

# The Organizational Structure of Law Firms: Lessons From Management Theory\*

S. S. SAMUELSON\*\*

Law firms are in a state of turmoil. A century of near mythic stability has ended in a tumult of change.<sup>1</sup> Organizations that were once synonymous with equability, professionalism and familial spirit have been molded by harsh economic forces into large, disputatious businesses.

Both the internal and external environments of law firms have been affected: even as firms have grown larger, their markets have become intensely more competitive. Historically, greater size and rapidly changing market conditions have created pressure on organizations to rationalize their structures by developing more sophisticated managerial and administrative frameworks.<sup>2</sup> This is now the case in the legal industry.<sup>3</sup> Efficiency and productivity are no longer dismissed as “boorish” concerns.<sup>4</sup> Increasingly, law firms are finding that the fragile and delicate structure of a traditional partnership is too weak to bear the stress and weight of vast change.

Although firms generally recognize the need for more rational frameworks, and have made considerable efforts to improve management,<sup>5</sup> serious organizational problems persist. Management theory and the impact of structure on organizational problems are foreign topics to most lawyers.<sup>6</sup> Moreover, scholars

---

\* Copyright (c) 1989 S. S. Samuelson. All rights reserved.

\*\* A.B., J.D. Harvard University; Assistant Professor, Boston University School of Management. I am grateful to Robert B. Dickie and James E. Post for comments on an earlier draft of this article.

1. Consider the terms legal scholars have used recently to describe law firms and the legal profession: “dramatic change” (Gilson & Mnookin, *Coming of Age in a Corporate Law Firm: The Economics of Associate Career Patterns*, 41 STAN. L. REV. 567 (1989) [hereinafter, Gilson & Mnookin, *Associate Careers*]); “extraordinary flux” (Gilson & Mnookin, *Sharing Among the Human Capitalists: An Economic Inquiry into the Corporate Law Firm and How Partners Split Profits*, 37 STAN. L. REV. 313 (1985) [hereinafter Gilson & Mnookin, *Sharing*]); “under siege” (Hillman, *Law Firms and Their Partners: The Law and Ethics of Grabbing and Leaving*, 67 TEX. L. REV. 2 (1988) [hereinafter Hillman, *Grabbing*]); and “anxiety and dismay” (Galanter & Palay, *Why the Big Get Bigger: The Promotion-to-Partner Tournament and the Growth of Large Law Firms*, 76 VA. L. REV. 747, 749 (1990).

2. R. NELSON, *PARTNERS WITH POWER: THE SOCIAL TRANSFORMATION OF THE LARGE LAW FIRM* 15 (1988); Huber & McDaniel, *The Decision-Making Paradigm of Organizational Design*, 32 MGMT. SCI. 572, 574 (1986). Thompson avows that change in organizational structure is driven by changes in the circumstances faced by the firm. J. THOMPSON, *ORGANIZATIONS IN ACTION* 10-12 (1967).

3. For a discussion of efforts to transform law firm organization, see B. HILDEBRANDT & J. KAUFMAN, *THE SUCCESSFUL LAW FIRM: NEW APPROACHES TO STRUCTURE AND MANAGEMENT* 7-8, 26 (1988); Fitzpatrick, *Legal Future Shock: The Role of Large Law Firms by the End of the Century*, 64 IND. L.J. 461 (1989); MacDonald, *Speculations by a Customer About the Future of Large Law Firms*, 64 IND. L.J. 593, 595 (1989); Galanter & Palay, *supra* note 1, at 801-04.

4. See, e.g., M. STEVENS, *POWER OF ATTORNEY* 8-9 (1987).

5. The American Bar Association Section on Law Practice and the periodical it publishes, *Law Practice Management*, are devoted solely to issues involved in managing a law practice. In addition, other periodicals such as the *ABA Journal*, *American Lawyer*, *Legal Times*, and the *National Law Journal* frequently run articles on law firm management. Moreover, the perceived need for professional advice on management has spawned an entire industry of law firm consultants. Fitzpatrick, *supra* note 3, at 461. See, e.g., *Am. Law.*, April 1989, at 6, 15, 24-25, 29, 31, 43, 107, 113, 119-21, 146 (advertising various consulting services, exclusive of legal placement services).

6. R. NELSON, *supra* note 2, at 271.

have offered little practical guidance. Although management theory is rich in literature on generic organizational structures, academic researchers have largely neglected the application of this literature to the internal organization of law firms.<sup>7</sup>

This article takes the first step in analyzing the structure of law firms and suggesting how, in accordance with management theory, these structures can be rationalized in a way that will enable firms to survive and even flourish in their troubled industry.

Law firms have already begun the precarious slide from their accustomed organizational form—a traditional partnership—into the great unknown of more complex hierarchy.<sup>8</sup> Management theory can aid, not only in developing guideposts for the journey, but also in revealing the industry's ultimate destination.<sup>9</sup> The lesson is an important one—firms that do not rationalize their structures will be unable to compete successfully and will, in the end, leave the field to their more forward-looking competitors.<sup>10</sup>

Part I of this article explores the process by which law firms create a legal service. It also presents an analysis of traditional law firm structure and a summary of the changing environment of the legal industry. Part II develops an organizational structure that fits the internal and external environment of law firms. Part III concludes with a look at the future of organization in the legal industry.

## I. THE PRODUCTION OF A LEGAL SERVICE

### A. *Why Law Firms?*

In structuring an organization, it is first necessary to understand the purpose and nature of its production process. How does a firm of lawyers produce a legal product? What do lawyers accomplish by organizing in groups?

Law firms, like all organizations, are created to accomplish tasks that individuals cannot manage on their own.<sup>11</sup> Organizations subdivide responsibilities to facilitate the work of each individual. When responsibilities are divided among functional divisions so that each employee can focus on certain kinds of work, the subdivision is termed "vertical."<sup>12</sup> In a "horizontal" subdivision, on the other hand, simple tasks are separated from complex ones so that unskilled employees can perform routine duties while skilled employees acquire the specialized training and experience to perform complex chores.<sup>13</sup>

Once tasks are subdivided among employees, the outputs of these individuals (or units) must be coordinated. Indeed, the term "structure" refers to the

---

7. Gilson & Mnookin, *Sharing*, *supra* note 1, at 318.

8. See notes 87-92 and accompanying text.

9. Mills, *Toward a Core Typology of Service Organizations*, 5 *ACAD. MGMT. REV.* 255, 264 (1980).

10. R. NELSON, *supra* note 2, at 89.

11. J. THOMPSON, *supra* note 2, at 15.

12. H. MINTZBERG, *THE STRUCTURING OF ORGANIZATIONS* 189 (1979).

13. Blau, *A Formal Theory of Differentiation in Organizations*, 35 *AM. SOC. REV.* 201, 203 (1970).

way in which an organization divides its operations into distinct tasks and then coordinates among them.<sup>14</sup>

While it is easy to appreciate the value of dividing responsibilities in manufacturing enterprises, its usefulness in service industries is less clear. The output of manufacturing enterprises is tangible and separable into units; service products are much less so.<sup>15</sup> Although a legal service can sometimes take the form of a tangible product (brief, contract, prospectus), the primary output (planning, counselling, negotiating) is intangible and, oftentimes, inseparable.<sup>16</sup>

There are other distinctions between service and manufacturing enterprises. A legal product is largely custom made; it can rarely be inventoried.<sup>17</sup> Moreover, it is difficult for supervisors to control, or even measure, the output of lawyers.<sup>18</sup> The production of a legal service requires more client interaction than is typically the case for a manufactured product. Facts, questions, and problems are received from a client while advice, solutions, and documents are delivered in return. Furthermore, in their contact with the customer, service workers not only help produce the output, but they sell it as well.<sup>19</sup> Thus, the organization of law firms cannot be neatly compartmentalized into various functions such as production, marketing, or quality control.

A law firm's structure must be flexible enough to permit great fluidity between the various functions yet rigid enough to forestall chaos. The task of designing such a framework is daunting; one is forced to wonder why service professionals associate together at all. Why not work as sole practitioners?

Despite the difficulties in finding an appropriate organizational design, substantial benefits can be gained when lawyers work together, including:<sup>20</sup>

*Economies of scale.* Typically, in any production process, as the volume of production rises, the average cost of each unit declines. This is true for a legal product as well. Lawyers are more efficient producing a legal service the tenth time they do it than the first. Furthermore, a group of lawyers can more efficiently utilize support services such as paralegals, secretaries, photocopy machines, word processors, libraries, or conference rooms.

*Economies of scope.* Jointly producing many related products is typically cheaper than producing each one individually. Clients often need the services of more than one legal specialist at a time. Once one lawyer in a firm is familiar with the client's methods and operations, the firm can provide other legal services more cheaply and efficiently than an outsider who is unfamiliar with the client. Furthermore, if a client's needs change or the initial diagnosis proves incorrect, the client can be transferred efficiently among the firm's different spe-

---

14. H. MINTZBERG, *supra* note 12, at 2.

15. Mills & Moberg, *Perspectives on the Technology of Service Operations*, 7 *ACAD. MGMT. REV.* 467, 468 (1982).

16. See Galanter & Palay, *supra* note 1, at 748.

17. R. NELSON, *supra* note 2, at 159.

18. Mills & Moberg, *supra* note 15, at 469. See Galanter & Palay, *supra* note 1, at 748, for a discussion of monitoring. See also Gilson & Mnookin, *Sharing*, *supra* note 1; and Hillman, *Grabbing*, *supra* note 1, for a discussion of the difficulty of shirking, grabbing, and leaving in law partnerships.

19. Mills & Moberg, *supra* note 15, at 468-69; Mills, *supra* note 9, at 259-60.

20. For a discussion of why professionals join firms, see H. MINTZBERG, *supra* note 12, at 357; R. NELSON, *supra* note 2, at 62; Gilson & Mnookin, *Sharing*, *supra* note 1, at 313.

cialists. A client who thinks she is in the market for a contracts lawyer may turn out to need a litigation expert. How much more efficient if both lawyers are under the same roof.

*Specialization.* As with manufacturing companies, law firms can benefit from both the horizontal and vertical subdivision of labor. Senior partners do not write research memoranda or draft interrogatories; they reserve their energies for complex issues of law and strategy. A litigator would no more do a corporate financing or stock offering than an obstetrician would perform brain surgery.<sup>21</sup>

*Minimum scale.* The manpower necessary to staff large-scale litigation or major corporate transactions may not be available in a small firm.<sup>22</sup>

*Diversification.* A lawyer's professional skills represent a significant investment in human capital. Membership in a firm permits the lawyer to diversify this capital by sharing market risks with other lawyers in different areas of specialization. If corporate business is off, the bankruptcy practice may be booming.

*Sharing human capital.* Lawyers with surplus clients profit from sharing their excess with other attorneys in the firm who have more time and fewer clients.

*Higher quality.* Since large firms receive a smaller proportion of their revenues from any one client, it has been argued that they feel less economic pressure to cede to client demands for shoddy or unethical work.

