

Articles

Disruptive Innovation: New Models of Legal Practice

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For decades, lawyers have been complaining that they hate working at law firms, and clients have expressed increasing frustration with high legal fees. But complaining is as far as either group went, until recently.

This is perhaps the first attempt at a comprehensive review of a wide variety of new business organizations that have arisen in recent years to remedy the market's failure to deliver business organizations responsive to the complaints of either lawyers or of clients.

The “New Models of Legal Practice” described here typically offer a new value proposition for lawyers and clients. For lawyers, New Models offer better work-life balance and more control over other aspects of their work lives—in exchange for which lawyers typically shoulder more risk, giving up a guaranteed salary, to be paid instead only for the hours they work. For clients, New Models typically drive down legal fees by sharply diminishing overhead through elimination of expensive real estate and the high cost of training new lawyers, and (again) dispensing with guaranteed salaries.

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This Article identifies distinct kinds of New Models being put in place by legal entrepreneurs; Secondment Firms, Law and Business Advice Companies, Law Firm Accordion Companies, Virtual Law Firms and Companies, Innovative Law Firms and Companies, and even Big Law's entry into New Models. The Article provides useful insight for clients, lawyers dissatisfied with law firms or considering entrepreneurship, and large law firms looking to better respond to the transformation now taking place in the legal sector.

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INTRODUCTION

“The clients were unhappy, and the lawyers weren’t happy. It just felt like there must be a better way.”

Something remarkable is happening in the legal profession. Many lawyers have founded—and joined—businesses that organize legal practice in novel ways. The variety is dazzling. As the center of gravity in American business has shifted from stodgy finance to move-fast-and-break-things tech, “law . . . has become a great place for entrepreneurs.”¹ The new ventures in legal entrepreneurship have been referred to as “New Law,”² and they pose a challenge to the behemoth Big Law firms

1. Cari Sommer, *How Entrepreneurship Is Reshaping the Legal Industry*, FORBES (July 24, 2013, 11:46 AM), <http://www.forbes.com/sites/carisommer/2013/07/24/how-entrepreneurship-is-reshaping-the-legal-industry/>.

2. See, e.g., Eric Chin, *2018: The Year Axiom Becomes the World’s Largest Legal Services Firm*, BEATON CAPITAL (Sept. 13, 2013), <http://www.beatoncapital.com/2013/09/2018-year-axiom-becomes-worlds-largest-legal-services-firm/>; see also Nicole Bradick, *Can a New Breed of Firms Solve the Attrition Problem for Women in the Legal Industry?*, A.B.A. J.: LEGAL REBELS (Dec. 17, 2014, 8:45 AM), http://www.abajournal.com/legalrebels/article/can_a_new_breed_of_firms_solve_the_female_attrition_problem/; Jordan Furlong, *An Incomplete Inventory of NewLaw*, LAW21 (May 13, 2014), <http://www.law21.ca/2014/05/incomplete-inventory-newlaw/>.

that monopolized much of the legal industry for so long. We refer to the innovations as “New Models of Legal Practice” (“New Models”),³ reflecting the novel business models they introduce, which hold the potential to disrupt established pathways in the practice of law.

Big Law tends to write off these New Models as small potatoes. But Axiom, one New Model organization, is now one of the largest providers of legal services in the country, and boasts that over half of the Fortune 100 companies are its clients. Axiom is an order of magnitude larger than most New Models, but it is not the only one nipping at Big Law’s heels. Trademarkia,⁴ a website providing free web content and connecting users to paid legal services, enabled its partner firm, Raj Abhyanker PC (now LegalForce RAPC), to dethrone Greenberg Traurig’s six-year stretch as the largest filer of trademarks in 2010.⁵ There is also Rimon, a virtual law firm that was featured alongside leading Big Law firms such as Weil, Gotshal & Manges; Morgan, Lewis & Bockius; and Morrison & Foerster in a year-end 2014 story in *The Recorder*, a Bay Area legal paper.⁶

Big Law feels the pressure from New Models and is responding in several ways. Some Big Law firms are eliminating offices for younger lawyers, perhaps to help compete with the many New Models that have dispensed with office space altogether. More dramatically, Big Law firms interviewed for this report have jumped on the bandwagon, founding New Models to enhance their offerings to clients. Given the frequency with which New Models steal trained lawyers from Big Law—some with large books of business—it seems only just that Big Law has started stealing back.

What we are seeing in the legal profession is “disruptive innovation,” a term coined by Harvard Business School Professor Clayton Christensen,⁷ often heard in business circles but now making waves in the legal profession. Disruptive innovation occurs when a competitor enters a marketplace with a product or service that most initially see as inferior—until successive improvements end up displacing

3. Notably, “new model” and “new legal model” have also been used by the founders of Bliss Lawyers in their recent book on transformation of the legal sector. See DEBORAH EPSTEIN HENRY ET AL., FINDING BLISS: INNOVATIVE LEGAL MODELS FOR HAPPY CLIENTS AND HAPPY LAWYERS (2015).

4. LEGALFORCE TRADEMARKIA, <http://www.trademarkia.com/> (last visited Dec. 18, 2015).

5. Adam Smith, *A Better Mousetrap?*, WORLD TRADEMARK REV. (Aug./Sept. 2011), https://www.cscglobal.com/cscglobal/pdfs/DBS_ABetterMouseTrap.pdf.

6. Patience Haggin, *Law Firm Leaders See Jumps, Bumps in 2015*, RECORDER (Dec. 24, 2014), <http://www.therecorder.com/home/id=1202713424656?slreturn=20150030163100>.

7. CLAYTON M. CHRISTENSEN, THE INNOVATOR’S DILEMMA: WHEN NEW TECHNOLOGIES CAUSE GREAT FIRMS TO FAIL xiii (1997).

established products or even entire industries.⁸ A classic example is digital photography, which ultimately dethroned the venerable Kodak.⁹

Christensen's emphasis on inferior products seems less apt than his insight that "suppliers often 'overshoot' their market: They give customers more than they need or are ultimately willing to pay for."¹⁰ The traditional Big Law model is to sell the client a Cadillac, even when he only needs or wants a Ford. Many New Models promise the Ford—with prices to match.¹¹

Disruptive innovation has hit the law.¹² This Article introduces and examines five basic types of New Models of Legal Practice. The first type, Law and Business Companies, marries legal with business advice and services. Next, Secondment Firms place in-house counsel in corporations on a part-time or temporary basis. Third, Law Firm Accordion Companies provide law firms with lawyers to work as overload capacity or to provide specialized skills. Then, in Virtual Firms, everyone works from home. Finally, a large and variegated group of Innovative Law Firms offer some or all of the following: innovations in billing and personnel policies, better work-life balance, and women-friendly practices.

Even the conversation about the new legal market is innovative. Online sources provide much of the reporting on the trend of disruptive innovations. A book claiming to be the first published typology of these disruptive innovations celebrates several "Hallmarks of NewLaw," such as the use of disruptive technologies, more efficient use of human capital, and fixed fee arrangements.¹³ The book is in itself an innovation—it is available only on e-readers, and its content is an aggregation of tweets and online postings by commenters on this topic, interspersed with analysis.

8. CLAYTON M. CHRISTENSEN ET AL., *HOW WILL YOU MEASURE YOUR LIFE?* 10–11 (2012).

9. Ron Miller, *Innovator's Dilemma Is Real and Requires Bold Action to Overcome*, TECHCRUNCH (July 17, 2014), <http://techcrunch.com/2014/07/17/innovators-dilemma-is-real-and-requires-bold-action-to-overcome/>.

10. CHRISTENSEN ET AL., *supra* note 8, at xvi.

11. Of course, not all clients have the same needs. For an examination of disruptive innovations affecting the provision of legal services to the poor, see Raymond H. Brescia et al., *Embracing Disruption: How Technological Change in the Delivery of Legal Services Can Improve Access to Justice*, 78 ALB. L. REV. 553 (2015).

12. Christensen and his colleagues have applied the terminology to the changes underway in legal practice. "The leaders of the legal services industry would once have held that the franchise of the top firms was virtually unassailable, enshrined in practice and tradition—and, in many countries, in law. And yet disruption of these firms is undeniably under way." Clayton M. Christensen et al., *Consulting on the Cusp of Disruption*, HARV. BUS. REV. (Oct. 2013), <https://hbr.org/2013/10/consulting-on-the-cusp-of-disruption>; see also Clayton M. Christensen & Scott D. Anthony, *eLawForum, Transforming Legal Services*, INNOSIGHT LLC (Jan. 21, 2003), http://www.drystonecapital.com/pdf/christensen_case_study.pdf; Darryl R. Mountain, *Disrupting Conventional Law Firm Business Models Using Document Assembly*, 15 INT'L J.L. & INFO. TECH. 170 (AUG. 30, 2006), http://www.kentlaw.edu/faculty/rstaudt/classes/justicetech_fall2011/darryl%20mountain%20document%20assembly170.pdf.

13. GEORGE BEATON, *NEW LAW NEW RULES: A CONVERSATION ABOUT THE FUTURE OF THE LEGAL SERVICES INDUSTRY* (2013) (ebook).

Is this really the much-publicized death of Big Law?¹⁴ Hardly. When it comes to high-stakes, bet-the-company deals and litigation, major companies still typically seek out the most prestigious and powerful representation they can afford. One informant said, “Anything where your company is on the line, you need the imprimatur of a law firm. I mean, there’s no cost sensitivity there, right? You’re throwing all the money in the world at it, because it’s way more risky not to.” Most, though not all, New Models concede that bet-the-company litigation will remain with Big Law for the near future. Huge deals that require the skills of lots of different attorneys will also remain with Big Law. New Models herald increased market segmentation. After all, huge deals and bet-the-company litigation represent only a tiny fraction of the legal marketplace. As noted by Richard Susskind in his influential 2008 book, *The End of Lawyers? Rethinking the Nature of Legal Services*, the legal profession has long insisted that bespoke legal services are the only path to quality.¹⁵ Today fewer clients—and lawyers—remain so convinced.

Since the Great Recession, the market for legal services has changed from a sellers’ to a buyers’ market.¹⁶ Demand for law firm services collapsed from 2008 to 2009; between 2010 and 2013 growth decreased to less than half the pre-2008 growth rate.¹⁷ Also, whereas corporations traditionally used Big Law for all of their legal work, clients today are intensely focused on segmenting their legal spend toward the lowest cost provider for different types of legal services.

New Models are benefitting from these trends in several different ways, making in-roads on Big Law practices in five distinct ways. First, while Big Law still controls legal matters that require very large teams, or teams that span many different practice areas, Virtual Law Firms such as Rimon, VLP Partners LLP, and Potomac Law Group, and Virtual Law Companies such as Berger Legal LLC and Cognition LLP, and Innovative Law Firms such as GLA Law Partners and Summit Law Group compete successfully for a wide range of matters that may require high-level expertise but involve only one or a few seasoned lawyers.

Second, boutique firms are challenging Big Law’s commanding market lead in specific practice areas. Boutique firms’ models that compete with Big Law in specific practice areas include Landmark Law Group (real estate), Smithline PC (tech transactions and IP licensing), Miller Law

14. See Noam Scheiber, *Yes, Big Law Really is Dying*, NEW REPUBLIC (July 28, 2013), <http://www.newrepublic.com/article/114065/death-big-law-firms-cant-be-ignored>.

15. RICHARD SUSSKIND, *THE END OF LAWYERS? RETHINKING THE NATURE OF LEGAL SERVICES* 28–33 (2008).

16. GEORGETOWN LAW CENTER FOR THE STUDY OF THE LEGAL PROFESSION, 2015 REPORT ON THE STATE OF THE LEGAL MARKET I (2015), <http://www.law.georgetown.edu/academics/centers-institutes/legal-profession/upload/FINAL-Report-I-7-15.pdf> [hereinafter GEORGETOWN, 2015 REPORT].

17. *Id.* at 7.

Group (defense-side employment law), Tucker Ellis, LLP and Bartlit Beck Herman Palenchar & Scott (trial work), Valorem Law Group (complex litigation), and The California Appellate Group (appellate).

Third, Secondment Firms handle overflow from in-house legal departments and part-time in-house counsel work that might otherwise go to Big Law. This includes Canadian Delgatus Legal Services, Inc., which provides temporary lawyers to fill in for lawyers on their long maternity leaves.

Fourth, relatively routine legal work is migrating to the lowest-cost providers. The behemoth of “legal process outsourcing” is Axiom, which has commodified large companies’ contracting and certain litigation functions.¹⁸ Also in this arena are: Counsel on Call (which does e-discovery, contract review and abstraction, and other managed services),¹⁹ Raymond Law Group (which specializes in price-sensitive commodity (litigation) work, The General Counsel, Limited (which sometimes handles all of a company’s employment law matters or a different type of work for a fixed fee), and d’Arcambal Ousley & Cuyler Burk (which often handles all of a company’s routine insurance work).

Fifth, other New Models target mid-market companies that have been priced out by the steep rise in Big Law rates.²⁰ Examples are The Mitzel Group, LLP; Phillips & Reiter, PLLC; InnovaCounsel, LLP; Avökka; The General Counsel, Limited; Exemplar Companies, Inc.; and Burton Law, LLC. Some of these firms target large companies as well.

All this adds up to a sobering picture that helps explain why Big Law’s book of business is no longer growing by leaps and bounds. To quote the 2015 *Report on the State of the Legal Market* from the Georgetown Law Center for the Study of the Legal Profession, “the market is now awash with new, non-traditional competitors that over time are likely to change the dynamics of the legal services sector”²¹ To quote the influential commentator James W. Jones, “While the numbers in terms of revenue that is actually being siphoned off by these non-traditional service providers still seems modest compared to the

18. Other legal processing outsourcing firms came to our attention too late to be included in this Article, such as CPA Global, Pangea3, and Integreon. The same goes for dispute resolution companies, such as Fair Outcomes, Inc., Resolution Tree, Raptor Risk Analysis, and Neota Logic; and document creation companies, such as Koncision, KM Standards, and Redgrave LLP. *See id.* at 11 (listing new competitors in the legal market).

19. Other companies that offer tools to automate document production and assembly, workflow management research, and contract review but that came to our attention too late to be included in this Article are: PlainLegal, LawPal, Diligence Engine, Ebrevia, Ravel Law, and Judicata. *See* Basha Rubin, *Big Law, Big Problems: The Bright Future For Small Firms*, FORBES (July 7, 2014, 12:59 PM), <http://www.forbes.com/sites/basharubin/2014/07/07/big-law-big-problems-2/>.

20. GEORGETOWN, 2015 REPORT, *supra* note 16, at 5.

21. *Id.* at 11 (noting that the Big Four accounting firms are rapidly expanding into Big Law’s traditional territory).

overall size of the legal market, they're growing and they're growing every single year."²² Big Law used to do the entire spectrum of legal work, from low- to high-complexity. Now "the unbundling taking place in the corporate legal market" means that the "'fat middle' of 'meat and potatoes' legal work" is being siphoned off, much of it to new models of legal practice.²³

This study contributes not only to the burgeoning literature how the legal profession has changed since the Great Recession, but also to the sociological work-family literature. The growing consensus among work-life scholars such as Erin Kelly and Phyllis Moen,²⁴ Katherine C. Kellogg,²⁵ Leslie Perlow²⁶ and one co-author of this Article²⁷ is that slapping an alternative schedule option on top of a full-time face time work culture does not work well.²⁸ Virtually all large law firms now have part time policies,²⁹ but the usage rate remains stubbornly low³⁰ and the stigma remains stubbornly high.³¹ Work-family scholars have come to the conclusion that the only way to deliver balanced work schedules without stigmatizing those who use them is to hard-bake work-life balance into the basic business model. That is precisely what many New Models do.

