cases, firms' move toward dedicated, professional management represents an increased investment in management and the level of accountability within the firm. In general, then, dedicated management should be expected to improve ethical accountability within firms.

V. CONCLUSION

As this Article goes to press, *The Lawyer* reports that Allen & Overy is "in talks with Shearman & Sterling" about a possible merger.[226] Part of the U.K. Magic

220. *See* Chambliss & Wilkins, *supra* note 23, at 565-70 (discussing the evolutionary nature of the in-house position).

221. Chambliss, *supra* note 4, at 1527 (finding that "respondents' titles do not reliably indicate the structure or function of their in-house role").

222. *Id.* at 1555-57 (discussing the importance of management support).

223. *Id.* at 1555.

224. *See* Chambliss & Wilkins, *supra* note 23, at 578-83 (discussing the strengths and weaknesses of different management structures).

225. *Id.* at 577 (concluding that "firms get what they pay for").

226. *A&O, Shearman to Merge?*, THE LAWYER, Oct. 2, 2008, http://www.thelawyer.com/cgi-bin/item.cgi?id=134953&d=415&h=417&f=416 (last visited Jan. 23, 2009).

Circle and the so-called "transatlantic elite,"[227] Allen & Overy's 2007-08 revenues came in at £1.02 billion, making it the fourth Magic Circle firm to break the billion pound barrier.[228] According to *The Lawyer*, Allen & Overy's search for "a market-busting merger" is behind senior partner David Morley's secondment to New York for three months.[229] Allen & Overy already has "nicked a whole load of Shearman's Germans."[230] And besides, says *The Lawyer*: "Shearman needs help. (Actually, this is incontrovertible.)"[231]

Of course, it is risky to write about merger gossip in a law review article. The merger market is far too volatile and even accurate gossip is soon dated. But the overture itself is interesting. It would be interesting to see who would manage that firm. Shearman obviously is the weak sister.[232] Talk about a management realignment.

One thing is clear: the era of the gentleman manager is coming to a close. Large law firms are multimillion and increasingly billion dollar enterprises that demand sophisticated management expertise in their core as well as peripheral functions. Although the vast majority of the current generation of executive-level managers come from practice and were appointed from the partnership ranks of their firms, top managers increasingly have a distinct professional identity as managers and participate in increasingly specialized networks outside of their firms. On his "lawyer profile" David Morley lists his practice area as "management."[233]

There has been surprisingly little research on the evolution of law firm management—and virtually none in the U.S.—since Nelson's study. It is as if the possibility of an archetypal shift were unimaginable. But, as I have argued, the conventional wisdom about the limits of managerial authority in law firms is dated. The current conditions of competition and consolidation among firms have created new incentives for centralized management and new sources of executive authority within firms. Researchers—and regulators—should pay attention. Three questions, in particular, invite systematic analysis.

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227. Matt Byrne, *Introducing the Sweet Sixteen*, THE LAWYER, May 10, 2008, http://www.thelawyer.com/cgi-bin/item.cgi?id=132761 (last visited Jan. 23, 2009).

228. Alex Spence, *Allen & Overy's £1 Billion Turnover Confirms London as Centre of the Legal World*, TIMES ONLINE, Jul. 4, 2008, http://business.timesonline.co.uk/tol/business/law/article4265365.ece (last visited Jan. 23, 2009).

229. *A&O, Shearman to Merge?*, *supra* note 226 (stating that Morley's move is "being taken in New York as proof that a deal is in the offing").

230. *Id.* (referring to Allen & Overy's hiring of four partners from Shearman's Frankfurt office).

231. *Id.*

232. *See* Spence, *supra* note 228 (reporting that Allen & Overy's top partners made £1.6 million in 2007-08, or about $3.2 million). Shearman & Sterling's profits-per-partner were $1.4 million in 2007. Richard Lloyd, *For a Few Dollars Less: A Sliding Dollar and Resurgent Brits Pose a Challenge for U.S. Firms in London*, AM. LAW., Jun. 1, 2007. *See also* Elie Mystal, *Law Firm Merger Mania: Allen & Overy + Shearman & Sterling = A&S&S??*, ABOVE THE LAW, Oct. 6, 2008, http://abovethelaw.com/2008/10/law_firm_merger_mania_ao_ss_as.php (describing Allen & Overy as "a revenue monster" and Shearman & Sterling as "facing strong headwinds").

233. Allen & Overy LLP, Lawyer Profiles, David Morley, http://www.legal500.com/firms/82-allen-overy-llp/offices/5-london/lawyers/4101 (last visited Jan. 23, 2009).