There are, then, potentially important benefits to practicing law in an organization rather than as a sole practitioner. Whenever lawyers work together in a cooperative endeavor, however, issues of organizational design and structure inevitably occur. The purpose of this article is to suggest ways to mitigate the tensions so that the benefits can be more fully enjoyed. Before suggesting improvements in organizational form, however, it is important to begin with an understanding of the basic parts of an organization as well as the way in which law firms have traditionally arranged these parts.

## B. *The Parts of an Organization*

Organizations are generally considered to have three levels of responsibility and control: the *operating core*, *strategic apex*, and the *middle line*.<sup>23</sup>

---

21. For a discussion of the increased specialization now found in the legal industry, see *infra* notes 50-53 and accompanying text.

22. For example, Cravath, Swaine & Moore employed a team of roughly 30 lawyers when that firm defended IBM against federal antitrust charges. J. STEWART, *THE PARTNERS: INSIDE AMERICA'S MOST POWERFUL LAW FIRMS* 66 (1983).

23. For a discussion of the parts of an organization, see H. MINTZBERG, *supra* note 12, at 24-34; T. PARSONS, *STRUCTURE AND PROCESS IN MODERN SOCIETIES* (1960); J. THOMPSON, *supra* note 2, at 10-12, 150-57.

Mintzberg elaborates Thompson's three-tier structure by adding the *technostructure* and *support staff*. The technostructure is charged with standardizing patterns of activity in the organization. It includes, for example, human resource managers and controllers whose function it is to see that similar personnel or financial policies are followed throughout the firm. The support staff provides indirect support to the basic mission of the organization. Members of the staff are responsible for functions such as marketing, pricing, and secretarial as well as for the mailroom, cafeteria, photocopying, and library. Both the technostructure and the support staff operate outside the basic mission of the organization and, at least in the case of law firms, have posed fewer difficulties in organiza-

The basic output of the enterprise is produced in the *operating core*.<sup>24</sup> The operators in the core secure the inputs of production, transform the inputs into outputs, and sell the outputs to customers. Operators also make tactical decisions—they exercise discretion when interacting with clients and performing other tasks. Their focus tends to be short-term.

The *strategic apex* is responsible for the firm's long-range planning.<sup>25</sup> In this role it oversees the design of the structure; the assignment of people and resources to tasks; the resolution of conflicts; and the allocation of compensation and other rewards. The role of the strategic apex is to insure that the organization functions smoothly as one integrated unit. It also oversees the organization's relationships with its environment by serving as spokesperson, liaison, negotiator (of major agreements with outside parties), and figurehead (deciding who, for example, greets important customers).<sup>26</sup> Interaction with the greater community gives the enterprise legitimacy and helps achieve its goals. The strategic apex is also charged with identifying elements of external change and assessing their impact on the firm before that impact becomes a serious problem to the operating core.<sup>27</sup> Although *tactical* decisions are made in the operating core, the strategic apex is responsible for overall policy decisions and strategic planning. At this level of the organization, the short run is relatively insignificant; the long run is of central concern.

The *middle line* connects the strategic apex with the operating core and insures that the decisions of the strategic apex are successfully implemented.<sup>28</sup> Middle line managers are also responsible for coordinating the interdependent units within the organization.

Depending on the arrangement of these three parts, different kinds of organizations result. In a *bureaucratic* organization, the work is highly specialized, standardized, and formalized. It is the opposite of an *organic* firm, where there is little standardization and *mutual adjustment* is common.<sup>29</sup> Mutual adjustment means that the coordination of work is achieved by informal communication rather than by standardization.<sup>30</sup> In a *formal* organization, work is highly regulated.<sup>31</sup> In a *centralized* organization, the power to make decisions rests in a single place in the enterprise.<sup>32</sup> It is the opposite of a *decentralized* firm in which power is shared by many individuals.<sup>33</sup> A *flat* structure has relatively few levels of authority while a *tall* structure has a long chain of command and numerous hierarchical levels.<sup>34</sup>

---

tional structure. The most troublesome dilemma facing law firms has been the organization of the professional staff.

24. H. MINTZBERG, *supra* note 12, at 24-29.

25. *Id.* at 24-26.

26. *Id.*

27. J. POST, *CORPORATE BEHAVIOR AND SOCIAL CHANGE* 9 (1978).

28. H. MINTZBERG, *supra* note 12, at 26-29.

29. *Id.* at 86-87.

30. *Id.* at 3.

31. *Id.* at 82.

32. *Id.* at 181.

33. *Id.*

34. *Id.* at 136.

The three parts of an organization—operating core, strategic apex, middle line—are present in law firms. Before discussing how they *ought* to be arranged, however, it is important to understand how they traditionally have been configured in law firms.

### C. *The Traditional Organization of Law Firms*

Any discussion of law firm structure must begin with the legal form of organization. Law firms have traditionally been organized as partnerships and still are, for the most part.<sup>35</sup> This is more than a legal technicality; it determines the ideology of the organization.

A partnership is the ultimate cooperative organization, a marriage of equals.<sup>36</sup> It is an economic and legal form embodying principles of collegiality and equality.<sup>37</sup> In the absence of an agreement to the contrary, all partners are legally entitled to manage and to share in the profits of the enterprise.<sup>38</sup> They are also personally liable for all debts of the organization.<sup>39</sup> Routine decisions can be made by a majority of the partners. But important decisions—those involving, for example, a sale of assets, a change in the nature of the business or the admission or ejection of a partner—require a unanimous vote of the part-

---

35. Law firms have clung to this organizational form for reasons of both history and law. Partnership was one of the earliest forms of organization, second in seniority only to the sole proprietorship. The concept of the corporation is thought to have originated with the Greeks and to have spread from them, through the Romans and into Anglo-Saxon law. But it was not until relatively recently (speaking in historical terms) that a corporation could be formed under English law without a charter directly from the king or Parliament. Williston, *History of the Law of Business Corporations before 1800*, 2 HARV. L. REV. 106, 114 (1888). In 1811, New York became the first state legislature in America to enact a statute permitting the routine incorporation of businesses. An Act Relative to Incorporations for Manufacturing Purposes, 1811 N.Y. Laws III (ch. 67).

It is important to note, however, that the New York incorporation statute is entitled "An Act Relative to Incorporations for *Manufacturing Purposes*" (emphasis added). In short, not all organizations shared in this legal bounty. In particular, professionals (such as doctors, lawyers and architects) were not allowed to incorporate, on the theory that their work product was so important and the capitalization of their businesses so small that they ought not to be permitted the protection from legal liability inherent in the corporate form.

Ironically, this monolithic ban on professional incorporation first cracked under the weight of tax law, not liability issues. (Under tax law, the retirement plans of corporations were treated more generously than those of unincorporated entities or individuals.) In 1954, the Court of Appeals for the Ninth Circuit ruled that a group of doctors in Montana could be considered a corporation for tax purposes. *United States v. Kintner*, 216 F.2d 418 (1954).

Although by the early 1960s most states had enacted statutes permitting professionals to incorporate, large law firms still faced a substantial legal obstacle in the American Bar Association's Code of Professional Responsibility which prevented partnerships of professional corporations (so-called "P.C.s"). See Bodine, *Owning Stock in a Law Firm*, Nat'l L. J., June 4, 1979, at 10. Since many states prohibited foreign P.C.s from registering or practicing, law firms with branch offices were effectively foreclosed from incorporating—they could neither form a partnership of the P.C.s located in different jurisdictions, nor could they practice as a foreign P.C. Beck, *Why Large Law Firms Have Not Incorporated*, 12 LAW OFF. ECON. MGMT. 516, 518 (1971-72). However, in 1979, the Code of Professional Responsibility was amended to eliminate this last barrier to the incorporation of a law practice. See Bodine, *supra* at 10. Nonetheless, only 14 of the 250 largest law firms had incorporated as of 1988. Nat'l L. J., Sept., 26, 1988, at S4-S24 (special supplement).

36. R. NELSON, *supra* note 2, at 4.

37. *Id.* at 211.

38. *Id.* at 8.

39. *Id.*

ners.<sup>40</sup> There is no hierarchy among partners, only between partners and associates (that is, non-partners).<sup>41</sup>

Without an agreement to the contrary, these legal rules govern every partnership. In addition, customs and rituals have evolved over time that are almost as important as the legal technicalities. Permanence of membership has, for example, been the accepted norm.<sup>42</sup> Indeed, "making partner" is the closest experience to tenure outside ivory towers.<sup>43</sup> Owing to their tenured status, partners have been known to receive compensation and perquisites that are not merited on economic grounds.<sup>44</sup>

Associates (as non-partners are called<sup>45</sup>) have no right to ownership or control of the business and, by and large, their compensation is not closely tied to firm profits. They accept this arrangement because of the prospect that, after an apprenticeship of six to twelve years, they will be invited into the Promised Land of partnership. If passed over, they are expected to leave the firm within some decent interval.<sup>46</sup>

The legal work itself is done by small teams of partners and associates. Most teams consist of between two and six lawyers, although in a major litigation case the group may be as large as thirty.<sup>47</sup> Team assignments are typically the result of free-form negotiation—senior lawyers collar their more junior colleagues, who acquiesce or not depending on their time schedules, their interest in the particular work, and the status of the partner doing the asking.<sup>48</sup> Often, the result of such an assignment "system" is haphazard training with little reward to the most highly regarded associates other than overwork (and an increased probability of making partner).<sup>49</sup>

40. See, e.g., UNIF. PARTNERSHIP ACT, §§ 10(5), 18(g)-(h) 6 U.L.A. 156, 213-14 (1969 & Supp. 1990).

41. There is no denying that in law firms, as in George Orwell's *Animal Farm*, "All animals are equal but some animals are more equal than others." G. ORWELL, *ANIMAL FARM* 112 (1946). In a small organization, the founding partner or the partner with the most clients (often the same person) has the ability to make and implement unilateral decisions. This is rarely the case in large firms.

42. See Fitzpatrick *supra* note 3, at 463 ("The lawyer who went with a firm planned, barring disaster, to stay there most of his or her career. Moving from one law firm to another reflected badly on the lawyer's professional judgment . . ."). See also, Thorner, *Legal Education in the Recruitment Marketplace: Decades of Change*, 1987 DUKE L.J. 276 (noting that lawyers traditionally expected to join firms with which they would spend the rest of their lives); and Labaton, *Downtown Crimps Large Law Firms*, *Times*, April 2, 1990, at D2, col. 1 (quoting the executive partner of Skadden, Arps, Slate, Meagher & Flom, Peter Mullen, as saying, "We hire partners for life . . .").

43. Indeed, the analogies to university life are strong: the "up-or-out" tenure system, the stress on collegiality, the insistence on professionalism over profitability, and the tension between lockstep compensation systems and so-called "marginal product" or "eat-what-you-kill" methods of setting salaries.

44. R. NELSON, *supra* note 2, at 28. In some firms, for example, an associate, no matter how valuable, cannot be paid more than a partner, no matter how unproductive.

45. For a discussion of the origin of the term "associate," see Galanter & Palay, *The Big Law Firm: Its Growth and Transformation* 8 n.7 (Aug. 25, 1989) (unpublished manuscript).