22. James Jones, *Q&A Interview: Industry Segmentation Could Dramatically Change the Face of the Legal Industry, Says Georgetown's Jones*, THOMSON REUTERS: LEGAL EXECUTIVE INST. (Jan. 29, 2015), <http://legalexecutiveinstitute.com/georgetown-laws-james-w-jones-industry-segmentation-could-dramatically-change-the-face-of-legal-industry/>.

23. Mark Cohen, *The "Fat Middle" and the "Lean Middle,"* LEGAL MOSAIC (Dec. 2, 2014), <http://legalmosaic.com/2014/12/02/segmentation-corporate-legal-work/>.

24. Leslie A. Perlow & Erin L. Kelly, *Toward a Model of Work Redesign for Better Work and Better Life*, 41 WORK & OCCUPATIONS 111 (2014), http://www.flexiblework.umn.edu/publications_docs/Perlow-Kelly-2014-WO.pdf; Erin L. Kelly & Phyllis Moen, *Building Flexibility Into the Way We Work*, HUFFINGTON POST (Jan. 23, 2014, 10:53 AM), http://www.huffingtonpost.com/erin-l-kelly/building-flexibility-into_b_4241132.html.

25. KATHERINE C. KELLOGG, CHALLENGING OPERATIONS: MEDICAL REFORM AND RESISTANCE IN SURGERY (2011).

26. LESLIE A. PERLOW, SLEEPING WITH YOUR SMART PHONE: HOW TO BREAK THE 24/7 HABIT AND CHANGE THE WAY YOU WORK (2012); Perlow & Kelly, *supra* note 24.

27. Joan C. Williams, *Why Men Work So Many Hours*, HARV. BUS. REV. (May 29, 2013), <https://hbr.org/2013/05/why-men-work-so-many-hours/>.

28. Michelle Travis, *The "Full-Time Face-Time" Norm and the Untapped Transformative Potential of Employment Discrimination Law*, LAW & SOC'Y ASS'N (May 27, 2004), http://citation.allacademic.com/meta/p_mla_apa_research_citation/1/1/6/9/4/p116945_index.html?phpsessid=roof4m982a3l9nnt990gc7uvr1.

29. Press Release, National Association of Law Placement, Rate of Part-Time Work Among Lawyers Drops for Third Year in 2013, Especially Among Women, but Most Working Part-Time Are Women (Feb. 27, 2014), http://www.nalp.org/part_time_pressrel_march2014?s=part-time.

30. *Id.*

31. We base this statement on the many conversations Joan C. Williams has had with law firm partners about their part-time policies. For an early study of the "part-time paradox," see CYNTHIA FUCHS EPSTEIN ET AL., THE PART-TIME PARADOX: TIME NORMS, PROFESSIONAL LIVES, FAMILY, AND GENDER (1999).

Because attorneys' longstanding desire for better work-family balance³² has not been addressed by existing institutions, disruptive innovation has moved in. The market's failure to offer lawyers something other than 24/7 availability is over.

Between 2012 and April 2015, Aaron Platt and Joan C. Williams interviewed more than fifty firms that differed in many ways.³³ This is, to our knowledge, the first attempt at a comprehensive survey of new models of legal practice. Some are traditional law firm partnerships, some are businesses solely owned by an individual, and some are companies with novel business plans. New Models outside of the United States and Canada, including the many companies changing the legal industry in the United Kingdom, were excluded.³⁴ We searched on the Internet, and used a "snowball sample," asking people we interviewed if they knew of any other New Models firms. Typically (although not invariably) we spoke with founders, so what they told us naturally puts the best face possible on their organizations. We found a wide variety of business organizations focused on a sweet spot that reflects a new value proposition for clients that is matched with a new value proposition for lawyers. New Model businesses are born all the time, and the firms represented herein are not the only ones pioneering this field. However, this work represents the most comprehensive academic review of its kind.

This Article holds important messages for three groups: clients, lawyers dissatisfied with existing models of legal practice, and Big Law as a whole. For clients, our goal is to aid in-house counsel to find the New Models firms that can help them segment their spending more efficiently—and meet some of their diversity goals. For lawyers dissatisfied with Big Law, our message is that there are now many alternative ways to practice law. To Big Law, too, this Article can be a resource: New

32. See DAVID B. WILKINS ET AL., HARVARD LAW SCH. CTR. ON THE LEGAL PROFESSION, THE WOMEN AND MEN OF HARVARD LAW SCHOOL: PRELIMINARY RESULTS FROM THE HLA CAREER STUDY I, 55 (2015), <https://clp.law.harvard.edu/assets/HLS-Career-Study-FINAL.pdf> ("Women report experiencing a litany of broken promises and unfair treatment surrounding parental leave and work schedules."). While the Harvard study finds that women are much more likely than men to report mistreatment, a lot of male attorneys also are dissatisfied with the lack of work-life balance experienced by many attorneys in large law firms.

33. We did not reach some companies that appear to fit our definition of New Models. These firms include Tyde Law, Fisher Broyles, Daily General Counsel, Vista Law, Trademarkia, and Cloudigy. For a variety of reasons, some firms that were interviewed are not reflected in this Article, including firms we discovered but ultimately felt did not match our definition of a New Model.

34. We also have not considered sole proprietorships, companies that specialize in nonlawyer (such as paralegal) services, that do only document review, or that primarily outsource significant legal work to other countries. For more information on innovations occurring throughout the legal world, see *Legal Rebels*, A.B.A., www.legalrebels.com (last visited Dec. 18, 2015) (listing innovative profiles published since 2009).

Models siphon off ideas, business, and personnel from Big Law. This Article provides Big Law the resources to return the favor.

A. THE NEW VALUE PROPOSITION FOR CLIENTS

For clients, the appeal is simple. When clients turn to Big Law, they pay a premium for lawyers who graduated as top students, typically from prestigious law schools, housed in luxurious offices that signal membership in the global business elite through expensive and lavishly furnished office space.³⁵ Clients expect—and get—a class act.³⁶

However, corporate clients have become ever more cost conscious and unwilling to foot the bill for work that can be done cheaper elsewhere.³⁷ That is where many New Models come in. Many Secondment Firms, Virtual Firms, and Innovative Law Firms offer legal fees at half to one-third those of Big Law, often to work with attorneys who trained at Big Law or who recently left it. In response to this newfound cost sensitivity among clients, New Models founders' "emphasis . . . is on making law more like other businesses, where you try to control your cost of production, and you change the way you make the widgets," as one New Models founder expressed. Another founder shared the sentiments of many others, "We felt that the prices being charged to our clients on an hourly basis were too high." Her New Model firm, in a small northern city, represents more Fortune 500 companies than any of the traditional law firms located there. As she put it, "You'll find that more and more of the Fortune 500 companies are seeking out firms like ours [that have] people who have the background and experience of practicing very, very high quality law, but who are not charging the exorbitant rates."

Many Secondment Firms, Law Firm Accordion Companies, Virtual Firms and some Innovative Law Firms are completely virtual, with lawyers working from their homes or other locations. "I'm going to take care of my clients when they need me to take care of them," said one Accordion Company founder. "And I can do that from the moon." Those that do have office space often have fewer offices or offices in less prestigious buildings. The founder of an Innovative Law Firm told us that he spends money on personnel and technology and "little to nothing on marble, mahogany and spending \$35 a square foot to store files." One founder of an Innovative Law Firm recalled looking at a Big Law office

35. See PIERRE BOURDIEU, *DISTINCTION: A SOCIAL CRITIQUE OF THE JUDGMENT OF TASTE* (Richard Nice trans., Harvard University Press 8th ed. 1984) (1996).

36. See JOAN C. WILLIAMS, *RESHAPING THE WORK-FAMILY DEBATE: WHY MEN AND CLASS MATTER* (2012).

37. See Scheiber, *supra* note 14; see also Noam Scheiber, *The Last Days of Big Law*, *NEW REPUBLIC* (July 21, 2013), <http://www.newrepublic.com/article/113941/big-law-firms-trouble-when-money-dries>.

and asking herself, “How much of their fee is going to be for their Monet?”

Going virtual is just one way technology makes New Models possible. The founder of a Secondment Firm elaborated “[w]e don’t need a big legal library. We don’t need the IT infrastructure that a typical firm has. We don’t need to be located downtown, because we can access all of our client’s files, we can access calendars and email via technology.” And in that way, “[t]echnology has really helped us to operate and to put a dent in the traditional law firm model.” Most New Models use cloud-based technology tools, allowing them to create seamless communication networks among widely dispersed attorneys, outsourcing everything from administrative work to office management. “It’s the technology [that] leveled the playing field,” said the founder of an Innovative Law Firm. “Basically, the overhead has gone down for everyone but in a way that now enables smaller firms to compete.”

Some New Models also shed another key cost center: lawyers just out of law school. As the founder of an Innovative Law Firm described it, in the 1980s the “law firms needed to compete with Wall Street, or at least they perceived they needed to compete with Wall Street, so they raised first-year salaries again and again and again. Economically, you can’t offer the first-year salaries they were offering without significantly jacking up the hours requirements.” Typical salaries for newly minted lawyers ultimately spiraled up as high as \$160,000 a year—a losing proposition for the firms that hired them. Starting salaries have fallen at many firms, but corporate clients today often refuse to use first-year associates or sharply limit their use.³⁸ Thus, a portion of the cost savings some New Models pass onto clients represents their success in poaching lawyers after Big Law has paid the steep costs of training an associate—costs which can range between \$200,000 and \$500,000.³⁹

It is easy to romanticize New Models—there is a lot that is exciting about them. But the raw fact is that many freeload off Big Law’s steep investment in training young lawyers. “We don’t hire baby lawyers,” said the founder of a Secondment Firm, echoing many others. “We think big firms are great at training associates,” said a Virtual Law Firm founder, “and we’d like to get them once they’re already trained.” This practice results in a lower bottom line as well as increased security; because so many of these firms are just starting up, they rely on the reputations associated with their lawyers’ Big Law pedigrees. That said, several

38. Even these reduced salaries are hefty. Research from 2013 found that the median associate salary overall was \$125,000, and the \$160,000 salary remains prevalent in many large firms. See Press Release, National Association of Law Placement, Associate Salaries Bobble but Remain Essentially Flat (Sept. 18, 2013), http://www.nalp.org/associate_salaries_sept2013?s=associate%20salaries.

39. See JOAN C. WILLIAMS & CYNTHIA THOMAS CALVERT, SOLVING THE PART-TIME PUZZLE: THE LAW FIRM’S GUIDE TO BALANCED HOURS (2004).

Secondment Firms mentioned that their clients were beginning to ask for more junior attorneys, and that they were hiring lawyers earlier in their careers in response. Secondment Firms are also finding that clients use them as a way to try out more junior attorneys before offering them a full-time job. So New Models are evolving in ways that promise more opportunities for junior attorneys, and should result in more independence for New Models firms that have been reliant on Big Law to provide their staffs' training and reputation.

B. THE NEW VALUE PROPOSITION FOR LAWYERS

If New Models' value proposition for clients centers on lower costs, the value proposition to lawyers is equally clear-cut. Many founders were motivated by a deep dislike of key elements of Big Law. One male founder opined as to why these firms are such miserable places to work: "One of the worst things about the traditional big firm model is that it's a funnel, and the people on top are expecting to make a million or two million a year, and the only way they can do that is if they've got the galley slaves below." Another said he wanted to found his own company because "all of [his] friends that are miserable at large firms" convinced him "that should not be [his] destiny." The critique of Big Law we heard articulated contains five basic elements:

- (1) lack of work-life balance;
- (2) pressure for every lawyer to be a rainmaker;
- (3) inability to control one's billing rate;
- (4) increasing economic uncertainties both in law firms and in-house; and
- (5) inability of Big Law to satisfy lawyers "bit by the bug" of entrepreneurship.

New Models have stepped in to fill the needs of lawyers who "love the work but hate the job." Founders reported over and over again being inundated with lawyers who wanted to join their firms or companies, and flooded them with resumes. A nearly universal common refrain for New Models founders is: "I get tons and tons of people reaching out to me about jobs all the time."

I. New Models Address Work-Life Balance and Eliminate the Flexibility Stigma

By far the most consistent critique is that Big Law fails to offer attorneys their desired trade-off between time and money. In the 1960s, a full-time attorney typically billed 1300 hours per year.⁴⁰ When salaries spiraled up in recent decades, hours spiraled up, too. Now commonplace

40. Deborah L. Rhode, *Balanced Lives for Lawyers*, 70 *FORDHAM L. REV.* 2207, 2210 (2002).

are billable hours requirements in the range of 2000 to 2300 hours per year—and billing 2000 hours translates to working roughly sixty hours a week.⁴¹

Yet this explosion in both hours and salaries runs contrary to the fact that money is consistently, and increasingly, rated as less important to today's young workers than job flexibility.⁴² Big Law attempted to address this demand by offering part-time schedules, which today are almost universally available across the profession.⁴³ Yet despite the availability of part-time scheduling, only 6.1% of lawyers worked part-time in 2013; the vast majority were women (90.6% of associates and 63.1% of partners working part time).⁴⁴ Most programs are plagued by the “flexibility stigma”: part-time lawyers are seen as less committed than other lawyers, and find the quality of their work assignments plummet from plum to strictly routine.⁴⁵ Part-time programs also commonly suffer from “schedule creep,” in essence, when a part-time lawyer's schedule creeps back toward full-time (often while being paid at a part-time rate).⁴⁶ This magic combination—a part-time schedule that gradually shifts back to full-time while simultaneously depriving the lawyer of fair pay and career-enhancing work—means that many young lawyers prefer to leave their firms rather than request an alternative schedule.

Recent scholarship concludes that the only way to eliminate the flexibility stigma is to change time norms—expectations surrounding face time and schedule—for everyone.⁴⁷ Because law firms have not done this, New Models have: working part-time is the norm in some, while in many others full-time is defined as sharply fewer than the 2000-plus-hours expectation common in Big Law. By hard-baking into their business

41. Catherine Gage O'Grady, *Cognitive Optimism and Professional Pessimism in the Large-Firm Practice of Law: The Optimistic Associate*, 30 *LAW & PSYCHOL. REV.* 23, 43 (2006).

42. See BENTLEY U. CTR. FOR WOMEN & BUS., *MILLENNIALS IN THE WORKPLACE* 2, 5, 12–13 (2012), <http://www.bentley.edu/centers/center-for-women-and-business/millennials-workplace>; BRAD HARRINGTON ET AL., B.C. CTR FOR WORK & FAM., *THE NEW DAD: CARING, COMMITTED AND CONFLICTED* (2011), <http://www.bc.edu/content/dam/files/centers/cwf/pdf/FH-Study-Web-2.pdf>; JENNIFER SABATINI FRAONE ET AL., B.C. CTR. FOR WORK & FAM., *THE MULTI-GENERATIONAL WORKFORCE: MANAGEMENT IMPLICATIONS & STRATEGIES FOR COLLABORATION* 4–5 (2008), https://www.bc.edu/content/dam/files/centers/cwf/research/publications/pdf/MultiGen_EBS.pdf; LAUREN STILLER RIKLEEN, B.C. CTR. FOR WORK & FAM., *CREATING TOMORROW'S LEADERS: THE EXPANDING ROLES OF MILLENNIALS IN THE WORKPLACE* 2 (2011), <http://www.bc.edu/content/dam/files/centers/cwf/pdf/BCCWF%20EBS-Millennials%20FINAL.pdf>.

43. Press Release, *supra* note 29.

44. *Id.*

45. See FUCHS EPSTEIN ET AL., *supra* note 31; Joan C. Williams et al., *Cultural Schemas, Social Class and the Flexibility Stigma*, 69 *J. SOC. ISSUES* 209 (2013) (documenting flexibility stigma in a variety of workplaces).