First, what is the formal authority structure in AmLaw 200 firms? Or, for that matter, AmLaw 100 firms? How much do management and governance structures vary by city? By size? By year of founding? Or by the primary practice areas of the firm? How have management and governance structures changed over time? Currently, we lack even basic descriptive information about law firm management. The *Law Firms Yellow Book*, an annual directory, provides some information, such as the names and titles of law managers, and could be cross-referenced with other annual data on firms. In addition, however, researchers need access to law firm partnership agreements and oral histories from firm members.

Secondly, how is succession handled? Succession emerges as perhaps the key question in considering the future development of executive management in large law firms. Again, such research would require access to partnership agreements and formal procedures for succession; but ideally researchers also would conduct case studies of succession—and other forms of transition, such as merger—in particular firms. Such research is a staple of the management literature, which focuses mainly on professional service firms other than law firms.[234] Increasingly, however, business and management researchers are becoming interested in large law firms.[235] The management literature provides one coherent approach to a theory of law firm management, as well as rich comparative data.

Finally, there is the messy issue of law firm culture. What does it mean to talk about firm culture in volatile, multi-office firms? How might such a construct be measured? Legal scholars only recently have begun "taking law firms seriously"[236] as an important arena—and agent—of professional conduct.[237] But scholars' increasing attention to the firm as a unit of analysis has coincided with a period of exponential growth, geographic expansion, and volatility among firms—especially the large, corporate law firms that dominate the legal services market.[238]

Thus, while "firm culture" tends to do a lot of work in the legal ethics literature, this construct is rarely measured—or defined. This issue is ripe for

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234. *See* Empson, *supra* note 151 (case study of a global accounting firm's acquisition of a mid-market accounting practice in the U.K.); Empson & Chapman, *supra* note 135 (case study of an alliance between two large consulting firms, one organized as a partnership and one as a corporation); C.R. Hinings, et al., *supra* note 135 (examining the dynamics of management change in large accounting firms).

235. *See* Cooper et al., *supra* note 123 (case study of management change in two Canadian law firms); Faulconbridge & Muzio, *supra* note 19 (qualitative study of management in 15 transnational law firms).

236. Milton C. Regan, Jr., *Taking Law Firms Seriously*, 16 GEO. J. LEGAL ETHICS 155, 172 (2002).

237. *See* Robert L. Nelson & David M. Trubek, *Arenas of Professionalism: The Professional Ideologies of Lawyers in Context*, *in* LAWYERS' IDEALS/LAWYERS' PRACTICES: TRANSFORMATIONS IN THE AMERICAN LEGAL PROFESSION 177, 198-202 (Robert L. Nelson et al. eds., 1992) (arguing that the workplace is a central arena for the formation of professional ideology and values).

238. *See generally* MARC GALANTER & THOMAS PALAY, TOURNAMENT OF LAWYERS: THE TRANSFORMATION OF THE BIG LAW FIRM (1991) (analyzing patterns of law firm growth between the 1950s and the 1980s); George P. Baker & Rachel Parkin, *The Changing Structure of the Legal Services Industry and the Careers of Lawyers*, 84 N.C. L. REV. 1635 (2006) (examining changes in the legal services industry between 1998 and 2004).

analysis and research. For instance, what is the strength of *firm* culture, relative to that of professional networks and practice groups? By what mechanisms and to what extent are the firm's expectations transmitted? What is the relationship between firms' investment in ethical infrastructure—such as professional risk managers—and firm members' expectations and understandings about how things are done?

Such questions invite systematic qualitative and ethnographic analysis, which in turn demands intimate access to firms. Law firms traditionally have been loathe to provide such access. Firm counsel who participated in focus groups in 2001 and 2002 uniformly said they would not grant access to researchers to study the effectiveness of risk management procedures in their firms.[239] As one participant said, "I wouldn't let you do it . . . I'll be damned if I am going to let those kinds of records outside." [2001-10].[240]

But times are changing. Firm leaders are increasingly aware of the importance of effective risk management and the potentially high price of unethical conduct. Many law firms have begun to undergo risk management audits by risk management and loss prevention consultants.[241] And firm leaders are increasingly interested in the organizational and psychological roots of misconduct within firms. Legal ethics scholars and researchers should capitalize on this interest and invest in systematic ethnographic research, with the aim of helping well-intentioned firm leaders sustain ethical cultures within firms. Increasingly "professional" law firm leaders can be expected to welcome such efforts.

239. Chambliss & Wilkins, *supra* note 23, at 586.

240. *Id.*

241. *See* James W. Jones, *High Stakes: The Growing Challenge of Law Firm Risk Management*, N.Y.L.J, Feb. 11, 2003, available at http://www.hildebrandt.com/Documents.aspx?Doc_ID=1137 (discussing the benefits of regular risk management audits).