46. See Galanter & Palay, *supra* note 1, at 748; Maister, *On the Meaning of the Partnership*, *AM. LAW.*, Oct. 1983, at 64; and R. NELSON, *supra* note 2, at 136. This time period generally applies to those who join the firm upon graduation from law school. For those who are hired laterally, special deals are struck. When Nelson studied 19 of the largest 20 law firms in Chicago, he found that 45% of the associates hired in 1971 had left the firms by 1984. R. NELSON, *supra* note 2, at 138.

47. R. NELSON, *supra* note 2, at 26, 63.

48. As a partner in one firm told this author, "I find that associates always have time to do general corporate work, but go looking for some help on a bond offering and all the associates are 'flat out.'"

49. Maister, *Industry Specialization*, 2 J. MGMT. CONSULT. 103 (Winter 1984/85).

Although in the past lawyers considered specialization (or, at least, "too much" specialization) to be unprofessional, the trend is toward an increased division of labor.<sup>50</sup> Greater competition has heightened the need for efficiency<sup>51</sup> and the greater complexity of the law limits the number of fields in which a lawyer can become expert.<sup>52</sup> Lawyers tend to specialize by function (tax, corporate law, litigation, trusts and estates), although some specialize by client-type (banking, health care, high technology, labor unions, municipalities).<sup>53</sup>

Leadership in law firms is exercised by one or several managing partners, chosen for their skills as lawyers rather than as managers. Managing partners manage only part-time, typically spending at least one-third of their time practicing law.<sup>54</sup> As is often the case in non-hierarchical organizations, leadership in law firms tends to be weak because of the need to develop a consensus for any decision of import as well as some that are, on their face, trivial. Democratic governance often fails to produce a coherent managerial approach and the time required to reach decisions is substantial.<sup>55</sup> Managerial innovation is often resisted by partners who fear it will intrude on their own prerogatives.<sup>56</sup> As a result law firms suffer from an inability both to make and to implement decisions.<sup>57</sup>

To complete the examination of traditional law firm organization, let us consider how the various elements of structure are configured.<sup>58</sup> The *operating core* includes virtually all lawyers—securing the inputs of production, transforming the inputs into outputs, and selling the outputs to customers. In other words, almost all lawyers practice law (except in the rare firm where there is a full-time managing partner).<sup>59</sup> The *strategic apex* includes all the partners. The entire partnership makes policy decisions; even when some responsibilities (such as setting compensation) have been delegated to a committee, all partners are consulted and a consensus obtained before a decision is made.<sup>60</sup> All partners are also part of the *middle line*, which implements firm decisions.<sup>61</sup>

50. Galanter & Palay, *supra* note 1, at 748; R. NELSON, *supra* note 2, at 76, 147, 172.

Many of the lawyers Smigel interviewed when preparing his classic 1964 book on Wall Street law firms refused to admit that anyone was specialized enough to warrant departments, although, when pressed, they would concede the existence of a "tax section." E. SMIGEL, *THE WALL STREET LAWYER* 225 (1964).

51. R. NELSON, *supra* note 2, at 158.

52. *Id.* at 84.

53. *Id.* at 52; E. SMIGEL, *supra* note 50, at 225-26.

54. Hagedorn, Hayes, Marcus, and Pollock, *Law Firm Management Can be Quite Rewarding*, *Wall St. J.*, Oct. 23, 1989, at B1, col. 1. Price Waterhouse, 1987 Law Firm Statistical Survey: *The Economics of Partnership in Midsize Firms* 11.

55. R. NELSON, *supra* note 2, at 112.

56. *Id.* at 112-13.

57. Bradlow & Silverman, *Managing the Law Firm—Is Democracy Obsolete?*, *LEGAL ECON.*, July/Aug. 1989, at 29.

Nelson summarizes law firm management thus: "I define traditional management as that characterized by (1) ad hoc and reactive policy-making, with little long-range planning; (2) direct administration by leading lawyers, aided only by a part-time managing partner, with no regular monitoring of internal performance measures or financial information; and (3) informally defined and shifting work groups." R. NELSON, *supra* note 2, at 91.

58. For a discussion of the elements of organization, see *supra* notes 23-34 and accompanying text.

59. See *supra* note 24 and accompanying text.

60. See *supra* notes 25-27 and accompanying text.

61. E. SMIGEL, *supra* note 50, *passim*.



The various parts of a law firm are strikingly interdependent—they all interact in both the production and sale of a legal product. The traditional law firm is, in short, a decentralized, organic, flat structure in which coordination is achieved by mutual adjustment.

#### D. *Forces of Change in the Legal Industry*

Lawyers have long been content to practice in the traditional manner. Recently, however, unprecedented stresses and strains in the legal industry have forced lawyers to re-examine many long-held notions about the practice of law. No discussion of law firm structure is complete without a consideration of these changes and their impact on law firms.

In the first two-thirds of this century, the life of the large-firm lawyer was simpler and more stable than today.<sup>62</sup> It was a time that many, looking back, think of as “halcyon.”<sup>63</sup> A graduate of an elite law school joined a firm with the realistic expectation he would remain there for his entire career.<sup>64</sup> The loyalty lawyers felt toward their firms was mirrored in the fidelity of their clients, many of whom valued stability over cost effectiveness.<sup>65</sup> It was also a time when lawyers could rest smug in the belief that law as a profession was “a branch of the administration of justice and not a mere money-getting trade.”<sup>66</sup>

Over the past twenty years, the practice of law has altered in virtually every respect. The single most visible change has been the increase in the number of lawyers. Between 1960 and 1985, the size of the legal profession in the United States more than doubled—from 285,933 to 655,191.<sup>67</sup> The number of lawyers grew by ninety percent in the 1970s and by forty-eight percent from 1980 to 1988.<sup>68</sup> It has been predicted that, by the early 1990s, there will be more than one million attorneys, a near fivefold increase in roughly thirty years.<sup>69</sup> The number of lawyers has increased at almost twice the rate of the general population and four times the rate of the general work force.<sup>70</sup>

The enormous increase in the number of lawyers has led to greater competition for clients and particularly for the most valuable kind, the mainstay of large law firms, price insensitive clients.<sup>71</sup> The supply of clients willing to pay virtually any price for top quality work has declined. In reaction to ever rising

62. For a description of life in a traditional law firm, see *id.*

63. Jones, *The Challenge of Change: The Practice of Law in the Year 2000*, 41 VAND. L. REV. 683, 683 (1988).

64. Fitzpatrick, *supra* note 3, at 463.

65. Jones, *supra* note 63, at 683-84.

66. Jones, *supra* note 63, at 683 (quoting A.B.A. CANONS OF ETHICS, Canon 12 (1908)).

67. BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, HISTORICAL STATISTICS OF THE UNITED STATES: COLONIAL TIMES TO 1970, at pt. 1, 416 (1976); B. CURRAN, K. ROSICH, C. CARSON, & M. PUCETTI, THE LAWYER STATISTICAL REPORT: THE U.S. LEGAL PROFESSION IN 1985, at 3 (1986 & Supp.).

68. Sander & Williams, *Why Are There So Many Lawyers? Perspectives on a Turbulent Market*, [1989] LAW AND SOCIAL INQUIRY 431, 432.

69. B. CURRAN, K. ROSICH, C. CARSON, & M. PUCETTI, *supra* note 67, at 3; B. HILDEBRANDT & J. KAUFMAN, *supra* note 3, at 1.

70. Rehnquist, *Dedicatory Address: The Legal Profession Today*, 62 IND. L.J. 151, 151 (1986-1987); Sander & Williams, *supra* note 68, at 433.

71. B. HILDEBRANDT & J. KAUFMAN, *supra* note 3, at 9-10.

legal fees,<sup>72</sup> businesses have brought more legal work in-house and, in an effort to spur price competition, have spread their outside work among more firms.<sup>73</sup> Some have even sought bids before assigning work on major transactions.<sup>74</sup> And no law firm has failed to lose some loyal clients into the great maw of mergers and acquisitions that has been so prominent on the American business scene over the last ten years.<sup>75</sup>

The structure of law firms has also led to increased competitive pressure. The major source of profitability for firms has traditionally been armies of associates paid a salary equal to only a fraction of the revenues they generated. Partners grew to expect an income based on a ratio of at least one associate (and ideally more) to each partner. Thus, each time an associate was promoted to partnership, two or three new associates had to be hired; creating an enormous growth imperative.<sup>76</sup>

Figures reflect that need to grow. Between 1960 and 1985, the number of firms with more than fifty lawyers increased from 38 to over 508. In the ten years between 1975 and 1985, the size of the fifty largest firms more than doubled. In 1988, 149 firms were larger than the largest firm in 1968.<sup>77</sup> As firms have grown, the structures and routines that worked well for thirty or forty lawyers are no longer adequate.

For a firm to grow, it not only has to hire new associates, it has to keep them busy as well. If the net income per partner is to stay *constant*, the firm's business must grow geometrically.<sup>78</sup> So, even as firms are experiencing intense competition in the sale of their services, they are pushed by an inexorable need to expand.

Law firms are also experiencing increased competition in the purchase of labor.<sup>79</sup> The typical source of supply for corporate law firms, graduates of top

---

72. Dockser, *Lawyers' Billing Rates Are Rising As Firms Try to Cope with Costs*, Wall St. J., July 28, 1989, at B8, col. 5.

73. Nelson reports that, over the last twenty years, corporate legal departments have grown faster than law firms. R. NELSON, *supra* note 2, at 57. See Guilianì & Berkow, *What Are the Key Factors In Law Firm Profitability*, N.Y.L.J., Sept. 23, 1985, at 29, col. 4; B. HILDEBRANDT & J. KAUFMAN, *supra* note 3, at 10-11; Jones, *supra* note 63, at 688; R. NELSON, *supra* note 2, at 8, 56-59. Bower also reports, as an example, that one major corporation cut its fees to outside lawyers from \$1.5 million to \$200,000 in three years. During that same period, the company's law department tripled in size. Bower, *Strategies For Profitability*, LEGAL ECON., Oct. 1987, at 44.

In a survey of corporate legal departments, 43% said they had cut their 1988 legal costs from the previous year or kept increases below the inflation rate. Most of these firms attributed their successful cost control to increased use of in-house counsel. The number of employees in the surveyed legal departments increased by 13.7%. Pollock & Geyelin, *Businesses Cut Legal Costs by Bringing Work In-House*, Wall St. J., Dec. 6, 1989, at B6, col. 1.

Arthur Andersen & Co. conducted a survey of corporate counsel and discovered that 80% believed their primary purpose was to control legal costs and 72% predicted that their use of outside counsel would either stay the same or decrease over the next five years. McCarty & Bonanata, *Making your Firm more Profitable*, MICH. BUS. J., Jan. 1986, at 90.