46. See CYNTHIA THOMAS CALVERT & JOAN C. WILLIAMS, *FLEX SUCCESS: THE LAWYER'S GUIDE TO BALANCED HOURS* (2011).

47. See PERLOW, *supra* note 26, at 197–203; Perlow & Kelly, *supra* note 24, at 111. See generally KELLOGG, *supra* note 25 (studying mandate to reduce surgical residents' hours to eighty per week, and analyzing impact of that shift in norms on flexibility stigma).

models flexibility or shorter hours for everyone, New Model firms have largely or completely eliminated the flexibility stigma. Some New Models founders are also very explicit about their desire to eliminate the stigma for lawyers that do not fit the traditional mold. As one founder said, “I think they need to be assured that they’re not going to be second-class citizens. [T]hey’re highly trained, talented lawyers, so they don’t want to be in a situation where they feel second string.”

Another important factor in New Models’ ability to provide better working conditions, particularly in Law Firm Accordion Companies and Secondment Firms, is that founders may run interference when an attorney feels that work-life balance has gotten out of whack. “We have very driven lawyers who will not let a client down,” noted one, but after a series of deadlines that interfered with an attorney’s work-life balance, “I gave my word I would try to figure out a way so we didn’t have that happen again.” Having the company owner intervene on one’s behalf precludes the workplace tension that could arise from having to put one’s foot down over the objections of a partner eager to please a demanding client. Sometimes when a lawyer has to work more due to a judicial deadline, it is simply unavoidable “and that’s called litigation,” one founder said. But if a crisis were to result from a client’s failure to plan, the founder said, she would work with the client to make sure it would not happen again. New Models firms also work hard to set client expectations, for example, by telling clients that lawyers work weekdays from 8:30 a.m. to 5:30 p.m. and do not check e-mails after hours or on weekends. Secondment Firms’ billing models may be expressly designed to offer a specific number of hours per month or quarter, and company owners typically intervene if a client demands hours beyond the agreed upon number. These kinds of boundaries are unheard of in Big Law firms but some founders felt that work-life balance was “a fundamental value of the firm.”

There is a mismatch between what Big Law offers and what many female attorneys want that results in massive defections from Big Law by women after they have children. Different groups of women lawyers mean very different things when they speak of work-life balance—but few mean working the sixty-plus hour weeks required to bill 2100 hours per year, regardless of whether they can choose their hours and location. New Models provide a welcome alternative to this “all or nothing” paradigm.⁴⁸ The founder of a Law Firm Accordion Company told us that she started her company “because there were so many lawyers who were leaving the profession because they didn’t want the traditional partnership track. I honestly felt . . . there’s got to be a way to provide

48. See generally Bradick, *supra* note 2 (suggesting that New Models may aid with retention problems targeting women lawyers). Note that Bradick’s firm, Custom Counsel, is profiled herein.

access for these lawyers who still are very driven [and] very smart . . . to stay in practice.”

When it comes to work-life balance, the most useful approach is to think of different tranches of women. One tranche sees themselves chiefly as stay-at-home moms and seeks to work only ten to twenty hours a week to “keep a hand in [practicing law]” so they can return to their careers after their children are grown. This is precisely what some Law Firm Accordion Companies often offer (although they also appeal to lawyers who want quite different things, as will be discussed later). Lawyers who want this type of schedule, typically women, represent a shift from the first generation of women lawyers, who often took for granted that they had to do “everything the men did, backwards and in heels.” While the older generation’s approach was to “pay heavy dues first, and [those dues] buy you the leverage to do other things, to have a life,” the younger generation of female lawyers says, “I’m awed and inspired by [the older generation]—but they . . . work too hard.”⁴⁹ One founder told us that one of her lawyers turned down a law firm partnership to join her Law Firm Accordion Company instead. Two of the Secondment Companies also serve this population looking to work fewer hours: Paragon Legal and Bliss Lawyers offer part-time schedules; Paragon places attorneys who want to work as little as ten hours a week.

Although these women do not want the life lived by older generations of professional women, most probably never intended to stay home full-time. Pamela Stone’s 2007 study found that only sixteen percent of stay-at-home mothers always intended to leave the workplace after having children.⁵⁰ Instead, “opt-out moms” typically wanted to maintain some professional involvement—but one that fits with their vision of motherhood. One Law Firm Accordion Company said, “I had one lawyer who joined us last year who said that she had been looking for something like this for several years. Just every once in a while, she would sit down at her computer and Google ‘attorney mother work-life balance.’ And one day, our website popped up. She clicked it and did like a little a happy dance in her living room . . . and she called us that minute.” This woman asked the founder, “Why is no one else doing this? Why has it taken so long for someone to do this?”

Many New Models also provide important on-ramps for mothers who have left the labor force to raise children. One founder said, “they quit. They became full-time moms. And then now that their children are older, they want to get back into the practice again . . . and were really disappointed and unable to find work that is acceptable to them after

49. Debra Bruno, *Balancing Act: Younger Women Play by Their Own Rules*, LEGALTIMES, May 7, 2008, at 18.

50. PAMELA STONE, *OPTING OUT? WHY WOMEN REALLY QUIT CAREERS AND HEAD HOME* (2007).

being out for so long.” She concluded, “law firms are not particularly receptive to people who have a large gap in their resume.” The founder recalled an attorney with three degrees from Stanford who for many years had a niche environmental practice at a well-known Big Law firm. When she looked for work after staying home full-time, firms offered to give her a job—as a third-year associate.

Note the assumption that her skills were degraded dramatically by motherhood, an example of the strongest form of gender bias: the negative competence assumptions triggered by motherhood.⁵¹ Law Firm Accordion Companies provide, to quote one founder, “an off-ramp [from full-time work] and an on-ramp [back into one’s career].” She recalled a woman who wanted to return to private practice after her son left for college: “She said it was amazing how easy it was to go back in because they knew [she’d] been working with” the founder’s company. “They knew she’d had quality work” By enabling her “to stay connected” during her years as a stay-at-home mother, the Accordion Company preserved this lawyer’s career.

At the same time, this founder noted, working for an Accordion Company is “not for everyone. Somebody who loves to see their name in the *Wall Street Journal*” would not be happy because “we’re not leading the deal or the lawyers behind the deal.” Accordion Companies’ key audience are women for whom remaining on the fast track is not an option: “The choice is that they would be basically home full-time, or they would be doing this,” said one founder. These mothers fully accept that they will be taking a large financial hit: “I gave up \$300,000 a year to do this,” noted one mother. Many founders, in describing their attorneys’ compensation, echoed the phrase that their attorneys were “nicely compensated.”

Other New Models—other Secondment Firms, Virtual Firms, and Innovative Firms—appeal to a very different tranche of women: those who want “full-time flex”: working forty to fifty hours a week, with the ability to control when and where those hours are worked to accommodate family obligations. This tranche of women is joined by many men⁵²: most men who seek work-life balance are talking about full-time flex. One founder of a Virtual Firm where attorneys work full-time flex bemoaned his difficulty in recruiting women and mused that “men seem to be more attracted to this model.”

Though men tend to want a different kind of flexibility than many women do, the important message is that work-life balance is not just a

51. Shelley J. Correll et al., *Getting a Job: Is There a Motherhood Penalty?* 112 AM. J. SOC. 1297, 1306 (2007).

52. KATHLEEN GERSON, *THE UNFINISHED REVOLUTION: COMING OF AGE IN A NEW ERA OF GENDER, WORK, AND FAMILY* 256 n.3 (2010).

woman's issue.⁵³ Millennials universally tend to care less than older generations about advancement than about work-life balance; to them, "time is often more important than money."⁵⁴ A majority of college-educated Millennial men put family above career on their personal priority lists, and have begun to take on greater family care responsibilities to go along with their generation's more egalitarian views regarding the role of women.⁵⁵ That explains why Millennial men (and women) "seek a supportive work culture that allows fathers as well as mothers to thrive in both their parenting and their careers."⁵⁶

Yet our research shows the inaccuracy of the conventional wisdom that it is only Millennials who insist on work-life balance. In fact, virtually all New Models firms were founded by older attorneys. Many are Baby Boomers and Gen-Y men who did what many mothers have long done: told employers who insist on the all-or-nothing workplace⁵⁷ to "take this job and shove it." This is a message rarely heard in the popular press.

Even when New Models founders have preserved the law firm model, they have taken it to new places. For instance, the founder of an Innovative Firm litigation boutique described team scheduling:

[W]hen we put together a team to work on a major case, we have to account for these different availabilities and commitments. For example, a lot of our work requires travel. We just don't assign a team member to travel if they don't have the capacity to travel because of their children.

Others cannot work long days, so they do not participate in trials. Other people have physical limitations. "We construct the teams in order to accommodate the needs of everybody within the team." Not surprisingly, the firm reported zero turnover.

Family responsibilities are not the only reason people want part-time hours or to work only part of the year. "We obviously have people with children that want to coach their little league or their soccer or their dance . . . [but also] we have musicians," one founder said. "We have people who actually sing back-up. We have people who have bands. We

53. Alison Maitland, *Advocates of Free Time*, FIN. TIMES (Nov. 26, 2007, 7:27 PM), <http://www.ft.com/intl/cms/s/0/d9bc03b2-9c3e-11dc-bcd8-0000779fd2ac.html#axzz306rcUEbp>. There is, in fact, some evidence that managers of Millennials are woefully misguided when it comes to understanding what Millennials want. One study revealed a sharp disconnect between managers and Millennials in this regard; namely, managers think Millennials want high pay, while Millennials *actually* want meaningful work. RIKLEEN, *supra* note 42, at 2.

54. FRAONE et al., *supra* note 42, at 4-5; RIKLEEN, *supra* note 42, at 2 (noting that Millennials want flexible careers and schedules).

55. BENTLEY U. CTR. FOR WOMEN & BUS., *supra* note 42, at 2; RIKLEEN, *supra* note 42, at 2 (noting that Millennials have far more egalitarian views about women's role than did predecessor generations).

56. RIKLEEN, *supra* note 42, at 4.

57. See STONE, *supra* note 50.

have people who are writers. We have an Iron Man who [enters international competitions].” Another founder mentioned a man who wanted to make time for “pheasant hunting in Montana” and “foraging for mushrooms” and also to start a new business. The first attorney brought on by yet a third founder was a man who wanted to spend his summer scuba diving in Southeast Asia.

The time-versus-money trade-off offered by New Models firms varies widely. The most common statement regarding compensation was well summarized by one founder: “They’re not making money hand over fist, but for the number of hours they put in, they’re well compensated.” Some attorneys, particularly in Virtual Firms, reported that they actually ended up earning more than in their traditional law firms. This was possible because going virtual meant a lower percentage of their billing went to overhead. Most others probably earned less—but they also worked less. Founders of Secondment Firms typically compared their salaries to salaries in-house, stating that their attorneys earned about the same *per hour* as in their prior environments—but many work fewer hours. A range often mentioned is that senior attorneys working full-time at Secondment Firms or Virtual Firms make between \$300,000 to \$500,000 a year, nowhere near the income of a highly paid Big Law partner but certainly a comfortable standard of living. There is, of course, a lot of variation in the pay of New Models lawyers, even among those who work full-time.

In return for shorter and/or more flexible schedules, New Models extract a price: lawyers typically get paid only to the extent that they work, with no guaranteed salary at most Secondment Firms, Law Firm Accordion Firms, and Virtual Firms. This eliminates a lot of the pressure for extreme hours and leaves lawyers willing to shoulder this risk, free to work as much or as little as they wish.

2. *Some New Models Eliminate the Requirement That All Lawyers Be Rainmakers*

While work-life balance is the most prevalent motivation for joining New Models firms, it is not the only one. Also prevalent is dissatisfaction with the well-nigh universal pressure on law firm partners to become “rainmakers”—those who bring new clients into the firm. Traditionally, Big Law had grinders, minders, and finders. The grinders contributed to the firm by working long hours doing the less glorious but very time-consuming aspects of legal work. The minders were the relationship partners, keeping existing clients happy. The finders were the rainmakers. This system worked because strong norms of firm loyalty made it difficult for the finders to join another firm and take their clients with them. Doing so was considered disloyal and bad form. In recent decades, this norm eroded, enabling rainmakers to insist on a larger slice

of the pie, on pain of jumping ship. These pressures were institutionalized when the *American Lawyer* began printing profits per partner,⁵⁸ putting firms under pressure to post high profits per partner in order to attract new rainmakers and keep those they had. Gradually, rainmakers' status and salaries soared, and those of both minders and grinders fell, leading to two-tier partnerships in which most partners were glorified employees, also known as "income partners."

Despite the increased status and money associated with rainmaking, the rainmaking mandate presents a serious problem: many lawyers hate rainmaking and are not good at it. A powerful force behind many New Models firms is that the founders do the rainmaking and leave the lawyers free to do what they like and do best: lawyering. Describing lawyers attracted to his firm, one New Models founder said, "they loved the research, they loved the writing, but in the traditional law firm model they got to the point where they didn't have a lot of value unless they could do a lot of other things [like rainmaking]." Many founders in firms that do not require rainmaking mentioned that many of their lawyers were attracted by the freedom from pressure to bring in clients. "There's two groups of people," said one founder. "People like me who actually generate work. I've tried hiring people in that category and then I basically gave up, because most . . . lawyers are not good at generating work, and most lawyers don't like it." To that end, Secondment Firms do not require rainmaking, no Law Firm Accordion Companies do, and Virtual Firms vary on this issue.

3. *Many New Models Allow Attorneys to Set Their Own Billing Rates*

Though less pronounced, a third theme emerged: New Models lawyers like the ability to set their own billing rate. Many lawyers feel that Big Law rates need to be set so high that they have to turn away work they want to do—and would if rates were lower. This is a powerful motivator for some lawyers to join New Models firms where they can set their own rates. One founder stressed that attorneys often are keen to do so: "[There are] other firms where they're forcing partners to bill out at \$800 per hour, which has priced them out of a lot of great opportunities." Another agreed, saying that one need "that is very big that most firms don't realize is that [lawyers] want the ability to set their own rates."

58. See, e.g., *Firms Ranked by Profits Per Partner*, AM. LAW. (May 6, 2014), <http://www.americanlawyer.com/id=1397565990976/Firms-Ranked-by-Profits-Per-Partner?slreturn=20150101223112>.

4. *New Models Provide Lawyers a Safety Net in a Climate of Economic Uncertainty*

Much less talked about is the fourth theme: some New Models respond to lawyers' needs in a climate of economic uncertainty. This includes associates' sharply diminished chances of making partner as compared with prior decades. "I think a lot of the younger lawyers . . . know that nobody's ever going to make equity partner in the large, traditional law firms unless you're an equivalent of a Michael Jordan in basketball," said one New Models founder.

New Models also can provide a path toward a permanent job in a legal market where jobs are harder to come by. Founders told us that some lawyers attracted to their companies had lost their jobs during the Great Recession of 2008, which hit the legal profession very hard. Said the founder of a Secondment Firm, "I feel like we just did a huge thing . . . helping attorneys who had kind of been big victims of the economy to find amazing, amazing jobs." This is a topic founders typically downplay, but founders of both Secondment Firms and Virtual Firms mentioned that lawyers (men in particular) joined their firms when they lost jobs, either with the intention to stay, or with the intention of using New Models as a way to get back into more traditional organizations.

Founders of Secondment Firms report that their clients use them as a "try-before-you-buy" way to hire attorneys. Secondment Firms also address a common catch-22: to get an in-house job, companies sometimes require lawyers to have in-house experience—but of course you cannot get in-house experience if you cannot get that initial job. Secondment Firms allow lawyers to gain enough in-house experience that it can pave the way to a full-time in-house job.