74. R. NELSON, *supra* note 2, at 59.

75. Jones, *supra* note 63, at 685.

76. See Galanter & Palay, *supra* note 1, at 780-84.

77. These statistics come from Galanter & Palay, *supra* note 1, at 749.

78. See Galanter & Palay, *supra* note 1, at 783-90; Thorner, *supra* note 42.

79. Bower, *supra* note 59, at 45; Thorner, *supra* note 63, at 280. Galanter & Palay suggest that law firms encountered this problem in the late 1960s as a result of the political climate. Law school graduates sought non-legal occupations so as to qualify for draft deferments. At the same time, anti-materialistic sentiments of students

law schools, has not increased, while the number of job openings has.<sup>80</sup> To meet their current hiring needs, the two hundred largest firms in the country would have to hire every new graduate of a top law school (although, traditionally, firms have considered only graduates in the top half of the class to be qualified).<sup>81</sup>

The combination of increased demand and constant supply has led inevitably to higher prices for associates.<sup>82</sup> In 1968, Cravath, Swaine & Moore raised its starting salary by eighty-seven percent—from \$8,000 a year to \$15,000.<sup>83</sup> In 1989, the starting salary in New York was \$83,000, a more than tenfold increase in twenty years.<sup>84</sup> During this same period, the Consumer Price Index increased only three and one half times.<sup>85</sup> Thus, the rise in the overall number of lawyers has intensified pressure to sell legal services, while the stability in the number of elite graduates has also increased competition in the markets out of which firms purchase their supplies (associate lawyers).<sup>86</sup>

This squeeze on profits has led to competitive practices previously unknown in the legal profession: marketing; bidding wars for lawyers with “portable practices”; and a diminution in institutional loyalty to any one firm.<sup>87</sup> Even within staid, long-established partnerships, revolts, defections, conspiracies—and firings—are commonplace.<sup>88</sup> Yet, to those firms that falter in their

dictated greater interest in poverty law, say, than corporate law. From 1964 through 1968, the percent of Harvard Law School graduates entering private practice dropped from 54 to 41. Galanter & Palay, *supra* note 45, at 96.

80. Nelson found, for example, that in a period when the four firms in his sample grew by 74%, enrollment at twenty leading law schools rose only 7%. R. NELSON, *supra* note 2, at 133. See also Gilson & Mnookin, *Associate Careers*, *supra* note 1, at 313; B. HILDEBRANDT & J. KAUFMAN, *supra* note 3, at 11; Snider, *Inside the Megafirms*, CAL. LAW., Sept. 1987, at 34.

81. Stein, *Law Firms Tighten Belt On Recruiting Students*, N.Y. Times, Sept. 6, 1989, at B1, col. 3.

82. The Wall Street Journal quotes a source as stating that, “Law firms are looking for new associates the way the Dallas Cowboys look for new quarterbacks.” Dockser, *Lawyers' Billing Rates Are Rising As Firms Try To Cope With Costs*, Wall St. J., July 28, 1989, at B8, col. 5.

83. Nat'l L.J., May 26, 1986, at 8, col. 1.

84. Dockser, *supra* note 82.

85. Bureau of Labor Statistics, 1988.

86. The obvious question then arises: why don't elite law firms expand their hiring base? The short answer is that they have, but they still prefer (and are willing to pay more for) graduates of top schools.

Hiring partners also report, off the record, that the screening process when hiring out of second-tier law schools is more onerous, but increasingly necessary. Firms have traditionally counted on law schools to do much of their screening for them and in the place of sophisticated hiring practices have instead relied on guidelines such as: hire virtually anyone in the top half of a national law school, in the top ten percent of the best local school, and on law review of lesser institutions. Few firms are now able to keep such guidelines intact.

(To take one non-representative example: ten years ago, virtually all of the lawyer-employees on the payroll of one of the largest Boston law firms were graduates of Harvard or Yale, college or law school. That is still true of most partners, but not of two-thirds of the associates.)

87. See B. HILDEBRANDT & J. KAUFMAN, *supra* note 3, for an exposition of the issues that concern corporate law firms. See also Fitzpatrick, *supra* note 3, at 463; Jones, *supra* note 63, at 687; Rehnquist, *supra* note 70, at 152; Labaton, *Lawyers in Capital Shift to Dewey, Ballantine*, N.Y. Times, Sept. 28, 1988, at D2, col. 4; Labaton, *Big Exodus of Lawyers At Top Firm*, N.Y. Times, Sept. 21, 1988, at D1, col. 6; Gosselin, *3 Gaston Snow partners quit to open law office for rival*, Boston Globe, Sept. 15, 1987, at 49, col. 3; Gray, *Lord, Day & Lord's Antitrust Division Quits En Masse to Join Coudert Brothers*, Wall St. J., Aug. 26, 1986, at 38, col. 3; Stewart, *Six Partners Resign From Mayer Brown to Join Other Firm*, Wall St. J., Apr. 25, 1984, at 53 col. 3.

88. R. NELSON, *supra* note 2, at 60. See also Margolick, *When the bottom line is the bottom line, not even a partner is safe*, N.Y. Times, May 13, 1988, at B6, col. 1; Stewart, *A Blue Chip Law Firm Comes On Hard Times After a Coup d'Etat*, Wall St. J., Nov. 18, 1983, at 1, col. 6.

transition to realpolitik, the demise of numerous old-line law firms<sup>89</sup> is a warning about the dangers of uncompetitive behavior.

These shifts in the internal and external environment of law firms have caused an erosion in the traditional two-tier organizational structure. Terms like "partner" and "associate" now co-exist with "permanent associate," "non-equity partner," "of counsel," "staff attorney," "junior partner," "senior attorney," and "participating associate," among others.<sup>90</sup> Some partners may be salaried, while some associates know that they will never be considered for partnership. In addition, firms use more "legal temps" provided by employment agencies and also have hired more paralegals.<sup>91</sup> In this way, they produce more legal services with less demand for admission to the partnership ranks.

To monitor all these different ranks, to keep track of the vastly increased number of employees, and to maintain an edge against their rivals in a terrifyingly competitive world, law firms have become more and more bureaucratic.<sup>92</sup> The organic structure that worked so well for small firms operating under an ideology of partnership is no longer effective in an environment where gentlemanly decorum has given way to cutthroat competition. Organizational change is inevitable. The question that remains is: what organizational structure is most effective and efficient in the production of a legal product by a large law firm?

## II. AN ORGANIZATIONAL STRUCTURE FOR LAW FIRMS

The design of an organizational structure for a large law firm is not an easy task. Fundamental conflict exists between: the ideology of partnership and the need for strong leadership;<sup>93</sup> a customized product and the need to maximize efficiency;<sup>94</sup> the difficulty in managing large groups of professionals and

In 1987, 54% of midsize firms (51-125 lawyers) and 76% of large firms (more than 125 lawyers) took on lateral partners. Also in 1987, 2.2% of the partners in midsize firms withdrew from the partnership as compared with 2.6% of the partners in large firms. Price Waterhouse, *supra* note 54, at 11.

89. Herrick & Smith in Boston; Friedman & Koven in Chicago; Isham, Lincoln & Beale in Chicago; Finley, Kumble, Wagner, Underberg, Manley, Myerson & Casey, nationally; Wald, Harkrader & Ross in Washington. B. HILDEBRANDT & J. KAUFMAN, *supra* note 3, at 3; Raridon, *The Practice of Law - The Next 50 Years*, LEGAL ECON., Apr. 1989, at 31; *The Strange Case of the Vanishing Firms*, Wall St. J., July 29, 1988, at 17, col. 1. See also Gray, *Shakeout in Legal Profession Continues: Merger Talks Here, A Dissolution There*, Wall St. J., Sept. 16, 1987, at 38, col. 2.

90. See, e.g., Lewin, *Law Firms Add Second Tier*, N.Y. Times, March 11, 1987, at D1; Lewin, *Retaining Valued Attorneys*, N.Y. Times, May 29, 1984, at D1, col. 3. See also Brill, *Reorganizing the Law Firm Hierarchy: Restructuring for the 90's*, AMER. LAW., July-Aug. 1989, at 50-57; Jensen, *'Unpartners' Proliferate In the Firms*, Nat'l L.J., Nov. 14, 1988, at 1, col. 4; R. NELSON, *supra* note 2, at 141, 143.

According to Price Waterhouse data, 44% of midsize firms and 56% of large firms have multiple classes of partners. Price Waterhouse, *supra* note 54, at 11.

91. Galanter & Palay, *supra* note 1, at 753-54 n.30.

Between 1980 and 1986, the number of paralegals increased by 128%. Sander & Williams, *supra* note 68, at 443. According to a study by Ernst & Young's legal consulting group, the number of paralegals in law firms increased by 18% in 1987 and 16% in 1988. *Paralegal Jobs Thriving in Atmosphere of Thrift*, Wall St. J., Apr. 13, 1990, at B1, col. 1. See also Marklein, *Washington's Paralegals: An '80s Takeoff Becomes a '90s Institution*, WASH. LAW. at 26 (Jan./Feb. 1990) (predicting that the paralegal field will grow by 75% between now and 2000, which is, according to the Bureau of Labor Statistics, a faster rate than any other profession).

92. R. NELSON, *supra* note 2, at 91-92.

93. *Id.* at 212.

94. *Id.* at 159.

the need to grow;<sup>95</sup> the complexity of measuring output and the need to increase productivity.<sup>96</sup>

Although the task may be daunting, its importance cannot be overstated. Management literature is replete with unhappy examples of organizations that failed to adjust their structures as their environments changed (or, alternatively, adjusted them when no change was warranted).<sup>97</sup>

There is no single "best" organizational structure suitable for all enterprises; organizations must match their structure to their situation.<sup>98</sup> A fundamental tenet of management theory is that effective structuring requires a close fit between contingency factors (such as organizational age, size, technology, environment) and design parameters (such as job specialization, training, unit grouping, formalization and decentralization).<sup>99</sup> In developing an effective structure for law firms, then, the first step is to understand their contingency factors.

#### A. *Contingency Factors*

Since growth in the size of law firms is one of the most striking developments over the last twenty years, we begin our discussion of contingency factors there.

##### 1. *Size*

The size of an organization has a substantial impact on its structure. The larger the organization, the greater the structural differentiation (that is, the division of labor, the levels in the hierarchy, the number of departments and subdepartments); the average size of its structural components; the number of subordinates per manager (also called the "span of control"); the administrative effort required (to handle problems of communication and coordination);<sup>100</sup> the formalization (that is, the reduction in worker discretion).<sup>101</sup>

Since law firms have grown dramatically in recent years,<sup>102</sup> we would expect them to develop a more elaborate structure, with more and larger work-units, more hierarchy, more rules, and a larger administrative component.<sup>103</sup>

---

95. Galanter & Palay, *supra* note 1, at 805.

96. *See supra* note 18 and accompanying text.

97. H. MINTZBERG, *supra* note 12, at 293.

98. *Id.* at 217.

99. *Id.* at 219-21.

100. *Id.* at 230-34; Blau, *supra* note 13.

101. H. MINTZBERG, *supra* note 12, at 233. Mintzberg also observes that, as organizational size rises, morale falls. *Id.* at 233. Perhaps this accounts for the widespread sense of malaise in law firms. *See supra* note 1 and accompanying text.