A final way New Models help lawyers respond to the woes of the legal labor market emerge again in Secondment Firms. One founder reported that some lawyers, after one or more corporate layoffs, decided to join his firm to avoid "putting all their eggs in one basket" since "they like the idea of having multiple clients so that no one client can . . . put them in that position where they don't have work."

5. *New Models Allow Entrepreneurs to Follow Their Dreams*

The final persistent theme among founders is something not often associated with lawyers: joy. New Models provide an outlet for lawyers bit by the bug of entrepreneurship, the desire to innovate and create something new. A Secondment Firm founder said, "I had always had an entrepreneurial interest or bent [W]hen I look back, some of my happiest days, professionally, was when I was in high school and college and I had a lawn mowing business in the summers in D.C." He mused, "A friend of mine and I together, we had 130 lawns we mowed on a

regular basis, and it was fabulous. We'd wake up. It felt like the world was our oyster." When this founder worked at a law firm, "I always felt that I was a couple of steps removed from the really interesting decisions, which were all business decisions." Founding a New Models company responded to his interests. One founder, Garry Berger, has founded both a Virtual Law Company and a Secondment Firm. We interviewed a founder of a Law & Business Company who got his law degree and master's degree in finance simultaneously, and was the chief financial officer ("CFO") for a high tech company. When we asked why he ultimately went into law, he said "Well, I don't know. Am I in law or am I an entrepreneur?" He continued, "People are happy when they come to work and they don't feel like a cog in a wheel or a fungible billing unit. We've given meaning to their lives and our clients love it." The romance of the new attracts not only founders, but also New Models attorneys. One founder noted that attorneys in his organization "really love that they're a part of something . . . we feel is the path of the future, something new, something innovative."

C. ROADMAP

In sum, New Models represent capitalism's response to a two-fold market failure. First, Big Law failed to offer clients their desired trade-off between quality and affordability. Second, Big Law failed to offer attorneys their desired trade-off between time and money—and satisfaction. The entry into the market of the New Models firms represents the market segmentation that has arisen to address these persistent market failures.

This Article begins with Part I, which describes the philosophy behind New Models, whose founders often articulate a harsh critique of Big Law. Part II discusses the most established type of New Model: Secondment Firms. Meanwhile Parts III and IV discuss Law and Business Companies and Law Firm Accordion Companies. In Part V, we peruse Virtual Firms, which incorporate virtual work and other novel uses of technology, often coupled with alternative fee structures. Part VI briefly discusses Innovative Law firms, which typically hard-bake work-life balance into their business model, and often include other innovative features. Due to the breadth of firms under this label, this Part is excerpted, but the comprehensive review is available in the full report.⁵⁹ Lastly, Part VII discusses the epitome of Big Law revenge: a large law firm that has founded a New Models company to complement their traditional practice.

59. JOAN C. WILLIAMS, AARON PLATT & JESSICA LEE, *DISRUPTIVE INNOVATION: NEW MODELS OF LEGAL PRACTICE* (2015), <http://www.uchastings.edu/news/articles/2015/06/Disruptive-Innovation-New-Models-of-Legal-Practice.pdf>.

I. THE PHILOSOPHY BEHIND NEW MODELS OF LEGAL PRACTICE

“It’s like you get Lasik [and say] . . . ‘Wow, why was I ever dealing with glasses?’”

Many New Models founders articulate a harsh critique of Big Law. Traditional law firms have “a slew of . . . problems: work-life balance, attrition rates, . . . very high leverage ratios, complaints about divorce rates being high, and satisfaction [problems].” The founder continued, “law firms [are] over-led and under-managed, and leadership sucks anyways.” “[P]artnerships are a super bad way to run a business,” said the founder of a Virtual Firm, because they produce “inertia—and the reason that very few or none of them have done anything progressive is because of the partnership structure.”

“What I realized was that I was really miserable at the typical law firm . . . but I didn’t dislike being a lawyer at all. In fact, I loved being a lawyer. I just hated law firms,” said the founder of an Innovative Law Firm. Another agreed: “It’s a miserable thing to sell hours. If you sell hours, you have to count hours and you have to spend your day marking down these little bits of time. That’s not what you want to be doing. You want to be reading and helping and negotiating . . . being a lawyer.” Commented the founder of a Virtual Firm, “I think it’s a horrible lifestyle for the lawyers to constantly have to track their time. The perspective of the clients [is that] it rewards inefficiency. It’s unpredictable, so a client doesn’t know necessarily what their bills are going to be.” Thus, while performance evaluations of in-house lawyers typically include metrics tied to how well they stay within budget, law firms’ billable hours model still ensures that costs can vary greatly.

“We’re one of the few industries in knowledge work where you have businesses run by people who don’t have any business sense or skill,” mused another founder. “Business skill is different from legal skill,” agreed yet another. He cited compensation systems as an example. “What you measure is what you get for behavior, so when it comes to work-life balance issues and values, core values, if there are not metrics in place to measure it,” the desired behavior won’t happen. “You’re going to get the behavior you motivate with your comp[ensation].” Another Innovative Law Firm founder reflected that “in a nutshell, the practice of law itself is and should be a fun and interesting job. You get to do different things all the time. You work with smart people. [B]ut so much of law firm life had turned into simply a race to see who could bill the most hours and who could get the most origination credit.” The founder added that it “really became the only way to make money in a law firm . . . [and it] didn’t matter how good you were or how efficient you were or what your results were.” At the same time, New Models founders were acutely aware that the lavish “class acts” displayed by law

firms translated into longer hours for attorneys who had to fund that overhead. “Much of the capital is in the office space and the furnishing and mahogany and blinds and Oriental rugs,” one said.

“I bought into the big firm mentality and billed over 2000 hours, generated my own clients, and was on the . . . hamster wheel,” observed another founder who made partner at a traditional firm. He found the Big Law model off-putting for several reasons:

My worst enemies were my business competitors and a business model where there are forty co-owners who are all trial lawyers and you re-divide the pie every year. Your incentive is to devalue what everyone else does and to pump up the value of what you do. I found all this very destructive to the process of delivering legal services.

He left the firm he called “a dinosaur—fat, dumb, happy, expensive commercial space and all that.” He now owns “a new breed of law firm” where the “emphasis is on making law more like other businesses, where you try to control your cost of production, and you change the way we make the widgets.” Additionally, he frequently speaks publicly on alternative fee arrangements.

Another founder critiqued Big Law’s reliance on many layers of review, saying that associates

are often thought of as being great ways to reduce cost. But I think they ultimately actually significantly increase costs because a junior associate needs to be reviewed by a mid-level associate, who’s reviewed by a senior associate. And then . . . information is completely filtered out by the time it gets to the partner. So a lot of valuable data is lost, and then they’re billing for it.

His Virtual Firm eliminated much of that hierarchy and in return they “don’t have the incentive to keep the associates busy.” Early-stage associates, he noted, have been replaced by form documents and document generators.

Many founders were motivated by the drain of women out of the legal industry. An Accordion Firm founder said, “The sole motivation was I wanted to practice law in a way that made sense for my life after I had children.” She was pregnant with her second child when she decided to leave her firm. “I really enjoy practicing law. I like being a lawyer. I feel strongly about being able to continue to practice law because I had all this education and training.” The founder tried part-time but discovered that it was even more stressful than when she and her husband both worked full-time. She found a friend who also wanted to “do high-level essentially temporary lawyer work just to supplement [] family income.” So they began to work together, and then after about a year, “we started having friends ask us if they could come and [work] with us.” So they started a company and “were completely flooded” with applicants.

The founder of an Innovative Law Firm recalled, “I had two young children . . . and I wanted more flexibility. Also, at the same time, I thought that I would set up a firm that provided the same quality of work to the same types of clients but at a much more reasonable rate. Basically, the overhead for everyone has gone down but in a way that now enables smaller firms to compete.” The founder of a Secondment Firm recalled that when she began her career in Big Law, “I knew, before I even started, that I just would not fit within that model for very long.” It did not fit with her family life ideals:

I knew before I even got married or really even was in a serious relationship that I wanted to be a mom. I also felt really strongly that if I did that, that I should be very present in their lives. A lot of that comes from having been raised in a household where I had two very career-focused parents who certainly made me who I am, in terms of being very motivated and entrepreneurial.

But she knew she “just didn’t want to do it that way.” She assumed that she would have to stop working and just raise kids—but events took her in a different direction. She went in-house and then did contract work, ultimately hiring another attorney to take the work from a large company she could not do. Then that company asked if she could supply them with attorneys for various projects, and her New Models firm was born—one that very consciously tries to eliminate the flexibility stigma.

Others were driven not so much by a mission to keep women from leaving the profession as by the practical insight that mothers were a largely untapped and talented labor pool. Said one male founder of a Secondment Firm, “I learned very quickly . . . there are a lot of really fantastic women lawyers especially who don’t have a good way of staying at the big firms.” He realized that “if I’m looking for really top talent,” here was “a terrific pool of talent to select from.”

Still other founders knew they were not cut out for law firm life in the long term—so they invented an alternative. “What seemed so great at the beginning, which was these partners, the senior associates were working just as hard and working just as late, the light bulb went on,” one said. “It was like, wait. That’s twenty years from now. You’re still working this hard? . . . I loved the work . . . but I didn’t feel . . . it was sustainable in a long-term way.” She founded a Law Firm Accordion Company. The power of her business model, she stressed, was that “it was really important to me from the beginning that this be viewed as a really universal thing, not a female thing. Our applicant pool is fifty-fifty. It really validates this idea . . . people across the board want to have a fulfilled life.”

One thing that is striking is the number of New Models firms founded by men that seek work-life balance. One male founder of a Secondment Firm was an attorney at Weil, Gotshall & Manges when he decided he wanted to spend more time with his two young children. “So I

thought I'll do this at home and didn't have all the overhead, etcetera, that it would be a good deal for clients and also a good deal for me and enabled me to have my own schedule and spend time with my family, watching my kids grow up." Another male founder of an Innovative Law Firm made explicit his goal of attaining a different trade-off between time and money:

You know what, if you were totally focused on profit . . . I wouldn't be sending everybody home at 5:00 and I wouldn't be giving them three unplugged weeks of vacation a year. [I]t's very important to me as a fundamental value that I go home every day at 5:00 and so I can't be leaving if they're still here. I've worked one and a half, probably two—to be totally honest with you, two weekend days since I started the firm. That was . . . really kicking and screaming.

The male founder of a Secondment Firm spoke for many others when he said that although most male lawyers at his company typically bill forty to forty-five hours a week, "they might work at 8:00 at night or 9:00 at night. But they might take three or four hours in the middle of the day to spend with their family." The founder of a boutique firm that does government-funded housing and community development work said, "we have a group of lawyers all of who seek that work-life balance. It's really, I think, a culture and vision thing," their hours are less, and their profits are "probably a little lower," too.

The most telling story was from a Virtual Law Firm, where our informant recalled that one attorney left because "he just wanted to grind it, and that's not who we are. He wanted to make a lot of money. At the firm, if you want to go make a million dollars, you need to go to a firm where they have that type of infrastructure. That's not us. You can make a great living, feed your family, send your kids to college and just live a nice life at our firm."

Other motivations also played a role. Shedding firm responsibilities such as "the bureaucracy or the politics of having to be in the office at a certain time or to be on certain committees" also allows attorneys to earn the same amount while working fewer hours, noted the founder of a Secondment Firm. An informant at a Virtual Firm had a longer list: "I get to choose which clients I want to take and I don't want to take. I don't have somebody overlooking those decisions, [saying] 'Well, why did you turn away \$50,000 worth of business from such and such a client?'" She continued, "I get to choose when and where I work. I get to choose what rates I have. I don't have to run around and try to develop this gigantic leveraged practice." She concluded, "You run your practice to please yourself." Another informant described the range of motivations: "They really appreciate the flexibility, the range in client work, the control, the hands on with clients at client sites."

A final attraction of New Models is that they give people a sense of being part of something new and different. A founder of a Secondment

Firm said that “people really love that they’re part of something that we feel is the path of the future, something new, something, innovative.” Another founder said, “The legal industry has not innovated ever, such . . . that if you can do something slightly different, you’ve got a good chance of what they call blue oceans.” Blue oceans refers to businesses creating “uncontested market space,” where the absence of competition helps these innovators achieve rapid, often highly profitable success.⁶⁰

II. SECONDMENT FIRMS

“It’s like asking the Dollar Store why they don’t turn into Bloomingdale’s.”

The most established New Model consists of companies that place lawyers in-house, either on temporary assignment (the original meaning of “secondment”) or on a more permanent but part-time basis. Generally, lawyers at these companies have elite law school and Big Law credentials, followed by experience working in-house. Lawyers work virtually from their own homes and/or on-site at companies they serve, at salaries consonant with those of lawyers in-house—which enables fees at a fraction of those at Big Law. Secondment Firms take pains to differentiate themselves from temp agencies such as Robert Half Legal. Temp agencies typically do entry-level or routine legal work; Secondment Firms are careful to insist that they do high-level legal work. When asked to differentiate, one informant analogized the comparison to that of the Dollar Store versus Bloomingdale’s.

Secondment Firms seek to offer high-level work at bargain basement prices. As mentioned, several firms noted that their fees averaged a third to a half of the fees of Big Law. One way Secondment Firms deliver this lower rate is that their lawyers do not get a guaranteed annual salary. They only get paid for the work they do. So lawyers take a risk: they work without the guarantee of a steady income in exchange for a release from many of the pressures of law firm life, most notably the pressures to bill long hours and to bring in clients. Most Secondment Firms split fees between the lawyer who does the work and the firm itself, and the percentages vary widely, even within a firm. One founder noted that the attorney who does the work gets between one-third and two-thirds of what is billed depending on the type of work “and the relationship I have with that attorney.”

Some organizations are organized as law firms, while others are organized as companies. Two quite different Secondment models have

60. W. CHAN KIM & RENEE MAUBORGNE, BLUE OCEAN STRATEGY: HOW TO CREATE UNCONTESTED MARKET SPACE AND MAKE COMPETITION IRRELEVANT 4–5 (2005). For a user-friendly online explanation of the concept from the authors themselves, see *What Is Blue Ocean Strategy?*, BLUE OCEAN STRATEGY, <http://www.blueoceanstrategy.com/what-is-blue-ocean-strategy/> (last visited Dec. 18, 2015).

emerged. The Independent Contractor Secondment Model (including Avökka, The General Counsel, Limited, InnovaCounsel, LLP, Outside GC, Phillips & Reiter, Conduit Law) stems from the desire of senior lawyers (typically men) to work more flexibly and escape the billable hours “rat race” or, less frequently, to avoid “putting all their eggs in one basket” after having been displaced by corporate takeovers. These lawyers usually have prior experience as general counsel or other senior positions in-house. Typically they work full-time “flex,” with time off as needed to attend to family matters or other interests. These firms reflect the fact that many men—even those who work very long hours—typically say they want to work forty hours a week.⁶¹ Attorneys typically are titled “partners,” even in organizations that are companies, not law firms. Lawyers are independent contractors on an “eat what you kill” arrangement—they have no guaranteed salary but keep what they earn (or collect), with the Secondment Firm taking a percentage of their fees. Some firms require attorneys to have their own book of business, while others do not. Many are members of the General Counsel Services Alliance.

At the second type of Secondment Firm (including Paragon Legal and Bliss Lawyers), the Employee Secondment Model, the firms’ core motivation is to offer women a non-stigmatized way to continue to practice at a high level after they have children or reenter the law after a career break. One of the Employee Secondment firms, Paragon, was founded by a woman, while women are the major shareholders at Bliss Lawyers. These firms have lawyers with a wider range of experience, including junior lawyers with only a few years’ experience. Their lawyers also work a wider range of hours, including many who work part-time.

However, an important point to note is that although the Employee Secondment model was founded for women lawyers, neither of these models is gender exclusive. Some women work in Independent Contractor Secondment Firms, while some men work at Employee Secondment Firms. Lawyers that choose the Employee Secondment model are typically in search of flexibility to pursue other interests, hoping to gain the in-house experience needed to secure a permanent in-house position, or simply looking to not place all their eggs in one basket. Of course, the distribution of these motives may differ by gender.

The major difference between the two types of Secondment Firms is that, in keeping with the founders’ motivation to offer *high quality* work to mothers, lawyers in this second type of Secondment Firm are employees of the firm, and thus receive full benefits packages.

61. GERSON, *supra* note 52, at 256 n.3.

A. INDEPENDENT CONTRACTOR SECONDMENT MODEL

I. Avökka

Andrew Foti is the founder of Avökka, a company that provides part-time general counsel services to mid-market firms, servicing clients both virtually and on-site. The firm has been in business for approximately a year. They have six attorneys with an average of twenty years' experience. They operate on a fixed-price basis and on a retainer. Attorneys typically work one to two days per week for three to four different clients each.

What distinguishes Avökka is the degree to which their attorneys are integrated into the clients' businesses and serve as proactive strategists. Foti described the work of this highly experienced team, stating "we're judgment, as a service." Their attorneys act as legal executives giving proactive legal advice with a view of the entire business in mind. Because they are targeting mid-market clients, many of which are startups in fast growth mode, there can be some evangelism required to get clients to fully appreciate what Avökka has to offer. Foti explains,

[a] big challenge is to change client behavior from reactive, episodic interaction with lawyers. Avökka's approach is like an insurance product. You have this lens, this person on staff, as opposed to just calling when you think you need them at the last minute. That's a different way of looking at legal that is quite unusual. Anyone that's done any sophisticated legal would understand that that lens has real value. In the mid-market, for people to necessarily see that value, it's a bit of an advocacy exercise. We're pitching to change consumer behavior, in a sense, to see the value. Those who are using it generally see it. If they're large enough, they get it.

Typically Avökka's services are split between virtual and on-site, with attorneys at the clients' offices weekly. Ideally, attorneys are with about three clients for one to three days a week per client. One challenge they currently face is building their human resources model, in terms of how to identify the right kind of attorneys for their business, especially those who have an entrepreneurial spirit and are interested in practicing in this new way and growing the business. Foti provides,

The idea is to create a collective, as opposed to having a bunch of sole practitioners, with a common culture and approach practicing a certain way under an identifiable brand. I think that not every attorney that has the kind of combined Big Law and executive experience I've described is a fit for this model. Apart from that background, the additional elements required are clarity of communication, a willingness to participate in and pragmatism in making decisions about risk, and a proactive approach that anticipates legal issues and finds ways to systematize processes in the business to get lawyers out of the way.

2. *The General Counsel, Ltd.*

The General Counsel, Ltd., founded in 1985, is unusual in that it is organized as a law firm; a majority of the others are organized as companies. It has consciously remained small in size to maintain collegiality and manageability. At the time of writing, its website lists five “principal attorneys” (two of which are women) with four “of counsel attorneys” (two of them women).⁶² The firm is in the Twin Cities area (Minneapolis/St. Paul), although the founder, Kent Larson, expressed interest in expanding. The lawyers average more than twenty-five years of in-house experience, and the firm’s website stresses that its lawyers are “key business advisors, not legal technicians.” Larson says the firm’s fees are significantly lower than those at Big Law, and they may be structured in various ways. “We typically have engagements that are long-term, ongoing, and involve either some level of effort,” such as quarter- or half-time, or, “handling a certain type of activity,” such as all employment matters. The firm’s website stresses its low overhead, passing cost savings along to clients, stating that “most services are delivered on a monthly, fixed retainer basis” with “substantial discounts available for retainer-based engagements, with the amount of the discount increasing with the level of hours required.”⁶³ For small projects, or one-off projects, General Counsel, Ltd. works either on an hourly basis, or according to Larson, “we may have some kind of a structured fee that’s tied to certain milestones or certain kinds of projects.” In other cases, clients pay a flat fee for “a percentage of the attorney’s time,” often thirty to fifty percent. In still other cases, the firm “will simply say . . . ‘I will handle our employment matters for a fixed monthly fee, and as long as it falls within reasonable boundaries, you’re covered with that.’” If, in a flat fee context, there is a “huge surge of work or special work that needs to be done, then we have to talk about that.” The flat fee structure “gives the client the ability to budget and it makes [costs] very predictable.”

The firm has no offices. As with most other Secondment Firms, attorneys work from home or at client sites. Larson estimated that the overhead at traditional law firms was in the range of fifty percent and said “our overhead is significantly lower than that.” Lawyers typically use support staff from clients, or hire assistance only as needed.

Larson added that the firm likes its lawyers to be working for General Counsel, Ltd. “at least half time or more,” but “the idea is that our attorneys work more or less ‘full-time.’ A number of them have other pursuits, so typically they’re engaged full time in various pursuits.”

62. *Attorneys–Directory*, GEN. COUNS., LTD., <http://www.gcl.com/attorneys> (last visited Dec. 18, 2015).

63. *Our Fee Structure Drives Value and Predictability*, GEN. COUNS., LTD., <http://www.gcl.com/about-us/our-fee-structure-drives-value-and-predictability/> (last visited Dec. 18, 2015).

One is an artist. Another has been a stand-up comedian. Another has a family business. Yet another was a state legislator. Several women joined as a way of balancing work and family. “In each case, we provided an opportunity for these lawyers to have really good meaningful engagements with clients and maintain their professional credentials and be satisfied professionally, and at the same time, have the flexibility in their lives that they needed and wanted to have,” said Larson. Attorneys were attracted by the ability to escape the billable hours “rat race,” and yet continue to do high-level work, which “they have a tough time finding [at] other places.” Another advantage from the attorneys’ viewpoint is the ability to have a “diversified clientele,” which both gives a wider variety of work and avoids putting “all your eggs in one basket.” Attorneys also get a “window into multiple corporate cultures,” which “allows them to spread best practices from one client to another.”

Lawyers do not need to bring in business, although at the time of the interview some did. The firm is “always looking for lawyers who can help bring in business,” and the firm was “working towards giving people an equity stake in the firm.” Lawyers are paid based on how much they work, offering workplace flexibility. However, it also means that attorneys need to feel comfortable with not getting a guaranteed salary and be able to “take the risk that goes along with building a practice. Not everybody either has kind of an entrepreneurial bent or has the ability to be an entrepreneur in the sense that they need a salary and they need predictable income right away.”

Larson did not disclose how compensation is structured, other than to say, “if somebody is a good originator, they get rewarded for that by the other people who are getting the work. For people who are good at doing the work, they end up being rewarded for that. We have to come up with a kind of a balance point that makes it reasonably equitable for everybody.” Origination credit sunsets, that is, it decreases over time. “Once the client is engaged with a lawyer, that lawyer’s the one who builds the relationship.”

Larson placed the firm’s clients into four buckets. First were “Fortune 100, 500, 1000 companies” with an existing legal department but who need someone to serve as regional counsel or division counsel, or need help with employment law or some other specific function. The next have small legal departments, often one or two lawyers, who need a bit more—“another quarter or half lawyer.” The third are small to medium-sized companies not big enough to justify full-time in-house counsel. For them, the firm can supply a part-time general counsel for eighty percent to ninety percent of their legal needs, and can find and supervise other attorneys to supply the remainder. The fourth are companies too small to have in-house lawyers, for which the firm works on a project basis.

3. *Outside GC*

Founded in 2002, Outside GC does mostly transactional work. At the time of writing, Outside GC's website listed forty-three attorneys (over half of them women), all of them non-equity partners.⁶⁴ The firm does not have junior lawyers; it has a "very specific set of requirements . . . that all the lawyers on our team have worked at a prestigious law firm, and have had significant time as in-house lawyers for more than ten years. That's a pretty high bar." Their attorneys have worked at "well-known companies" and graduated from "prestigious law schools."

Outside GC "really want[s] lawyers who are going to come and stay . . . we've only had something like five lawyers ever leave in eleven years. We're really proud of that, and that's really a big part of our value proposition to our clients that continuity of our team members." Their goal is to "give the lawyers ownership of the relationship. You know, that's part of what makes them feel excited, it makes them entrepreneurial." As a result, the firm typically gets "an incredible number of inquiries from fabulously talented lawyers" who would like to work there.

Most of Outside GC's attorneys come from corporate generalist backgrounds, although they do have some lawyers "who are more specialists in a particular area; so for example we have an immigration lawyer, and we have our patent and trademark lawyers." The workflow operates by assigning a primary lawyer for a given matter, who then "seeks assistance from other members of the team who have a particular expertise when matters come up for that client, where someone else on the team has a better background than they do for that particular project."

Outside GC's fees, typically between \$200 and \$300 per hour,⁶⁵ are "about a third of what the lawyers in the firms we're coming from are billing out at for people with the same number of years of experience." They typically hire lawyers who have been in-house, and pay roughly what in-house lawyers earn. "Now we're not paying our lawyers as much as the general counsel of Google makes, I'm sure. But someone who is general counsel for a small or mid-sized company or senior counsel at a larger company, we're paying very competitively to them compared to those kinds of jobs." Outside GC lawyers are paid essentially a percentage of the gross fee, in the range of sixty-five percent to sixty-eight percent.

64. *Meet the Team*, OUTSIDE GC, <http://www.outsidegc.com/business-contract-corporate-in-house-attorneys-lawyers> (last visited Dec. 18, 2015).

65. Sheri Qualters, *Area Lawyers Carve Niche as 'Outside' General Counsel*, 22 B. BUS. J. (Nov. 8-14, 2002), <http://outsidegc.web6.hubspot.com/Portals/62401/pdf/OutsideGC.pdf>.

They have three common arrangements. One is to provide general counsel services on demand, “at a rate substantially less than that charged even by smaller law firms,” according to their website. Another is to provide senior lawyers to handle a temporary overload in a legal department. The third common arrangement is to place an attorney to work on-site as a part-time legal counsel or to handle a work overload.

Outside GC keeps costs low in two ways. First, they only hire senior lawyers who are “really efficient” because they are “not learning on the client’s dime.” Second, they have kept infrastructure costs very low, so they “really don’t have any passed-through expenses” other than the lawyers’ time. They do have five nonlawyer professionals who provide administrative support for the team, “including accounting, billing, collections, ordering business cards and getting people’s emails and systems set up.” All five work from home and are working parents.

Attorneys are not expected to do business development, but are “lawyers who are really just good lawyers and that’s all they want to do. We don’t make them worry about being good at being lawyers and also being good at being business developers.” Very few bring in their own clients. When lawyers do so, they are rewarded financially, but the ability to do so is not considered in the hiring process.

The firm sees itself as “family friendly, woman friendly, alternative friendly. We really will allow people to define their own experience.” They have many people who work less than full time. One of the things that is “unique about Outside GC is that we have come up with a way to let people have a really professional experience as a lawyer, while not having to compromise their ability to have a holistic whole person experience with their families, their community, their personal life, whatever it is.”

Unlike the other Secondment Firms, Outside GC has “an office in the financial district of downtown Boston. It’s lovely,” said our informant, “but [we] really don’t go in there very much.” In fact, he goes about twice a month and said he is “probably there the most.”

4. *Phillips & Reiter PLLC*

At the time of this writing, the website of Phillips & Reiter, with headquarters in Houston and offices in Dallas, Austin, and Fort Worth lists nine lawyers (one of them a woman), all of whom are equity partners of the firm.⁶⁶ The firm was created in 2003 as a “third alternative for senior lawyers” in addition to law firms and in-house. Our informant, Gregory Phillips, one of the co-founders, said that the key in founding the firm was

66. PHILLIPS & REITER PLLC, <http://www.outsourcegc.com/> (last visited Dec. 18, 2015).

flexibility. I didn't like the idea of having to sit in an office if I didn't really have the work to do, or if I had completed my assignment. If I wanted to go out and coach my son's baseball team, I didn't like the idea of having to just show up on the weekends just because somebody needed to see me there. That just burned me up. I can manage myself. I know what I need to do. I don't need to play those games.

He also asked, pointing to Enron, "Are you going to put your fate in someone else's hands[?]" Or maybe, he pondered, "I'd rather put my fate in my own hands? . . . I'd rather be in charge of my own destiny."

The founders realized that technology meant they did not need a law library or an elaborate IT system, which enabled them to "put a dent in the law firm model" and provide legal services to clients at thirty to forty percent less than the cost of employing full time general counsel.⁶⁷ However, "I'm just telling you from starting a firm that it's not easy." You have to be good at business and "lawyers aren't traditionally good business folks. They don't have a stomach for risk."

Phillips stressed that "all of our attorneys are corporate generalists" doing "transactional corporate practice." The website lists corporate law and finance, intellectual property, energy, and international law as areas of practice. Most lawyers at the firm come from in-house (although many started out at law firms). Typically, they have been senior lawyers at a large legal department, or general counsel of a mid-sized company, and the pay is similar to someone working in those environments. Their office space is "A-, B+ space. We're not downtown. We don't have marble floors, mahogany wood furniture. All of our furniture, by design, is going to be similar to the furniture of an in-house lawyer, and it's all uniform. We buy it from the same place in every city." As is common in-house, they have a higher ratio of lawyers to administrative employees; at the time of the interview, they had three administrative employees for the twenty-eight lawyers in the firm. "We actually sell the fact that we're just like you guys, clients. You're a mid-market company. You're not downtown in the Penzoil Building or the Exxon Building. You're saving dollars as well."

Fees work in two ways: by the hour and on retainers. Hourly are "probably about forty percent less than the fees of our peers . . . in larger full-service firms," around \$300 to \$350 per hour. For that, "you get a very good lawyer, with a very good pedigree, top law school, top law firm." Phillips & Reiter also has a retainer model for clients who say, "look we want to use your lawyers for twenty hours a week." Typically, on-site Secondment Firms deliver a discounted rate. Our informant stressed, however, that they "don't really sell on price. We sell on the

67. Tonyia Sullivan, *Small Businesses Save Money by Hiring Outsourced Counsel*, AUSTIN BUS. J. (Feb. 10–16, 2006), <http://www.outsourcegc.com/wp-content/uploads/2009/05/abj-021006-hiring-outsourced-counsel.pdf>.

value and that's worked well for us." The informant further stressed, "You've got to be able to do the day-to-day stuff . . . You can't go work on an M&A deal every day." Most of Phillips & Reiter's lawyers have fifteen or more years of experience, with at least twelve years at the bottom end. Phillips explains, "All of our lawyers are similarly situated, at a similar point in their careers. Our lawyers pretty much manage themselves because they're incentivized . . . based on how much they want to make . . . because no one's beating on them." They "have a good work ethic, and they come to us for various reasons, most of it work-life balance and flexibility." Despite this flexibility, lawyers at Phillips & Reiter do have "kind of a minimum billing number of hours we'd like for [lawyers] to meet because that makes our economics work." Phillips did not specify a number but indicated that "full time" is less than what is commonly expected in Big Law, stressing that "we don't say bill 2000, 2500 hours because we want to just build, build, build and make a lot of money." Like other similar firms, attorneys at Phillips & Reiter are paid on a collections basis: "They get paid when the clients pay." Typically the lawyers keep "anywhere from forty-five to fifty percent of the billable hour. The rest goes to infrastructure and the rest goes to the firm" (presumably, to the five firm founders).