102. *See supra* notes 67-70 and accompanying text.

103. And, indeed, in his study of law firms, Nelson found that the smallest firms were the least formalized and centralized. R. NELSON, *supra* note 2, at 33.

## 2. Age

As an organization ages, it learns more about solving its problems, both internal and external. It then tries to perpetuate these discoveries by formalizing them with rules and standard operating procedures.<sup>104</sup> Thus, the older the organization, the more formalized its structure.<sup>105</sup>

A related theory by Arthur Stinchcombe holds that the structure of a firm is also influenced by the age of the industry in which it operates, regardless of the date when the organization itself was founded.<sup>106</sup>

The modern law firm was first conceived in New York in the 1870s. In 1873, Shearman & Sterling employed five lawyers; Strong and Cadwalader had six.<sup>107</sup> Although these firms were not large by modern standards, they do represent the first instances of the production of a legal service by lawyers acting as a joint economic unit rather than by sole practitioners who happened to be sharing office space. These early firms were in the vanguard of a transformation in the way legal work was organized.<sup>108</sup> They arose out of their clients' need for large scale representation. As Pinansky put it: "When the quantity of litigation reached the volume of Jay Gould's, one lawyer became unable to handle properly all of the client's affairs . . . . Natural divisions of labor resulted and the first firms, complete with formal agreements, emerged."<sup>109</sup>

This period at the end of the 19th Century<sup>110</sup> was distinctive primarily because it saw the first widespread use of professional managers to replace owner-managers. According to Stinchcombe's theory, law firms will hire more professional managers in the place of managing partners.

## 3. Technology

The technical systems used to produce a legal product—a pen, typewriter, or word processor—are not difficult to operate and, as such, are termed "unsophisticated."<sup>111</sup> Since these instruments do not control operators' work, technology in the legal industry is also considered to be relatively unregulated.<sup>112</sup> Moreover, lawyers engage in "unit production"—the production of small

104. Starbuck, *Organizational Growth and Development*, in HANDBOOK OF ORGANIZATIONS, at 480, (J.G. March ed. 1965).

105. H. MINTZBERG, *supra* note 12, at 237.

106. *Id.* at 143, 153-64; Stinchcombe, *Social Structure and Organizations*, in HANDBOOK OF ORGANIZATIONS (J.G. March ed. 1965).

107. J. HURST, *THE GROWTH OF AMERICAN LAW: THE LAW MAKERS* 306 (1950).

108. *Id.* at 611. Hurst also reports that 1870 saw the beginning of a marked specialization in law practice. *Id.* at 297.

109. Pinansky, *The Emergence of Law Firms in the American Legal Profession*, 9 U. ARK. LITTLE ROCK L.J. 611 (1986-87).

110. Termed the "Railroad Age" because it coincided with the rise of railroads and related industries. H. MINTZBERG, *supra* note 12, at 229.

111. *Id.* at 250-51.

112. Although legal historians make reference to the vast increase in the amount of technology required to produce a legal service that occurred in the beginning of the 20th century (typewriters, telephones, law libraries), and again in the 1960s (photocopiers, fax machines, computers), the technology required to produce a legal service is still deemed unsophisticated because it can be operated by relatively unskilled workers. See Galanter & Palay, *supra* note 45, at 12-13; J. HURST, *supra* note 107, at 308; Pinansky, *supra* note 109, at 616-18.

batches to meet customers' orders—the technology of which is typically unsophisticated and unregulated.<sup>113</sup>

Organizations engaged in unit production with unsophisticated, unregulated technology tend to be organic, and are characterized by loose, informal working relationships, and resistance to bureaucratic standardization.<sup>114</sup> First-line managers work closely with operators, typically in small work groups. In such firms, there is little managerial hierarchy.<sup>115</sup>

#### 4. Environment

In a rapidly changing environment, external conditions are more important determinants of an organization's structure than age, size, and technology.<sup>116</sup> Four terms are used to describe and measure the quality of a firm's environment.<sup>117</sup>

*Stability* measures the predictability of the organization's work.<sup>118</sup> A dynamic environment is one in which each task (or, in the extreme case, each interaction with the client) requires novel solutions; decisions made by employees are complex or judgmental; and the employee operates with considerable autonomy.<sup>119</sup> All professional service organizations tend to operate in dynamic environments and law firms are no exception.<sup>120</sup> The more dynamic the environment, the more organic the structure. Faced with uncertain sources of supply, unpredictable customer demand, and frequent product change, the organization cannot easily foretell its future so it must use a flexible, informal structure.<sup>121</sup>

*Diversity* is a measure of the organization's range of customers, products, services, and geography.<sup>122</sup> An enterprise with distinct markets will tend to divide itself into units on this basis and to give substantial decisionmaking authority to the managers of these units.<sup>123</sup> The work of large law firms is becoming more and more specialized because the firms have discovered that their comparative advantage lies in competing on the basis of expertise in specific (and even arcane) areas of the law rather than on their general reputation.<sup>124</sup> Likewise, more and more firms have diversified geographically by opening branch offices.<sup>125</sup> Some law firms have even diversified out of the legal field altogether by

113. As opposed to mass production or process production (e.g. intermittent production of chemicals in multiprocess plant). H. MINTZBERG, *supra* note 12, at 252.

114. *Id.* at 87, 254-55.

115. *Id.* at 254-56.

116. *Id.* at 287.

117. *Id.* at 268-69; J. THOMPSON, *supra* note 2, at 69.

118. H. Aldrich, *Organizations and Environments* 67 (1979); H. MINTZBERG, *supra* note 12, at 268.

119. Mills, *supra* note 9, at 264; P. MILLS, *MANAGING SERVICES INDUSTRIES: ORGANIZATIONAL PRACTICES IN A POSTINDUSTRIAL ECONOMY* 10 (1986).

120. See *supra* notes 17-19 and accompanying text.

121. H. MINTZBERG, *supra* note 12, at 270-71.

122. Aldrich uses the term "environmental homogeneity-heterogeneity" to refer to the same concept. H. ALDRICH, *supra* note 118, at 66. See H. MINTZBERG, *supra* note 12, at 268-69.

123. H. MINTZBERG, *supra* note 12, at 278; J. THOMPSON, *supra* note 2, at 70.

124. R. NELSON, *supra* note 2, at 56-61.

125. Galanter & Palay, *supra* note 45, at 80, report that 87 of the 100 largest firms had branch offices in 1980. In 1987, 65% of midsize firms and 96% of large firms had branch offices. Price Waterhouse, *supra* note 54, at 13.

establishing subsidiaries to offer advice on investments, economics, and real estate development, among other subjects.<sup>126</sup> Therefore, we would expect to see law firms developing a market-based structure that gives substantial authority to managers of the subunits.<sup>127</sup>

*Complexity* measures the level of sophisticated knowledge an organization must have about its products or customers.<sup>128</sup> Law firms operate in a complex environment. A firm cannot determine, for example, whether or not it can adequately meet client needs until it has obtained substantial information from the client. And even the best strategies sometimes fail. The employee can exert much effort to little effect (for example, lawyers lose litigation cases).<sup>129</sup> Complexity also appears to be on the rise. As in-house counsel have taken over much of the routine legal chores, law firms tend to be left with litigation or other work in rapidly changing and complex technical areas.<sup>130</sup> The more complex the environment, the more decentralized the structure.<sup>131</sup>

*Hostility* is a measure of the competition for clients and resources.<sup>132</sup> It drives organizations to centralize their structures so that decisions by the strategic apex (which are particularly crucial in times of hostility) can be more easily implemented.<sup>133</sup> The legal industry is intensely competitive and the level of hostility has indeed begun to challenge traditional organizational arrangements.<sup>134</sup> We would expect to see firms become more centralized.

Table 1 summarizes the impact of these contingency factors on organizational structure and illuminates the difficulties inherent in structuring a law firm. Contingency factors that relate to the production of a legal service—technology, stability, diversity, and complexity—point towards an organic, decentralized firm with little managerial hierarchy. Other factors, such as size, age, and hostility, suggest that firms should be more bureaucratic, with

126. Fitzpatrick, *supra* note 3; Galanter & Palay, *supra* note 45, at 114-15; B. HILDEBRANDT & J. KAUFMAN, *supra* note 3, at 12.

127. The next step on the continuum—a divisionalized law firm—appears less likely since divisionalization is better suited to simple diversified markets than to complex ones and, as we will see, the legal industry is complex. See also H. MINTZBERG, *supra* note 12, at 281, 385.

128. H. MINTZBERG, *supra* note 12, at 268-69.

129. P. MILLS, *supra* note 119, at 30-31.

130. R. NELSON, *supra* note 2, at 61.

131. H. MINTZBERG, *supra* note 12, at 276.

132. *Id.* at 269. Aldrich uses the term "environmental capacity" to refer to the same concept. H. ALDRICH, *supra* note 118, at 63. He suggests that a lean environment (that is, a competitive one) forces an organization either to operate more efficiently or to move to a different environment.

133. H. MINTZBERG, *supra* note 12, at 281. The armed forces offer a classic example of centralization in a time of hostility.

134. Galanter & Palay, *supra* note 45, at 89, 204; B. HILDEBRANDT & J. KAUFMAN, *supra* note 3, at 9; R. NELSON, *supra* note 2, at 2. For a discussion of the causes of this competition, see *supra* notes 62-92 and accompanying text.

135. Structural differentiation refers to the division of labor, the levels in the hierarchy and the number of departments and subdepartments. See *supra* note 100 and accompanying text.

136. The span of control refers to the number of subordinates per manager. *Id.*

137. In a formal organization, work is highly regulated. See *supra* notes 29-34 and accompanying text.

138. In a bureaucratic organization, the work is highly specialized, standardized, and formalized. *Id.*

139. In an organic firm, there is little standardization and mutual adjustment is common. *Id.*

140. In a decentralized firm, power is dispersed among many individuals. *Id.*

141. In a centralized organization, the power to make decisions rests in a single place in the enterprise. *Id.*



greater structural differentiation and more managerial supervision.

TABLE 1

<i>Factor</i>	<i>Impact on Structure</i>
Size	More structural differentiation <sup>135</sup> Greater size of units Larger span of control <sup>136</sup> Larger administrative component More formal <sup>137</sup> More hierarchy <sup>138</sup>
Age	More formal More professional managers
Technology	Organic <sup>139</sup> Little managerial hierarchy
Stability	Flexible, less formal
Diversity	Decentralized, market-based units <sup>140</sup>
Complexity	Decentralization
Hostility	Centralization <sup>141</sup>

This Table accurately reflects the real tensions in the legal industry. The traditional law firm organization—unstructured partnerships—is no longer appropriate in the intensely competitive environment of the modern firm.

### B. *Developing a Fit between Situation and Structure*

An appropriate organizational structure is one that best matches the internal and external environments of the enterprise. Law firms face a fundamental dilemma in meeting the need for individual autonomy and decentralized decisionmaking while also responding to the economic demands of the environment for more centralized control and planning. Let us now consider possible solutions.