Phillips & Reiter retains more of the structure of a traditional law firm than some other Secondment Firms. As noted, all lawyers are equity partners, although there are "different classes of equity." The two name partners, Greg Phillips and David Reiter, are at the top. A managing partner runs the office in each city. In addition, committees provide advice and input from committees on risk management, technology, benefits, and employee matters. Lawyers move up the equity ranks into profit sharing "if they prove they can build up a practice over a twelve-month period," just as occurs in a traditional law firm. However, "because we give so much away on the front end, it's not like there's a big pot of gold."

Until recently, lawyers were expected to bring in one-third of their work, the firm provided the second third, and the final third was "co-developed." Shortly before our interview, the firm had shifted for new lawyers to a system where rainmaking is the province of the firm, not of the attorneys. "We'll bring on lawyers without a book, but we're very selective on who we bring on board. We only bring lawyers on board when we have the work there and when we see a clear path to getting them ramped up." The firm shifted to the new system when it realized that not every great lawyer is a great rainmaker. "We thought you could train lawyers on how to go do business development. Over time we found that [many] lawyers aren't that great at business development." But they also realized that many great lawyers were happy to settle for

lower pay than they initially realized, so they hired a consultant to help them identify target clients and figure out the best way to approach them.

Another way the business model has evolved is that the firm has gotten more selective. At first, they were not as “selective up front, and we hit some foul balls.” But, Phillips noted, “There are great lawyers out there who are kind of tired of the rat race.” The firm also changed in another way; for the first five years, about fifty percent of their lawyers worked at the client site, while the other half worked from home. As of the time of the interview, only about thirty percent work at the client site, while roughly seventy percent worked from home. The firm holds two firm retreats a year, one focused on business, while the other is purely social.

Clients are chiefly of two types. One is a mid-market company (\$5 million to \$200 million in revenue) which needed substantial services but suffers from Big Law sticker shock. “We step into that gap . . . They jump for joy when they find our firm because they get a lawyer who’s very experienced and can handle sophisticated matters, and know about business.” The second type of clients are big legal departments with a hiring freeze which have lost a key lawyer. The firm also does “their smaller deals that are less strategic where it doesn’t make sense to go pay a lawyer \$800 an hour to do a \$20 million asset divestiture.”

Despite its similarity in some ways to a traditional law firm, the central dynamics of Phillips & Reiter are different. “If you’re a partner in one of those firms you have an allocation that’s pretty high, where you’re probably required to hire so many associates, so many paralegals, so many administrators, so you’re going to get tagged with this bill at the end of every quarter that you’ve got to pay back to the firm . . . and if you don’t do it then you’re probably going to get asked to leave or you’re going to get dinged by your profit distributions.”

5. *InnovaCounsel, LLP*

InnovaCounsel, LLP was co-founded in 2005 (originally called the General Counsel) by Stuart Blake, who had recently left a general counsel position. His co-founder was Michael Oswald. The company is actually comprised of two entities—one is a law firm and the other is an LLC that provides business support, such as bookkeeping and other administrative functions for the firm. Blake started the company because during his time as general counsel, he worked with a number of small to mid-size companies who said they could not afford to pay outside firms for doing day-to-day legal work, nor full-time in-house counsel. Most of the clients they serve generate \$20 million to \$200 million in annual revenue.

InnovaCounsel works with clients on a negotiated flat monthly rate, based on the number of days attorneys will be on-site, with engagements

typically being one or two days per week. The engagements are open-ended, with some clients having turned to InnovaCounsel for nearly ten years. The more days per week the attorneys work, the more the per diem rate is discounted—following the same principle as buying in bulk—and offering savings over the daily rate for hiring traditional outside counsel. In fact, Blake estimated their rates as being equivalent to hiring a paralegal at a large law firm. Yet compensation actually received by the attorneys is commensurate with that of attorneys at a large firm, assuming InnovaCounsel lawyers were working five days a week. The company pays for malpractice but does not provide other benefits.

Attorneys work on-site and are as integrated as possible with the client's business, with company e-mail addresses, phone extensions, and their own offices. Because their attorneys are all senior level with many years of experience, they are able to quickly understand a client's business operations and work with management and staff to get things done. According to Blake, "One of the great benefits of working for InnovaCounsel is that, in a world where there is a finite number of general counsel positions and a fair amount of age discrimination, those who want to do senior-level in-house work have greater opportunity to do so."

Blake said that InnovaCounsel has encountered "some difficulty seconding its lawyers to fast growth companies, who often desire the imprimatur of a big name firm." There is also the issue that some firms specialize in providing counsel to startups and do so for "free," only taking equity in the company as payment. Also, because these investments are potentially very lucrative for law firms, they often compete for recommendations from startup venture capitalists, and "the startups are loathe to displease their funders."

6. *Conduit Law*

Peter Carayiannis is the founder of Conduit Law, a corporation in Ontario. Prior to founding Conduit, Carayiannis practiced for seven years at one of the largest law firms in Canada, leaving in 2004. Carayiannis explained his motivations for leaving:

It wasn't really all the fault of the billable hour, but most certainly that was a part of it. Working in a big law firm, I was challenged with conflicts of interest. I was challenged with developing new clients. I was challenged with getting the resources from the firm to actually develop a business. Ultimately, the partnership's interest in me was simply to bill more hours. I wanted to create a career; I didn't want to create a life where I was a docket monkey in some big machine. All of that together created friction.

Carayiannis' decision to start Conduit came about in a serendipitous manner. He had read about natural resources mining startups trying to

find capital for their businesses, and as part of this process, needing someone to function in a CFO role but not at a traditional full-time level. Seeing a market opportunity, chartered accountants in Toronto came together as a group to serve as part-time CFOs for junior mining companies on the Toronto Stock Exchange. Carayiannis recalled thinking at the time, “If a C.A. (chartered accountant) can be a part-time CFO, what’s to stop a lawyer from being a part-time GC?” Carayiannis now prefers the terms on demand or on-site GC, rather than part-time.

When Carayiannis left his firm, he had one client “who was interested in having me work from their office for two days a week.” He told us that he hoped “within a year I’d have three clients. I was frankly very unambitious. Within a few months, I had half a dozen clients. It was entirely word of mouth. I was working exclusively on a fixed-fee basis as the general counsel of all these different companies.”

Conduit’s delivery model is to place lawyers as in-house counsel available on demand for clients. Some of those counsel work at clients’ offices. They sit at a desk at a client’s office one or two days a week, maybe more. Sometimes it might be five days a week for a particular project, but typically, if an attorney is working four or five days a week, it is for a few different clients. The company also offers virtual in-house counsel, where the lawyer does not work at the client’s premises on a regular basis but is available on a direct approach from the client for long term periods. Conduit does not bill by the hour, except in unusual circumstances when it is required by their client. In 2014, ninety percent of their revenue was generated under alternative fee arrangements.

One of Conduit’s distinguishing features is that they are business-to-business rather than business-to-consumer. As Carayiannis explained,

That helps to give people a significant amount of discipline around the types of clients we can take on and the types of clients we can’t. Residential real estate, wills, estates, trusts, family law, criminal law, those types of matters really that are more traditionally placed in a high street practice are not part of Conduit Law. We don’t do it.

To keep this focused practice, when Conduit Law is approached with work that appears to be “consumer facing,” Conduit will decline the work and typically refer it to another firm.

B. EMPLOYEE SECONDMENT MODEL

I. Paragon Legal

Mae O’Malley founded Paragon Legal in 2006. She began her career in Big Law, then went in-house, moving to contract work after her children were born. Pretty soon she had so much contract work she brought on another attorney to help; then Google asked her if she could supply them with attorneys for various projects, and Paragon Legal was born.

At the time of writing, Paragon had more than sixty attorneys deployed on projects, with most of the company's clients based in the San Francisco Bay Area. Paragon's practice areas include tech and commercial transactions, intellectual property, corporate and securities, marketing, and employment, in addition to other areas.⁶⁸ Paragon is available to do various types of work including filling in for senior attorneys on leave, handling overflow work, support during peak periods, outsourced general counsel for emerging growth clients, and projects requiring specialized skills such as M&A work.

Paragon's original focus was startups, but O'Malley moved to public company work to find clients who could guarantee at least ten hours of work a week. Clients select a level between ten and forty hours per week, as well as how many days they want the Paragon attorney to be on-site. Switching to steadier public company work solved the problem of attorneys not being guaranteed enough income to justify paying for child care. Today, Paragon's clients include many tech companies, such as Netflix, Autodesk, Salesforce.com, and LinkedIn, to name a few.

The Paragon website promises that "Paragon selects only the very best, accepting fewer than ten percent of applicants—but we skip the attitude that often accompanies 'high-end' attorneys." At the time of writing, over sixty-five percent of attorneys on the team were women. O'Malley told us that it took a while to develop "marquee" level work; once that happened, "the rate at which we could bring in attorneys of the appropriate level of experience has never kept up with the rate at which the work comes in."

Today, Paragon guarantees attorneys an agreed-upon number of hours (typically between ten and forty per week) but does not guarantee that its attorneys will be working year-round, although "the vast majority" of attorneys do. Paragon attorneys typically make "equal, if not better pay, than where they were coming from on an hour-for-hour basis." All attorneys at the same level of seniority are "effectively paid the same and billed out at the same rate." Paragon attorneys typically work at the client site rather than from their homes, although telecommuting is an option.

This model is attractive to the client by offering a predictable spend and lower rates. O'Malley estimates that "we're charging not even a third" of Big Law rates and the firm has little overhead. In addition to O'Malley, the firm's lean management team includes a Director of Recruiting, Human Resources Manager, and Operations Manager. Paragon is organized as a law firm, and since 2011 has offered healthcare and a 401k. O'Malley considers Paragon Legal as "very market competitive with our benefits package." Paragon expects attorneys to

68. PARAGON, <http://www.paragonlegal.com/> (last visited Dec. 18, 2015).

come in “trained at a large firm for several years, and then [have] gone in-house and have at least eight years of experience, with the average being closer to twelve to fifteen years.” What Paragon offers is “really, really complex work at a low rate.” The majority of female attorneys at Paragon are “mothers raising school-aged children,” said O’Malley, although many do not have young children. “We have a lot of [Baby] Boomers on our team,” she said. Attorneys are not expected to do business development.

Paragon hires the attorneys, and then matches them to projects, “in a very collaborative process with the clients.” The firm is “very attorney focused,” asking the attorneys what they are looking for, so then, “matching them accordingly with a project makes it such that the attorneys are going to have a high likelihood of being happy . . .” In the rare case when an attorney no longer wants to work on a project, Paragon will take them off it. “I’m nothing if I don’t have attorneys, right?” said O’Malley. “That’s my product,” O’Malley told us, “We figure as long as we keep our attorneys super happy, they’ll keep our clients really happy, and that’s the best business development we can do.” Paragon’s model has worked so well that “we don’t do any business development anymore.” In the rare situation where a client is not happy with an attorney, Paragon will restaff with a different attorney.

At the time of our interview, O’Malley noted that Paragon’s business model was changing due to “client demand for junior, more entry-level attorneys who are really, really pedigreed [with] nice, strong academic credentials and one to two years of very top firm experience.” As a result, “we’ve gone beyond moms looking for jobs to much more junior attorneys who have figured out pretty early in the game that their longevity at a traditional firm [is limited].” Junior lawyers, typically with one to three years of experience, are called “Counsel” and are paid commensurately less than “Senior Counsel,” meaning those with over eight years of practice.

“We are looking for attorneys who have decided to make a long-term career change and who want to work within our model for many years, as opposed to looking at us as a temporary end-term solution.” According to O’Malley, attorneys who leave Paragon do so typically not because they are unhappy, but because they decide to “step back into the permanent job market” for a variety of reasons.

Paragon, which doubled in size each year for many of its early years, expects slower growth in the future. O’Malley notes that her initial motivation—her own work-life balance—necessitates that limit for the time being.

2. *Bliss Lawyers*

Deborah Epstein Henry is a co-founder and managing director of Bliss Lawyers, a Secondment Firm that shares some characteristics with Virtual Firms. Epstein Henry is also an expert in the development of new legal models, having written two books on the issue: *Law & Reorder: Legal Industry Solutions for Restructure, Retention, Promotion & Work/Life Balance*⁶⁹ and *Finding Bliss: Innovative Legal Models for Happy Clients & Happy Lawyers*.⁷⁰ The latter of the two was co-authored with Suzie Scanlon Rabinowitz and Garry Berger, Bliss' other co-founders. Their client base includes law firms as well as in-house legal departments across industries like financial services, technology, media, research and development, healthcare, energy, real estate, and consumer products. Attorney specialties are diverse, including corporate, litigation, intellectual property, compliance, licensing, M&A, trusts and estates, employment, and real estate, among others.

Prior to co-founding Bliss in 2011, Epstein Henry ran (and now leads) Flex-Time Lawyers, an international consulting firm she started in the 1990s. Flex-Time started as a support group of 150 lawyers focused on work-life issues. The group has now expanded to an immense network of attorneys focused on work-life balance, women's issues more generally, and issues impacting the future of the legal profession. Bliss began partly as an outgrowth of Epstein Henry's work seconding lawyers from her Flex-Time network to Berger and Scanlon Rabinowitz at Berger's virtual firm, Berger Legal. They then began to engage lawyers to work through Epstein Henry and Scanlon Rabinowitz's Fortune 500 and law firm client relationships as well. After working together for three years through Berger Legal, in 2011, the demand became so great that the three started what became known as Bliss Lawyers as a separate entity. As of 2015, Epstein Henry put the size of Bliss' network of lawyers as "over 10,000."

There were two primary motivations for starting Bliss, apart from filling the market niche. The first was the development of a New Model of legal practice in a field where the traditional model was becoming increasingly unresponsive to client needs and dysfunctional for attorneys. The second motivation was providing lawyers an alternative career path. One of the catch-22's of recruitment for in-house counsel is that most companies will only hire those with previous in-house experience. Because it begins as a temporary arrangement, secondment alleviates some of the risk for clients that comes with hiring permanent in-house

69. DEBORAH EPSTEIN HENRY, *LAW AND REORDER: LEGAL INDUSTRY SOLUTIONS FOR RESTRUCTURE, RETENTION, PROMOTION AND WORK/LIFE BALANCE* (2010).

70. DEBORAH EPSTEIN HENRY ET AL., *FINDING BLISS: INNOVATIVE LEGAL MODELS FOR HAPPY CLIENTS AND HAPPY LAWYERS* (2015).

staff. For this reason it opens a path for attorneys who want to transition to in-house.

The secondments on average last a year, and attorneys most often work on-site with the client, but may also work at home, or a mixture of the two. One concern with secondments is that because attorneys are working on-site at a company where they are not an employee, they will be treated like second-class workers, a status that is at odds with their high level of skill and average of fifteen years of experience. To prevent this from happening, Epstein Henry and her co-founders work with clients to make sure their secondees can participate in team meetings, have office space comparable with other permanent in-house staff, and have an e-mail address with the client's domain name.

Clients are attracted to the model for a number of reasons. Because Bliss' back-office operations are virtual, the dramatically lower overhead means they can charge substantially lower rates—one third to half of traditional firm rates, by Epstein Henry's estimate. They typically charge flat fees rather than bill by the hour because that is what clients have told them they want. Importantly, Bliss is a certified women-owned business and over sixty-five percent of their engagements are women. Bliss' status as a women-owned business helps clients meet their goal of using diverse suppliers, and the fact that a majority of Bliss' secondments are women also gives clients who want to increase their management level representation of women a chance to try out female attorneys.

Epstein Henry says that their lawyers join the network for numerous examples, including: parents or other lawyers in transition looking for a way back into their careers; lawyers looking for more flexible work due to their entrepreneurial spirit or as an opportunity to reinvent; lawyers with varied in-house experience interested in expanding the industries in which they work; lawyers at the senior arc of their career who are not ready to retire but who want more choice and flexibility in their practice; law firm lawyers who have been trying to transition to in-house practice and cannot do so without in-house experience; and those looking for more predictability in their work life (they choose whether they accept work offered by Bliss). Epstein Henry characterized compensation as "generous" and "on the higher end" among secondment companies. Bliss provides its employees with healthcare, insurance, a 401k, a 529 plan, and Continuing Legal Education ("CLE"). As part of their commitment to making sure their secondees don't feel like second-class citizens, they also offer year-end bonuses, which are common among permanent employees at their financial services clients and elsewhere.

When it comes to running the firm, in addition to the three co-founders, they have a Chief Financial Officer, Director of Talent, Talent Relationship Officer, two Talent Officers, a Data Base Manager, and an

assistant. Co-founders generate clients and help with recruitment of talent. Additionally, Epstein Henry focuses on building the company brand and increasing its visibility through her public speaking and writing, Berger serves as the company's General Counsel, overseeing contractual negotiations and the legal aspects of the business, and Scanlon Rabinowitz concentrates on the company's operations and marketing initiatives. The Director of Talent and her team vet talent and work with the client originator to identify candidates and liaise between the client and secondees before they have been engaged.

III. LAW AND BUSINESS COMPANIES

Traditional rules that prohibit nonlawyers from partnerships with lawyers have meant that few lawyers work in companies that combine many different skill sets, similar to the manner of management consulting firms like McKinsey & Company. We profiled two New Models firms breaking free of that tradition by merging law and business in this new way.⁷¹ This key similarity between the companies profiled for this Article should not veil the huge differences between them. For example, Axiom is one of the few New Models companies that has grown as large as Big Law, with over 1200 professionals; another, Exemplar Companies, Inc., has fewer than twenty-five people. Axiom is unique in other ways as well. It combines two quite different New Models: part of its business ("Insourcing") is a secondment model, while another ("Managed Service") is a Law and Business Company that has carried the trend of least-cost segmentation toward its logical conclusion. Despite these success stories, this movement has just begun and has met bumps in the road. One of the firms originally interviewed for this report (Clearspire) went out of business between the time we interviewed it and the publication of this Article.

One thing preventing more New Models from operating in this field is the litany of ethical regulations precluding lawyers from sharing fees with nonlawyers. But these rules are coming under attack; if the challenges are successful, the market might witness an increase in organizations that combine legal with business advice and/or financial services.

A. AXIOM LAW

An order of magnitude larger than any other new model firm, Axiom has over 1200 people in seventeen offices and "Centers of Excellence" in the United States, Ireland, Poland and India. Its clients include "over half the Fortune 100 companies," said Abbey Yvon,

⁷¹ Another company, LegalForce RAPC, the firm behind Trademarkia, did not respond to interview requests.

Marketing Director at Axiom. The website lists technology and commercial transactions, mergers and acquisitions, life sciences, financial services, regulatory and compliance, intellectual property, and employment as areas of practice across all three divisions.⁷²

Initially, the firm focused on Insourcing, their take on a secondment model. Axiom “stripped seventy percent of the cost-structure from the delivery of sophisticated legal services,” said Yvon. Axiom separates rainmaking from lawyering—an attractive proposition for many lawyers. Attorneys are hired at a specific annual salary but only get paid for the time they actually work. “Some appreciate the flexibility to take six months off to travel the world or to work only two or three days a week,” Yvon told us. “If they choose the former, they’re not guaranteed an engagement when they wish to return, but an attorney in good standing would typically take priority over an attorney who had never worked with Axiom,” she noted. “Most of our attorneys, however, want to work full-time and, for them, the key draw is Axiom’s client base of Fortune 500 clients and sophisticated work,” she said.

“Axiom attorneys are eligible for annual raises, receive full benefits, and are given extensive professional development opportunities including mentorship, memberships to Practising Law Institute (“PLI”) and other professional organizations, and an integrated network of peers just as they would at any traditional firm,” Yvon said. Once a part of the Axiom team, attorneys are assigned a “professional development manager tasked with making sure attorneys are happy on their engagements, that they’re enjoying their Axiom experience and that everything’s running smoothly,” she continued.

In 2010, the firm branched out into its fastest growing “product line”—what it calls its “Managed Service” business. The idea is to combine law and business advice, marrying legal skills with the process and project management orientation of management consulting—with an important difference. Whereas management consultants typically delineate strategic vision and then end the engagement, Axiom is designed to fully execute: to carry out the strategic plan, with the goal of having long-term relationships providing services to its clients.

Axiom’s Managed Services take segmentation of the market for legal services toward its logical conclusion, replacing the “old artisanal model” with a new model that combines project management, process innovation, and technology to the delivery of legal work to “drive simultaneous improvement in risk-mitigation and cost-mitigation,” said Axiom’s Liana Douillet Guzmán. For example, instead of having commercial contracts drafted one by one by individual lawyers, Axiom

72. *Industries*, AXIOM L., <http://www.axiomlaw.com/what-we-do/overview/industries> (last visited Dec. 18, 2015).

might propose first to leverage technology to standardize a company's commercial contracts, and then to segment different roles to people with specialized skill sets. Unlike Axiom's Insourcing division, legal professionals who work in this arena are hired full-time at a guaranteed annual salary.

Axiom has proprietary software that provides contact management and data analytics, and it develops "playbooks" to standardize responses to various business scenarios. The combination of standardization and playbooks allows companies, said Douillet Guzmán, to respond quickly to world events or market changes, improving a company's ability to manage business risks.

B. EXEMPLAR COMPANIES, INC.

Exemplar Companies is credited with being "the first law firm in the nation to abandon hourly billing in favor of exclusively fixed pricing," and "the first registered Investment Bank to combine with Law and Consulting under an integrated brand."⁷³ As noted by its website, "Exemplar is a closely integrated family of companies," which includes Exemplar Law LLC, Exemplar Tax and Accounting, LP, Exemplar Consulting LLC, and Exemplar Capital, LLC, a FINRA-Member Broker-Dealer.⁷⁴ Exemplar's website lists twenty-five professionals. Five are women, including three at the law firm and two at the consulting firm. Christopher Marston founded Exemplar Companies in 2005.

"Exemplar is really a product of looking at the woes of the professional . . . the complaints of clients, and creating what we see as the knowledge 'Firm of the Future,'" said Marston, whom we interviewed. "Super-siloization of the work force" means that "you've got the very narrow, non-transferrable skill sets. People don't see the forest through the trees. They aren't able to give advice on the big picture level, 10,000 foot level, and businesses want holistic advice." Marston has both undergraduate and graduate business degrees in finance and was the CFO of a high tech company before founding his business. "So my knowledge of both the pricing, finance, economics, and economic theories that underlie pricing strategy was greater than most people who come out into practice."

The additional focus on finance led Marston to conclude that "lawyers couldn't solve a lot of problems" because businesses "needed business advice and capital help." Exemplar is the convergence of four business units: a law firm, a tax and accounting firm, a business advisory firm, and a federally registered broker-dealer investment bank. Marston

73. Press Release, CSR Wire, Venture-Backed Companies Put Social Impact on Par with Financial Returns (Aug. 1, 2013), http://www.csrwire.com/press_releases/35966-Venture-Backed-Companies-Put-Social-Impact-on-Par-with-Financial-Returns.

74. EXEMPLAR COMPANIES, INC., <http://www.exemplarcompanies.com/> (last visited Dec. 18, 2015).

drew an analogy to primary care in medicine. “You don’t take a drug that helps your kidney[s] without thinking about what the drug does to the liver. Everything, all systems are interconnected.” In keeping with the analogy, Exemplar’s business model is to deliver “holistic care” to “high-growth, mid-market companies.”

Exemplar employs “a lot of cross-disciplined, multi-educated professionals” with multiple degrees. It took a while for Marston to find the right people, he said, because “a lot of people said ‘yes, I want to be on the bus,’ and a lot of them couldn’t drive the bus.” While a traditional law firm hires people who have skills and competence, “we need skills, competence, leadership, business savvy, social savvy, and conscious/worldly people.” The firm uses innovative hiring methods to find attorneys who fit in with the culture. A candidate must first make it through four to six interviews with partners.⁷⁵ Often, Marston will then gather a group of attorneys together with the candidate to play a board game called “Apples to Apples,” which requires players to match nouns to adjectives.⁷⁶ In accordance with the firm’s “no-jerks” policy, Marston likes to see how potential candidates compete.⁷⁷ The firm does not have partners or associates, but instead operates on a corporate structure: “We have team members and of course we have leaders at all levels of the organization people who lead initiatives, people who lead industry initiatives, geographies.”

Central to Marston’s vision of offering integrated legal and business advice is a shift away from hourly billing. To Marston, the labor theory model of pricing is “the worst business model you could possibly execute on. You are selling increments of time—something that your customers simply do not want to buy,” he said. Marston shifted to “fixed and value-based pricing.” “[W]e establish the value of the thing and both parties nod their head and say this looks good to us, let’s do it, and everybody’s happy.” If Exemplar’s clients believe that the value of a service is less than they were charged for it, Exemplar is willing to renegotiate the price, though this has rarely happened since Exemplar’s founding.⁷⁸ Marston developed the Exemplar Value Index, which estimates the value of the engagement, and of each individual’s contribution: “We have six major factors and dozens of smaller [ones] . . . that factor into the compensation index,” in contrast to traditional law firm models, which focus on origination and production. Marston’s index adds other roles, including project manager, strategic account manager (managing the relationship across Exemplar’s business units), openers (who bring new

75. Steven T. Taylor, *Running Ahead of the Pack: Trailblazers in the Law Firm World*, 35 LAW PRAC. MAG. 30, 32 (Apr./May 2009).

76. *Id.*

77. *Id.* at 32–33.

78. *Id.* at 32.

relationships into the firm), and closers (who scope pricing and close the deal). Separating the various roles is important, Marston noted. For example, in a law firm, the relationship partner typically is the same person in charge of doing the work. “So nobody is going to go to the relationship partner and tell them that the service from that partner is terrible.” Valuing all of these functions separately creates an “ecosystem,” eliminating client hoarding and incentivizing cooperation.

Value pricing also eliminates a common problem, said Marston: “winner’s curse.” This occurs where Big Law bids up salaries so high that to recoup the value, the firm must work lawyers so hard that attrition rates grow. This hurts the firm as new lawyers are paid so much that the firm loses money for the first two years, and “ends up with burnt-out professionals living a miserable existence, some even getting divorced or becoming depressed.” Some even leave the firm, resulting in a wasted investment. Instead, value pricing “makes everyone a stakeholder in firm outcomes,” Marston noted. It also makes people more focused and productive because “[i]n our model, you make more money by being efficient.”

While stressing that “it’s possible to make pizza so cheap no one wants to eat it,” Marston estimated that Exemplar saves clients twenty to thirty percent, as compared to the fees for an AmLaw 100 firm. “It’s not because we have low overhead or work from home. That’s baloney.” It is because “you’re charging for value and . . . motivating your team members to be efficient. If your team members don’t have to write ridiculous twenty-page memos that nobody wants to read, what you’ll find is that they can achieve outcomes for clients a lot more effectively and efficiently.” Often what clients want is not a resource draining memo, but for their lawyer “to pick up the phone and give you the bottom line and let you ask as many questions as you want.”

The firm does control overhead costs with modern open-format office space, but they also have offices in downtown areas. He used Boston as an example: they have office space in Faneuil Hall at half the price per square foot of a typical Big Law office—but the space also communicates “our brand is an innovative firm . . . brick and beam, very cool, approachable. It makes people feel comfortable and helps them realize that they really are with the thought leaders and the market leaders.” Exemplar’s office space has a gong that attorneys bang when they close a big deal or win a case.⁷⁹ Marston concluded that the long-term answer “is [not] just to send everyone home and have them work from home. I don’t want Gillette to send all of its people home so I can buy razors at fifty percent off. Our profession needs community, teamwork, and leadership to solve sophisticated problems for customers.”

79. *Id.* at 33.

IV. LAW FIRM ACCORDION COMPANIES

“A lot of people I talk to are just basically beside themselves with joy to discover that something like this exists. [They ask] . . . ‘Why has it taken so long for someone to do this?’”

Accordion Companies provide law firms with the ability to “accordion up” when there is a surge of work, and fold back down when that work is completed. These five Law Firm Accordion Companies provide law firms with a network of carefully curated lawyers to tap into those situations. Sometimes the Companies offer a firm access to specialists it might not have, but more often the Companies provide firms access to outside help that otherwise might overtax the attorneys employed by the firm. By far the largest is Counsel on Call, which has 900 attorneys and was worth nearly \$50 million in 2013.⁸⁰ Most of the other companies have networks of about 100 attorneys.

Law Firm Accordion Companies provide employment for the tranche of women who often identify as stay-at-home mothers but want to keep their skills sharp and avoid a gap in their resumes by working ten to twenty hours a week. The Accordion Companies also include many lawyers who have their own solo practices, but also sign up to get additional work from the Accordion Companies. By gender, the firms vary; some firms are composed almost entirely of women, while at others, like Cadence Counsel, applicants are about evenly split between men and women.

Accordion Companies are not law firms. Typically, they are solely owned companies. Like Secondment Firms, they are matchmakers, but typically they connect lawyers with law firms rather than directly with clients—although some work both with law firms and companies as in-house lawyers. Conflicts of interest are avoided because the attorney-client relationship is with the individual lawyer—not the Accordion Firm. Rainmaking is generally the province of the founder or head of the company. Some Accordion Company networks were founded, very self-consciously, by former Big Law attorneys and aimed at former Big Law attorneys; others throw a wider net.

These networks not only help the attorneys achieve work-life balance; they also allow better work-life balance for the Big Law firms that hire them by allowing the law firms to outsource peaks of work. “We also see it as a retention tool for the firms themselves and a way to promote more work-life balance for their attorneys because they know that when things get busy, they can call in some help,” said one founder.

⁸⁰ E.J. Boyer, *Nashville Businesswoman Becomes Face of Wal-Mart's Global Campaign*, NASHVILLE BUS. J.: NASHVILLE BIZBLOG (Aug. 29, 2013, 1:43 PM), <http://www.bizjournals.com/nashville/blog/2013/08/local-business-owner-becomes-face-of.html?page=all>.

Law Firm Accordion Companies help solve two problems commonly faced by lawyers working part time that most law firms have never managed to solve. One is stigma. Jane Allen of Counsel on Call discussed how she helps workers to overcome resistance with clients who have difficulty understanding how a lawyer can work effectively on a part-time basis. The other is schedule creep. Erin Giglia of Montage Legal Group discussed how she serves as the go-between, working with the law firm to find solutions “that lawyers will call me and say, ‘Hey, Erin, I’m supposed to be working twenty hours a week. I’m working thirty. I’d love to keep this up, but I can’t. So can you bring someone else in to help, and I [will] carve out discrete projects to reduce my time?’” Having the business owner negotiating for her part-time lawyers proves far more effective than requiring a fourth-year associate to negotiate with a supervisor who is not respecting her schedule. In effect, Law Firm Accordion Companies can accomplish what law firm part-time policies rarely have: they shift time norms away from full-time face time.

A. COUNSEL ON CALL

Counsel on Call was founded by Jane Allen as a way of keeping talented lawyers in the profession. The company, which had nearly \$50 million in revenue as of 2013,⁸¹ has over 900 lawyers practicing in the United States and Europe, and serves one-third of the Fortune 100 companies according to its website.⁸²

Some fifteen years ago, Allen was looking for law clerks and ended up speaking with former judicial clerks who “didn’t want to bring in business in the traditional sense but were really good and . . . loved” the law. Allen mused, “What if we had those lawyers and we could provide them to the attorneys that needed [help]?”