#### 1. *Decentralization*

Law firms face a diverse and dynamic environment and the various parts of the organization are interdependent (that is, they cannot be insulated from each other or the environment).<sup>142</sup> Under these circumstances—diversity, dynamic environment, and interdependence—constraints and contingencies typically exceed an organization's capacity to adapt and coordinate as a unified entity. The organization must, therefore, identify several separable domains<sup>143</sup> and organize

142. See *supra* notes 17-19 and accompanying text.

143. A domain consists of claims which an organization stakes out for itself in terms of (1) range of products, (2) population served, and (3) services rendered. J. THOMPSON, *supra* note 2, at 26.

self-sufficient profit centers around them.<sup>144</sup> Each unit can then monitor and plan responses to fluctuations in its environment.

## 2. *Function v. Market*

In designing these units, however, there is a fundamental tension between clustering around function (e.g., corporate, litigation, tax), market (e.g., health care, high technology, real estate development, insurance), or individual client.<sup>145</sup>

A functional structure promotes and facilitates the development of expertise on the part of workers because they are "housed" with and evaluated by others in the field. Senior lawyers are better able to train and evaluate junior colleagues in the same field rather than those in other areas. Thus, if expertise is critical to competitive effectiveness, the functional form is superior.<sup>146</sup>

A functional structure also creates more economies of scale.<sup>147</sup> If a high technology client wants to sell its stock, a securities lawyer with years of experience in such deals is a more efficient choice than a high tech lawyer who is a novice at public offerings.

A market or client structure, however, creates more economies of scope. A lawyer who has worked for a particular client already can provide other services more efficiently than someone who is unfamiliar with the client. Using a market-based structure, a firm can respond more effectively and quickly to client needs. When markets are diverse, it can be difficult to maintain knowledge in all areas, so some specialization in particular markets is essential. Likewise, product innovation is facilitated by market groupings since lawyers are more attuned to client needs. Thus, the more diverse and changing its customer base, the tighter the scheduling needs of clients, the more effective a market structure is.<sup>148</sup>

Both systems of organization offer advantages. But once one system is chosen, the benefits of the other are forfeited. If a functional structure is adopted, the firm gains a high level of technical expertise and economies of scale, but projects fall behind schedule because the functional experts are not as client-oriented.

If the organization is market-driven, scheduling is better but the quality of specialized work declines.<sup>149</sup> Specialists lose the reinforcement they might gain from working with colleagues in their own fields and their sense of professional worth is diminished when they are evaluated by general managers instead of their specialist peers. The market structure is also more wasteful of resources since it must duplicate personnel. It is inefficient, for example, to assign a tax

---

144. *Id.* at 73.

145. Galbraith, *Matrix Organization Designs*, BUS. HORIZONS, Feb. 1971, at 29, 30.

146. *Id.* at 39.

147. *Id.*

148. *Id.* at 38.

149. *Id.* at 30; H. MINTZBERG, *supra* note 12, at 125.

expert full-time to each market domain when only part-time services are needed.<sup>150</sup>

Expertise has always been an essential component of effective lawyering, so a functional structure has traditionally seemed appropriate, especially in an era when competition was weaker and the pace more leisurely. Increasingly, however, law firms are pressed to compete for clients on the basis of product innovation and speedy response. In an effort to be more competitive, some firms have even established interdisciplinary teams to identify trends affecting particular markets and to develop specific legal services for current or prospective clients in those markets.<sup>151</sup>

The grouping of units is an exceedingly important design parameter. It allows common supervision, the sharing of resources, and common measures of performance. There is always strong coordination within a unit, and problems of coordination between units. Over time, units develop different goals, time perspectives, interpersonal styles of interaction and degrees of formalization.<sup>152</sup> How, then, can the benefits of both functional and market groupings be obtained?

### 3. *The Matrix Prescription*

One possible solution to this dilemma is to base specialists in homogeneous groups for "housekeeping," but to deploy them into task forces for operational purposes. Indeed, Thompson suggests that this is the most rational solution for organizations handling unique or custom tasks. He cites as an example the general hospital which has specialized groups for housekeeping purposes: pharmaceuticals, nursing, medicine, and surgery. To treat patients, a task force is created that calls on a member of each group.<sup>153</sup>

This task force structure coincides neatly with the demands of law firm practice. Although lawyers are trained along functional lines, in the actual practice of law, they spend a considerable portion of their time working for a handful of particular clients.<sup>154</sup>

Many firms already have a task force structure, but there is still a tension between the two units because in some the functional department is paramount, in others it is the task force.<sup>155</sup> When an organization needs to focus intensive attention on both complex technical issues and the unique project requirements of the customer, when it needs both its functional and market groupings to be in equal balance, the solution is a matrix structure.<sup>156</sup>

The term "matrix" arose out of the project management structure developed in the aerospace industry in the 1950s, but is now used to refer to any organizational structure with a "2-boss" or multiple chain of command (as op-

---

150. H. MINTZBERG, *supra* note 12, at 127-29.

151. B. HILDEBRANDT & J. KAUFMAN, *supra* note 3, at 231.

152. H. MINTZBERG, *supra* note 12, at 106-08.

153. J. THOMPSON, *supra* note 2, at 80.

154. R. NELSON, *supra* note 2, at 251.

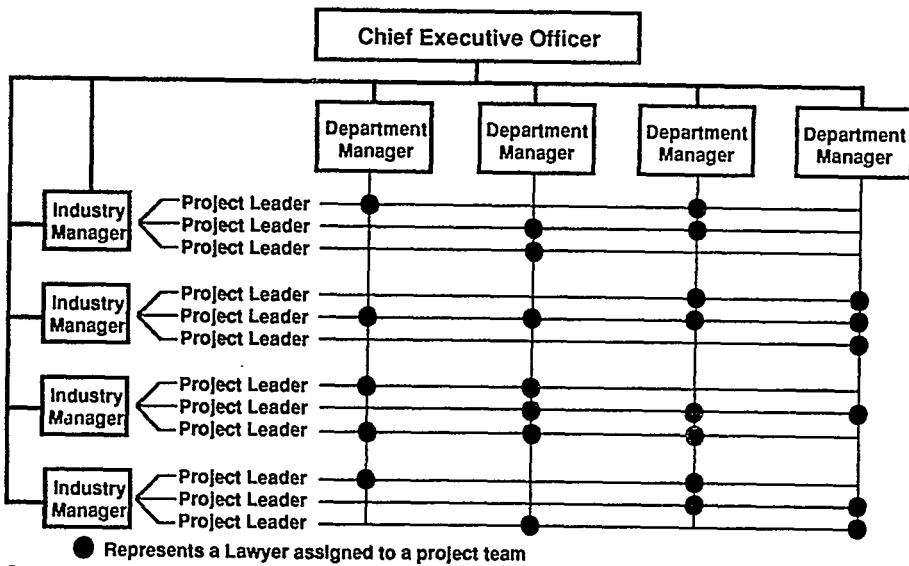
155. E. SMIGEL, *supra* note 50, at 225-27.

156. S. DAVIS & P. LAWRENCE, *MATRIX* 163 (1977).

posed to the more traditional one person-one boss single chain of command system).

What would a law firm matrix look like? [Figure 1 provides a representative view.] Departments and industry groupings would interact on an equal basis. Each lawyer would be assigned to a functional department: corporations, tax, litigation, labor law, employment law, bankruptcy, or intellectual property, for example. Department Managers would be responsible for managing the personnel in their department.

Figure 1



The actual legal product would be produced, however, by market-based teams with Industry Managers responsible for managing work output. There would be one manager for each discrete client grouping, or, if warranted, for a specific client: banks, health care, high technology, cable, biomedical/engineering, utilities, or XYZ Investment Bank.

Industry Managers would assign a Project Leader to handle each project and the Leaders would, in consultation with the relevant Department Managers, select lawyers to work on the project team. The Project Leader would be responsible for producing a good product on a timely basis.

To explain their roles in more detail, Department Managers would be fundamentally responsible for managing the professional staff. Their responsibilities would include forecasting personnel needs; training departmental members;

making project assignments; reviewing and evaluating members (in consultation with Project Leaders);<sup>157</sup> and setting compensation.

The importance of this role in managing the professionals cannot be over-emphasized. In the current tumultuous environment, careful nurturing of a law firm's professional staff is essential. It is, after all, far and away a firm's most valuable asset.

Beyond training and evaluation, Department Managers can provide much needed support to professionals operating in an inchoate environment where few guidelines exist. The production of a legal service involves a great deal of uncertainty. The best approach is not always clear and the results are not always easy to evaluate.<sup>158</sup> Uncertainty breeds anxiety but this disquiet can be reduced by managers who provide assurance and support.<sup>159</sup>

Lawyers need more than hand-holding, however; they require direction as well. A careful, thoughtful assignment system is crucial to a firm's long-term success. Maister put it this way, "the kind of assignments junior members receive, the various cases, industries, and clients they encounter, and the mix of senior people they work with largely determine the kind of professionals they become."<sup>160</sup> The pattern of assignments profoundly influences lawyers' motivation, productivity, promotability, and value to the firm.<sup>161</sup> Department Managers who can effectively trade-off the competing demands of professional development, client needs, and the preferences of firm members, will be fulfilling a valuable role indeed. Professionals often resist the notion of supervision, but autonomy and close supervision can (and, indeed, must) coexist when a firm is operating in a dynamic, hostile environment.<sup>162</sup>

Accurate forecasting of personnel needs is also crucial to a firm's success. More than one firm has died because of an overly optimistic hiring policy.

As is fitting for a matrix structure that requires its groupings to be in equal balance, the Industry Managers, too, would play a critical role. Each Industry Manager would have "bottom-line" responsibility for the profitability of her own group.<sup>163</sup> Industry Managers would be responsible for evaluating and main-

---

157. Although the evaluation typically would be prepared by the Department Manager, both bosses must take part in the evaluation and, indeed, many matrix organizations insist that both superiors be present when the employee is evaluated. S. DAVIS & P. LAWRENCE, *supra* note 156, at 79-80.

158. Every litigator has had the experience of winning a case yet finding the client disgruntled because the verdict was not higher or the fees lower. Likewise, one never knows at the end of negotiations whether a better deal could have been obtained.

159. P. MILLS, *supra* note 119, at 118.

160. Maister, *How to Build Human Capital*, AM. LAW., June 1984, at 6.

161. Maister, *Job Assignments Set the Pace in Professional Service Firms*, 4 J. MGMT. CONSULT. 57 (1986-87).

162. Mills, *Self-Management: Its Control and Relationship to Other Organizational Properties*, 8 ACAD. MGMT. REV. 445, 447 (1983); Mills & Posner, *The Relationships Among Self-Supervision, Structure, and Technology in Professional Service Organizations*, 25 ACAD. MGMT. J. 437, 441 (1982).

163. Technically, the groups would be considered semi-profit centers, as opposed to pure profit centers, because of their heavy dependence on staff support for administrative activities (e.g., recruiting, finance).

A firm with branch offices could be organized as a three-dimensional matrix in which lawyers report to a Department Manager (who may work at a different location), an Industry Manager and a Branch Manager. Alternatively, the Branch Manager could function as an Industry Manager and the lawyers could also report to a Department Manager located, say, at the main office. Finally, each branch could be run as an independent firm with the Branch Manager fulfilling the role of CEO and all reporting relationships being internalized in the

taining the client relationship by, for example, determining the level of satisfaction with firm service, cross-selling the firm's other services to the client, and making sure the firm is positioned to handle the client's future needs. These managers would also have the authority to approve all new clients and new projects. Managers can increase the efficiency of the firm by turning down clients and projects that do not fit the firm's overall strategy.<sup>164</sup>

If the Department Managers set compensation, but the Industry Managers are responsible for the profitability of their own groups, how would the budgeting process work? Department budgets would be cost budgets primarily estimating the work required by each department and the cost of this effort. The Industry Managers would use this cost data to estimate the profitability of their units.<sup>165</sup>

It is worth noting at this juncture that no organizational structure will work unless good managers are rewarded along with the rainmakers. As the environment has become increasingly competitive, law firms have tended to favor lawyers who bring in a significant amount of business. Indeed, in a time of intense pressure on profits, it is easy to see the appeal of a short-run approach that rewards rainmakers and ignores the others.<sup>166</sup> Important business-getters often lack the time or ability to manage well, while other lawyers are typically not given the necessary authority. For a firm to operate efficiently, good managers must be rewarded for managing, whether or not they bring in business. Good management can do as much for the bottom line as superior rainmaking.<sup>167</sup>

One further note of caution: an informal or latent matrix is not, typically, an effective organizational mode since it tends to deteriorate into anarchy. A matrix organization is most (and perhaps only) effective when the structure is definite and the duties and responsibilities are explicit.<sup>168</sup> Thus, law firms must resist the temptation to *call* their organization a matrix, while going about business as usual without any alterations in the real allocation of responsibilities.

#### 4. *The Elements of Structure in a Matrix Organization*

To fully understand the workings of a matrix organization, it is essential to consider the relationship between the various elements of structure: the operating core, the middle line, and the strategic apex.<sup>169</sup>

---

branch office. The appropriate choice of these options would depend on the size and function of the branch offices. Lawyers in a small outpost in Washington, D.C. who primarily conduct lobbying activities would, most appropriately, report to the Branch Manager (also acting as Industry Manager) as well as a Department Manager in the functional area (tax, antitrust, or energy, for example) who might be located elsewhere. A 50 or 100 lawyer "branch" engaged in the whole gamut of legal services would, on the other hand, most appropriately be organized as an independent firm, with all reporting relationships internalized and the Branch Manager serving as CEO.

164. Mills & Moberg, *supra* note 15, at 472.

165. See S. DAVIS & P. LAWRENCE, *supra* note 156, at 78-79, for a detailed description of the budgeting process in a matrix firm.

166. See R. NELSON, *supra* note 2, for a discussion of the role of business-getting in firms.

167. See B. HILDEBRANDT & J. KAUFMAN, *supra* note 3, at 61; Lorsch & Mathias, *When Professionals Have to Manage*, HARV. BUS. REV., July-Aug. 1987, at 78-79.

168. S. DAVIS & P. LAWRENCE, *supra* note 156, at 132-33.

169. See *supra* notes 23-28 and accompanying text for a description of the elements of structure.

a. *The Operating Core*

The work of the operating core would be performed by the project teams. It is here that a legal service is produced. As we have seen, the operating core tends to have a short time horizon and so do those in the project teams. The primary focus is on getting the job done on a timely basis.<sup>170</sup>

Rational organizations seek to insulate their operating core from disturbances in the external environment on the theory that, if the technical core is allowed to focus solely on creating a product, the production process will be more efficient.<sup>171</sup> Management theory also suggests that organizations ought to, by use of regulation and standardization, reduce the discretion of the operating core.<sup>172</sup> Yet, insulating, regulating, and standardizing the operating core in a law firm is difficult because the interaction between client and lawyer inevitably requires discretionary decisionmaking.

Chase suggests that, in order to reduce customer contact, and increase standardization, service firms should decouple the "quasi-manufacturing" part of the business.<sup>173</sup> He reports, for example, that consulting firms regularly divide projects into pure service and quasi-manufacturing components. Pure service employees, for example, gather data at the client's facility, while quasi-manufacturing workers analyze the data and prepare reports at the firm's home offices.<sup>174</sup>

For law firms, more standardized document production and greater use of permanent associates and paralegals to perform routine legal chores would be a step toward decoupling the quasi-manufacturing part of the legal business.<sup>175</sup> This would be the task of the Department and Industry Managers in their role as supervisors of the operating core.

b. *The Middle Line*

Initially, the Department Managers and the Industry Managers, acting together, would fulfill the functions of the middle line. They would connect the strategic apex with the operating core and ensure that the decisions of the strategic apex were successfully implemented. Department and Industry Managers would also establish firm-wide policies such as standards for determining performance (for example, requirements for billable hours).

The middle line should be relatively large. Thompson suggests that where there are many sources of uncertainty, there will also be many bases of power,

---

170. See *supra* Part I.B.

171. J. THOMPSON, *supra* note 2, at 19-20.

172. H. MINTZBERG, *supra* note 12, at 92.

173. Chase, *The Customer Contact Approach to Services: Theoretical Bases and Practical Extensions*, 29 *OP. RES.* 698, 703 (1981).

174. Chase, *Where does the customer fit in a service operation?*, *HARV. BUS. REV.*, Nov.-Dec. 1978, at 139.

175. The American Trial Lawyers Association and the Illinois State Bar Association have signed a contract with the Legal Research Center of Minneapolis to provide research and writing for their members. Firms that use the Legal Research Center and other similar companies are in essence decoupling the quasi-manufacturing part of the legal business. Hayes, *Lawyers Hire Ghostwriters, Raising Specter of Liability*, *Wall St. J.*, Dec. 5, 1989, at B1, col. 3.

in which case a large middle line is appropriate.<sup>176</sup> Likewise, the more open an organization is to the environment (and a law firm, in which virtually all lawyers have contact with clients, is very open), the larger the middle line.

When production is on a customized basis (as it is in a law firm), significant business-getters should be included in the middle line, but as clients become institutionalized, rainmakers are less important and, therefore, may not need to be included.<sup>177</sup> Therefore, as a firm ages and grows, the middle line would become relatively smaller. Indeed, in a new firm, every lawyer (or at least every partner) might be included, but in a 150-lawyer firm, such an inclusive policy would be unworkable.

### c. *The Strategic Apex*

At the top of the organizational chart, in the place of the strategic apex, is the chief executive officer (CEO). Many firms still resist having a leader, fearing that leadership will reduce individual autonomy.<sup>178</sup> Indeed, the whole notion of a CEO violates the principles underlying the ideology of partnership. But the consensual style of leadership that worked when small firms operated in a calm environment, is no longer appropriate for large, well-established institutions in circumstances of great hostility.<sup>179</sup>

The CEO would be responsible for: defining the goals of the firm; running the administrative support arm; providing information about performance; setting compensation for the middle line; developing marketing plans; engaging in practice development activities; facilitating interunit coordination by arbitrating disputes; overseeing the organization's relationships with its environment by acting as spokesperson, liaison, negotiator when major agreements must be reached with outside parties, and figurehead (to greet important customers).<sup>180</sup> It is not surprising, given this list of roles, that in most service industries, CEOs spend little time in the operating core.<sup>181</sup> The era of the managing partner who runs a large firm during spare hours seems all but gone.<sup>182</sup>

In their transition from part-time to full-time managing partners, firms have struggled with the issue of whether the CEO should be a partner promoted from within the ranks; an outsider who happens to be a lawyer; or a layperson with strong prior management experience.<sup>183</sup> Other professional service organizations (schools, hospitals, and social welfare organizations, for example) have

---

176. J. THOMPSON, *supra* note 2, at 71-75.

177. *Id.* at 129-31.

178. Zwicker, *Strong Leaders Essential to Successful Law Firms*, LEGAL ECON., July/Aug. 1985, at 42.

179. Even decentralized, informal organizations need leadership, particularly when operating in rapidly changing markets. See Howell & Dorfman, *Substitutes for Leadership: Test of a Construct*, 24 ACAD. MGMT. J. 714, 715 (1981), for example, who reject the notion that professional expertise is a satisfactory substitute for hierarchical leadership. See also Galbraith, *supra* note 145, at 33.

180. P. MILLS, *supra* note 119, at 170.

181. S. DAVIS & P. LAWRENCE, *supra* note 156, at 78; P. MILLS, *supra* note 119, at 69.

182. Bradlow & Silverman, *supra* note 57, at 31; and Lorsch & Mathias, *supra* note 167, at 80, suggest that chairpersons of large consulting firms usually leave managerial duties only to bless an important assignment or to maintain a relationship with a long-standing client.

183. See B. HILDEBRANDT & J. KAUFMAN, *supra* note 3; Boston Bus. J., May 18, 1987, at 2 (Interview with Richard J. Santagati, CEO at Gaston Snow); MacDonald, *supra* note 3.



usually insisted that the top manager be a skilled technician. The evidence also suggests that owners are reluctant to share power with outsiders.<sup>184</sup> But studies indicate it is difficult to find a CEO with superior administrative abilities and technical competence so, by limiting the search to those with a high level of skill, weak management often results.<sup>185</sup>

Having reviewed the relationship between the various elements of structure in a matrix organization, it is important to consider now whether this structure fits the contingency variables of law firms.

---

TABLE 2

<i>Theoretical Structure Requires:</i>	<i>Matrix Structure Provides:</i>
More structural differentiation	Lawyers are divided into both functional and market-related groups.
Greater size of units	Units are larger than the teams of lawyers used on an individual case or project.
Larger span of control	Managers and CEO have substantial span of control (especially in comparison with traditional partnership where the only span of control involves individual teams).
More formal, bureaucratic	More formal and bureaucratic than a traditional partnership. More centralized because micro decisionmaking is located in the strategic apex.
Organic, informal, decentralized	Matrix structure is relatively organic and informal with little managerial hierarchy. It is decentralized in that macro decisionmaking that involves interaction with clients is in the operating core and the middle line. <sup>186</sup>
Market-based units	Market-based units are as important as functional units.
More professional managers	The CEO is a professional manager.

---

184. Geeraerts, *The Effect of Ownership on the Organization Structure in Small Firms*, 29 AM. SCT. Q. 232, 235 (1984).

185. J. THOMPSON, *supra* note 2, at 156.

186. This analysis is consistent with Mintzberg's suggestion that when firms operate in a complex environment, which creates tendencies toward decentralization, and a hostile environment which causes the opposite tendencies, the organization, in order to respond to the crisis and survive, centralizes power temporarily. Should the crisis persist, there are two alternatives: either the organization does not survive or it selectively decentralizes. Decisions that require little coordination but intimate knowledge of the customer are decentralized while those requiring coordination throughout the firm are centralized. See H. MINTZBERG, *supra* note 12, at 281-285.

### C. *Matching a Matrix Structure to the Contingency Factors*

As was noted earlier,<sup>187</sup> contingency factors in the legal industry do not yield consistent direction on organizational structure. Those factors that relate to the production of a legal service—technology, stability, diversity, and complexity—point towards an organic, decentralized firm with little managerial hierarchy. While other factors—size, age, hostility—point in the direction of a bureaucratic firm with greater structural differentiation and more managerial supervision.

To evaluate the proposed structure, it is essential to determine whether this framework complies with the needs of the contingency factors; whether there is, in short, a fit between structure and situation. Table 2 compares the matrix framework with the theoretical structure suggested by the contingency factors.

Reviewing the list, we observe that these apparently contradictory requirements are met by the matrix structure.<sup>188</sup> The matrix structure must, however, pass one last test.

### D. *The Benefits of Practicing Law in a Matrix Structure*

The production of a legal service by a group of lawyers creates some troublesome managerial problems. Yet, despite these difficulties, lawyers continue to organize in firms because of the substantial benefits that result.<sup>189</sup> The purpose of a management structure is to enhance these benefits. It is important to consider, then, how a matrix structure affects the benefits of practicing law in a group.

*Economies of scale.* In a nonmatrix structure, a firm must choose between the inefficiency of hiring dedicated specialists for each unit or the decline in quality that results when generalists perform the jobs of several specialists. An organization achieves greater economies of scale when it deploys its resources in a flexible manner, moving the specialists around to serve units as needed.<sup>190</sup> Furthermore, the rational assignment system of a matrix structure insures that the professionals will be assigned to the projects in which they have expertise, in contrast with the virtually random assignment system all too common in law firms.

*Economies of scope.* Once lawyers in a firm are familiar with the client's methods and operations, the firm can, according to the theory of economies of scope, provide other services more cheaply and efficiently than firms unfamiliar with the client. A matrix organization enhances this benefit because it provides for lawyers to be repeatedly assigned to the same markets, and, where appropriate, the same clients.

---

187. See *supra* Part II.A.

188. Davis and Lawrence agree that, "[t]he matrix . . . can provide a structure that is at once more open and yet more coherent than the underorganized tendencies and managerial inefficiencies among large practices." S. DAVIS & P. LAWRENCE, *supra* note 156, at 163.

189. See *supra* notes 20-22 and accompanying text.

190. *Id.*

*Specialization.* A functional grouping promotes and facilitates the development of expertise while the market grouping increases knowledge of and responsiveness to client problems.<sup>191</sup> A lawyer in a matrix organization is doubly specialized, by subject and also by client or market.

*Minimum scale.* A matrix organization permits a firm to grow large and still maintain some rationality. A larger firm is more able to meet minimum scale requirements.

*Diversification.* A matrix organization enhances a firm's ability to diversify by organizing itself around separable domains. A unified organization has great difficulty in coordinating diverse markets, products, and geographical locations.<sup>192</sup>

*Sharing human capital.* In a traditional law firm, there is little division of responsibilities among lawyers. All partners are expected, for example, to bring in clients, to practice law competently, and to aid in the management of the firm. A matrix organization divides responsibilities so that lawyers may find different areas of competence. Thus, those whose primary talent lies in rainmaking can be Project Leaders or Industry Managers, while those who are excellent managers can head up departments.

*Higher quality.* By basing specialists together in the same department, a matrix organization promotes the development of expertise and the maintenance of high standards. Lawyers are evaluated by a Department Manager whose job it is to maintain high levels of expertise.

It appears, then, that a matrix organization amplifies the benefits to be gained from lawyers working together.

### E. *The Empirical Evidence*

This article has, thus far, presented solely the theory of law firm organization. In theory, the traditional partnership structure is not suitable to large, mature firms that operate in intensely competitive environments. The empirical evidence supports this theoretical view.

In his study of Chicago law firms, Nelson found that the traditionally organized firms were not as successful as their more bureaucratic competitors. Lawyers in the less bureaucratic firms worked substantially more hours per year to achieve the same level of profitability and were substantially less committed to their firms.<sup>193</sup> Indeed, Nelson argues:

Despite the tensions between managerial authority and client responsibility, the trend toward bureaucratic organization will continue and probably accelerate. . . . Indeed, bureaucratization as a means of improving service to clients and increasing partnership profits appears to be in the economic self-interest of the client-responsible elite. As increasing numbers of firms adopt bureaucratic managerial approaches, pressure will increase on other firms to do the same.<sup>194</sup>

---

191. See *supra* notes 145-52 and accompanying text.

192. See *supra* notes 122-27 and accompanying text.

193. R. NELSON, *supra* note 2, at 123-24, 185, 187, 221, 223.

194. *Id.* at 225. See also, Fitzpatrick, *supra* note 3, at 463; Galanter & Palay, *supra* note 1, at 751-52; Boston Bus. J., *supra* note 183.

There is some empirical evidence outside the legal industry to support the view that a traditional partnership is not the most efficient form of organization. In a study of service organizations, Mills found that the most successful firms had two levels of management above the operating core.<sup>195</sup> The matrix structure has two such levels. There is also evidence that profit and rate of return are higher in taller organizations.<sup>196</sup> And Russell, Hochner, and Perry found that worker-owned firms tend to "degenerate"; that is, they are inclined, over time, to imitate the hierarchical practices of conventional organizations that surround them.<sup>197</sup>

Law firms are experiencing immense tension between their need to grow and their need to manage; between the ideology of partnership and the efficiency of a bureaucratic structure. This article has suggested an alternative to the traditional partnership structure that is consistent with organizational theory and empirical research.

### III. CONCLUSION

In the discussion of optimal organizational structure, the various managers have deliberately not been described in terms of partners and associates because such a designation is not important to an understanding of their roles in the firm. The structure proposed in this article suggests a more complex hierarchy than is the case in a traditional two-tier law firm: Project Member; Project Leader; Industry or Department Manager; and CEO.<sup>198</sup> Under a matrix system, some partners might find themselves in a subordinate role to other partners and even, conceivably, to associates. Partners as well as associates would be assigned both to departments and industry groups and their output would be evaluated by Managers for purposes of compensation and assignment. An associate with a particularly large client base could be a Project Leader or even, in the case of a new field, a Project Manager, with partners as subordinates.

---

Jones, Day, Reavis & Pogue has utilized a matrix organization since the early 1970s. The firm has a "Group Coordinator" for each of five departments: litigation; tax; real estate; corporate; and government regulation. These Coordinators roughly correspond to the "Department Managers" in Figure 1. The firm also has a "Regional Manager" for each of five regions: Midwest; Southeast (including Washington, D.C.); New York/International; Texas; and California. These Regional Managers roughly correspond to the "Industry Managers" in Figure 1. Each lawyer reports to both a Group Coordinator and a Regional Manager. The Group Coordinators and Regional Managers report directly to the chief executive officer. To advise him, the C.E.O. appoints a "Partnership Committee" that acts as a board of directors. Telephone conversation with Ernest Gellhorn, California Managing Partner, Jones, Day, Reavis & Pogue (June 15, 1990).

195. P. MILLS, *supra* note 119, at 71.

196. In laboratory research, Carzo and Yanouzas found that the amount of time necessary to complete decisions did not differ significantly between tall and flat structures; however, flat organizations required more time to resolve conflict and coordinate effort, and tall organizations performed better with respect to profit and rate of return on revenue. Carzo & Yanouzas, *Effects of Flat and Tall Organization Structure*, 14 ADMIN. SCI. Q. 178 (1969). See also Dalton, Toldor, Spendolini, Fielding and Porter, *Organizational Structure and Performance: A Critical Review*, 5 ACAD. MGMT. REV. 49, 55 (1980).

197. Russell, Hochner, and Perry, *Participation, Influence, and Worker-Ownership*, 18 INDUS. REL. 330, 340 (1979).

198. Steven Brill has proposed an organizational model based on the seven levels found in investment banks: senior managing partner; managing partner; partner; junior partner; senior associate; associate; and junior associate. Seniority would be neither a necessary nor a sufficient condition for advancement. Brill, *supra* note 90, at 54.

Complex hierarchies do not fit well with the two-tier partnership construct. Traditionally, partnership has carried with it seven distinct attributes: equity participation, tenure, autonomy, participation in policy making, income, internal status and recognition, and external status and recognition.<sup>199</sup> In a multi-level hierarchy, it makes more sense to unbundle these rewards and to grant individuals different combinations, depending on their abilities and their contributions to the firm. Indeed, in many firms, four of these attributes (tenure, autonomy, participation in policy making, and internal status) are no longer automatically associated with partnership.<sup>200</sup>

As the concept of partnership carries less meaning, law firms may decide to reject the legal form of partnership in favor of a corporate organization.<sup>201</sup> Under a corporate form, shares could be granted to employees based on their level in, and contribution to, the firm.

Whatever the legal form of ownership, large and complex organizations require a more intense management effort. Although the free-form style associated with a traditional partnership is, in the short-run, easier, the results are haphazard at best. The laissez-faire approach is suitable, perhaps, for a small organization in a noncompetitive environment, but it is ineffective for a large, mature firm operating in a hostile arena. Management is not without cost; time, effort, and resources are all required. Even more difficult, perhaps, lawyers must cooperate with management and also sacrifice some of their autonomy for the greater good of the organization. Firms and their lawyers are faced with an important choice: will they operate as collections of independent (and sometimes warring) fiefdoms run by important rainmakers or as coherent, integrated institutions? For those who elect to operate as an integrated economic unit, this article has proposed an appropriate structure.

Over the last twenty years, large law firms have been rocked by enormous changes. The legal form of organization and the firm structure that were suitable in 1873 for the five lawyers at Shearman & Sterling are now outmoded. Lawyers are caught in a difficult conundrum. Being a sober-minded, tradition-respecting group, they have preferred to "satisfice": to trade off potential gain in performance for a congenially structured mode of operation.<sup>202</sup> Faced with a choice between being a little less profitable but maintaining the old ways, lawyers have often elected the status quo. That choice is rapidly disappearing. Increasingly, failure to change will mean failure to survive.<sup>203</sup>

---

199. Maister, *supra* note 46, at 65.

200. See *supra* note 90 and accompanying text.

201. Hillman suggests that many lawyers probably think of their firms as more like a corporation than a partnership anyway. Hillman, *Grabbing*, *supra* note 1, at 37.

Our discussion has been limited to the theory of organization, but it is worth noting that, in some jurisdictions, shareholders of a professional corporation enjoy a more limited liability than do partners. See, e.g., *Lyon v. Barrett*, 89 N.J. 294, 445 A.2d 1153 (1982).

202. See Child, *Organizational Structure, Environment and Performance: The Role of Strategic Choice*, *SOCIOLOGY* 1, 17 (1972) for a discussion of the tendency to satisfice.

203. Aldrich suggests that as the capacity of an industry reaches the saturation point where no further population growth can take place, different forms of organization cannot exist in equilibrium. The form of organization with adaptive advantages will tend to eliminate its competitors. H. ALDRICH, *supra* note 118, at 64-66.