Counsel on Call’s clients “first and foremost . . . care about quality.” If they care more about price, they go elsewhere. “I don’t care if it’s a box of documents, if I’m paying a lawyer to go through it, the lawyer better find the document that I would find,” according to Allen. But the firm does far more than the routine “going through boxes” work. Their website touts “expertise in virtually every practice area”⁸³ and ability to “produce consistently high-quality work product at low-cost, all custom tailored to our clients’ specific needs.”⁸⁴ Commonly requested areas of work include document review and coding, eDiscovery, litigation, corporate transactions, contract review and abstraction, and managed services.

81. *Id.*

82. *Who We Are: Company Stats*, COUNS. ON CALL, <http://counseloncall.com/who-we-are/> (last visited Dec. 18, 2015).

83. *Id.*

84. *Id.*

Counsel on Call attorneys generally graduated in the top third of their class from top-tier law schools and have at least three years' experience working at large firms or in-house.⁸⁵ According to Allen, most of her attorneys make about the same per hour as they did in their prior positions. Attorneys only get paid for the engagements they work on, which is what the flexibility of the model is based on—from both the client and provider standpoint. “There’s always a concern with ‘can I be guaranteed a certain amount of money,’ but we don’t operate that way. There aren’t any guarantees under this model, but generally lawyers work as much, or as little, as they want.” As of 2008, Counsel on Call was billing clients between \$50 and \$125 per hour, and paying its attorneys between \$35 and \$85 per hour.⁸⁶

There is also no expectation that attorneys have a book of business. “We bring the work,” said Allen. That said, some lawyers have brought in clients for whom they work a day or two a week. This overcame a key hurdle for attorneys working flexibly; attorneys on more traditional schedules literally cannot bend their minds around how to manage part-timers. “We had some clients who really wanted to work with our lawyers, but the whole idea of somebody only working twenty hours a week—they really had a hard time being able to manage that.” So Counsel on Call manages for them. Counsel on Call takes care of paying lawyers’ salaries, covering them for purposes of workers’ compensation, unemployment insurance, and disability insurance. It also offers continuing legal education, and enables them to meet other lawyers on the Counsel on Call network to counter the isolation of working from home. Allen said that they do not offer health insurance because insurance companies typically require someone to be working full-time. Cost containment is taken seriously, but it is balanced with “treating people the way we would want to be treated. I would never ask any of my lawyers to work in an environment that I’m not willing to work in myself,” said Allen.

Their part-time model helps Counsel on Call to offer career progression. In some practice groups, “we’ve had people who have worked with us for so long” that they have progressed into team management roles. For example, there is now a lawyer who is “in charge of all four labor and employment lawyers across the country.” Counsel on Call provides an on- and off-ramp for lawyers who “[f]or whatever reason at that point in their life decided, [they] ‘just need to take a step off the fast track but . . . don’t want to be off completely.’” Allen told us about “a brilliant lawyer and an amazing researcher and writer” who

85. Martha Neil, *Counsel on Call Brings More Contract Attorney Options to Boston*, A.B.A. J. (May 5, 2008, 3:19 PM), http://www.abajournal.com/news/article/counsel_on_call_brings_more_contract_attorney_options_to_boston.

86. *Id.*

worked with them until her son went to college, after which she went back to a full-time law practice. The lawyer said “it was amazing how easy it was to go back in” because of her work with Counsel on Call. She now runs her own practice group.

Although many are mothers, others are attracted to this model for varying reasons. One is a breast cancer survivor who “figured out a long time ago that life’s way too short.” She has been with Counsel on Call for over a decade and is “one of our superstar lawyers.” Other lawyers “want to coach their little league or their soccer or their dance classes.” In Nashville, they have a lot of songwriters and musicians, including some who go on tour. “We have people who are writers. We have people who love to travel. We have people who love to garden. You name it.” One lawyer competes internationally in Ironman races. Another is a former managing partner of a large law firm. Still another has spent his entire career serving in a series of general counsel positions for corporate clients and is the firm’s “general counsel on call.”

Counsel on Call very consciously takes on the flexibility mantra. “In our mind we’re helping change the profession for the better and our lawyers are treated as the professionals they are.” Allen said, “just because somebody’s choosing not to be on the partnership track doesn’t mean they’re not a really good lawyer.” She recalls potential clients going through CVs and “the eyes would just get wider and wider because, it’s ‘man, these people may be better lawyers than me.’”

Counsel on Call actively manages workflow so as to preserve attorneys’ work-life balance. Allen noted that sometimes a deadline means that work on an atypical schedule is unavoidable. “Is it a deadline that all of a sudden a judge just popped on you on a Wednesday that you have to produce by Tuesday? If that’s the case, it’s called litigation.” But if the last-minute crisis was due to a client’s failure to plan, Allen said, typically she will try to make sure it does not happen again. Their attrition rate is less than three percent, which according to Allen means that lawyers can be “assigned to the same client for years.” Typically, people leave because of life changes, such as when their youngest child begins school and they want to return to a full-time position.

Over the past five years, their model has evolved because “we understood pretty quickly that whenever you had two or more lawyers working you needed to have a process, you need to keep track, and you need to provide metrics.” So they set up managed service centers where lawyers came to work instead of working from home. Attorney managers attend the company’s training program, which teaches effective team management and communication. Counsel on Call currently has offices wherever they have a critical mass of lawyers—ten was the number mentioned. This organizational infrastructure is developing gradually. Counsel on Call has lawyers who no longer practice but perform business

functions. Some work with clients, while others work with candidates. “If someone has a meeting [with a client], then they’ll let this lawyer know and she’ll work to identify who is the right lawyer or lawyers for that client,” said Allen. Then they consult with the lawyer and the client to “make sure it’s a good fit.” They also have teams that demonstrate and assess new technology.

Another push is to develop internationally. Counsel on Call has a “vast number” of foreign language speakers whom they market to clients who need legal expertise abroad. The question, said Allen, is “do you need people sitting in the U.K. or can you have lawyers who worked in the U.K. who are residing in the U.S. now?” As of the time of writing, Counsel on Call is considering opening up offices abroad.

B. MONTAGE LEGAL GROUP

On its website, Montage Legal Group characterizes itself as “[f]ormer prestigious firm attorneys providing freelance/contract legal services for law firms nationwide.”⁸⁷ This captures the thrust of the Law Firm Accordion Companies and how they distinguish themselves from traditional legal staffing companies. Montage lists high-prestige names, noting that their attorneys have degrees from Harvard, Georgetown, and Columbia, and cataloging the “prestigious law firms” that trained them. The other chief message of the website is communicated visually: there is a photo of the founders with their small children.⁸⁸

Laurie Gormican Rowen and Erin Clary Giglia co-founded Montage in 2009 “because the traditional law firm didn’t work for what we needed to achieve in our own lives,” Giglia said. Each invested just \$2000 in the company.⁸⁹ Montage has over 100 attorneys, and according to Giglia, its attorneys all have at least five years of Big Law experience, clerking, or “something similar, a DA’s office or something like that.” According to Giglia, most Montage lawyers left Big Law after having children.

The company began in California, but has grown to a nationwide presence, with concentrations in California, New York, and Washington, D.C. The website lists twenty-eight specialties including criminal law, employment, immigration, tax, appellate, bankruptcy, juvenile law, health law, and entertainment law. Montage’s ideal clients are attorneys

87. MONTAGE LEGAL, <http://montagelegal.com/> (last visited Dec. 18, 2015).

88. *About Us*, MONTAGE LEGAL, <http://montagelegal.com/> (last visited Dec. 18, 2015).

89. Mamie Joeveer, *How Two Stay-At-Home Moms Are Changing the Legal Industry*, FORBES (Aug. 27, 2014, 11:03 AM), <http://www.forbes.com/sites/mamiejoeveer/2014/08/27/how-2-stay-at-home-moms-are-changing-the-legal-industry/>.

who left Big Law to found their own firms.⁹⁰ They typically call Montage for help, Giglia noted, when they “get busy for a period of time due to . . . trial schedules or a big deal is going to [close] . . . or for whatever reason, they get really busy.” Montage also works a lot with smaller law firms. If such firms are “looking to get a client that has quite a large matter, they will often use Montage Legal as part of their pitch.

Attorneys are free to accept or reject work as they wish. At the time of the interview, Montage attorneys typically worked from five to forty hours a week, although some worked up to sixty. When asked what a typical engagement looked like, Giglia said “usually, it’s more like five to twenty hours a week for the next three weeks.” Or it might be one attorney for “twenty hours a week of litigation work for a period of time.” Montage attorneys do anything from drafting pleadings to second-chairing a trial. “Sometimes, we’ll be asked to come in and train associates who may need a little bit of additional help to try to build up a practice area within a small firm.” A third scenario is to help on discrete projects, typically with a short turnaround time. Firm attorneys might need to focus on depositions and trial preparation, and “they don’t have the people to sit down and spend the seventy hours that it might take to oppose an extremely complicated and very important motion for summary judgment, for example,” noted Giglia. Although many engagements are short term, at the time of the interview Montage had worked continuously with some clients since 2010.

Montage made over \$1 million in revenue in 2013.⁹¹ Rates vary according to the type of work completed, ranging from \$75 per hour for document review to the range of \$200 to \$225 per hour for more sophisticated tasks. The company typically retains twenty percent of the rate, “but we’ve taken much lower than that” depending on the situation. If a Montage attorney generates the business, the company takes a lower percentage; attorneys with Montage are independent contractors who are paid only when they work. Many take on other work in addition to their role at Montage, including serving as adjunct law professors, maintaining solo practices, and working with employment agencies. Montage has neither offices nor technology. Instead, Montage attorneys work directly with other law firms, not sharing their materials with anyone else at Montage. Therefore, there is no attorney-client relationship with Montage, and thus no conflicts problems.

At the time of the interview, Giglia estimated that about ninety-five percent of Montage lawyers quit their previous law firms after having babies. Some start work with Montage right away, while others on-ramp

90. G.M. Filiako, *Freelance Law: Lawyers’ Network Helps These Women Keep a Hand in the Workforce*, A.B.A. J. (Aug. 1, 2011, 6:40 AM), http://www.abajournal.com/magazine/article/freelance-law-lawyers_network_helps_these_women_keep_a_hand_in_the_workforc.

91. Joeveer, *supra* note 89.

after a substantial career break. Military spouses are another demographic attracted to the Montage model. When one woman's husband was deployed to Afghanistan, she moved to Los Angeles for eight months. Since it was not practical to find a full-time job for just eight months, she worked instead with Montage. The one man with Montage at the time of our interview was starting his own solo practice. Since then, approximately a dozen men have joined the network.

"I really enjoy practicing law. I feel strongly about being able to continue practicing law because I had all this education and training," Giglia said. She did not want to become a stay-at-home mom, and thought, "I'd like a little bit of extra . . . high-level, essentially temporary lawyer work just to supplement our family income." Like many others, she tried part-time at her law firm and found it did not work for her. "It was actually far more stressful to be part-time." Having "two very, very hectic schedules" between her and her husband did not work. "Mainly, sleep was the problem."

"Everyone knows someone," said Giglia, who found that "this is not worth it." She went on, "I don't want to be working sixty, eighty hours a week At the same time, they're programmed. Their personality traits don't necessarily lend themselves to being home full-time. They feel like they want to use all this training and motivation . . . to continue practicing but just in a different way." As Stone points out in her book, most stay-at-home professional mothers do not actually *want* to stay at home.⁹² They just want high-quality, non-stigmatized, and flexible work. Montage provides that. Because Montage was meeting a need unmet by the market, Montage was "completely flooded with people who wanted to come and do this with me." As of the time of our interview, Giglia noted, "I get . . . between ten and twenty calls a day from attorneys all over the country dealing with this issue"—calls and resumes.

C. CUSTOM COUNSEL

"Serving Overworked Lawyers Everywhere" declares Custom Counsel's website.⁹³ Custom Counsel had launched just six months before our interview, with "about a dozen" lawyers in Maine. Founder Nicole Bradick was just launching in the District of Columbia. As of the time of writing, Custom Counsel listed over 100 attorneys across nearly every jurisdiction and was acquired in January 2015 by CuroLegal, an Ohio company specializing in outsourced operations for law firms. Custom Counsel will stay intact, adding its network of attorneys and expertise in flexible law firm staffing to CuroLegal's suite of law firm operations and consulting services. Bradick has joined CuroLegal as its Chief Strategy

92. STONE, *supra* note 50.

93. CUSTOM COUNS. LLC, <http://customcounsel.com/> (last visited Dec. 18, 2015).

Officer (“CSO”). Custom Counsel also has an extended network of about 1000 additional attorneys who are available to work as needed.⁹⁴

Bradick’s original motivations in launching Custom Counsel, the first network of its kind in Maine, were similar to those of the firms already discussed. “Many of my lawyers are moms, so they are with their kids all day. And then . . . they can write a motion at night when the kids go to sleep.” They do not have to accept any projects, “so it’s really sort of ultimate control.” Again, the key demographic is women who see this as a way to “keep a hand” in the law rather than leaving their careers altogether.

Custom Counsel emerged organically. Bradick negotiated a part time schedule with her law firm, and since “Maine has a pretty tight-knit bar,” people reached out to her:

I started talking to a lot of young mom lawyers who were trying to figure out how to make things work. And I started to notice a troubling trend of lawyers just simply leaving the practice. We’re talking Ivy League lawyers who had federal clerkships or worked at top law firms. And it just seemed that there had to be a different model.

Custom Counsel attorneys average between five and ten years of experience and work as independent contractors.⁹⁵ Bradick saw “a significant untapped labor pool . . . of ex-Big Law lawyers who have turned stay-at-home moms. But they want to keep working and they want to keep practicing law until their kids are older.” Her goal, she said, was to create “a very curated group. It has been amazing to me the quality and level of expertise.” As in other similar firms, Bradick cannot guarantee a specific quantity of work so the model is “more tricky for moms who are primary breadwinners. But we hope to get there someday.” At the time of the interview, most lawyers were content working ten to fifteen hours weekly.

In addition to these mothers, her network included a wide range of other attorneys looking to practice in a different way, including “one father who had to leave his firm because they had face time requirements that he couldn’t accommodate with wanting to be at his children’s soccer games.” But many of the lawyers are not working with Custom Counsel for family reasons alone; Custom Counsel’s lawyers choose to freelance for a broad range of reasons, such as supplementing their income while running other businesses or “starting fledgling solo practices.”

Bradick’s goal was to have “coverage for nearly every practice area,” and was turning away applicants if a practice area was already

94. Stephanie Francis Ward, *Freelance Attorney Network Custom Counsel Acquired by CuroLegal*, A.B.A. J.: LEGAL REBELS (Feb. 3, 2015, 1:30 PM), http://www.abajournal.com/legalrebels/article/freelance_attorney_network_custom_counsel_acquired_by_curolegal.

95. Jessica Hall, *‘Therapist’ for Mom Lawyers Branches Out*, PORTLAND PRESS HERALD (JUNE 11, 2012), http://www.pressherald.com/2012/06/11/therapist-for-mom-lawyers-branches-out_2012-06-11/.

sufficiently covered. Practice areas included commercial litigation, family law, criminal law, appeals, workers' compensation, education, securities, and elder law. At the time of the interview, Custom Counsel did not do document review. Bradick noted that its focus is "higher-end legal work," which was roughly ninety percent litigation. She also noted that she had a "backlog of very qualified people to call upon . . . if the need [arose]."

Custom Counsel's clients were generally small to mid-sized firms of twenty to twenty-five lawyers all throughout the country. "A lot of these firms . . . over the years have [brought up] people through the ranks to partnership, but haven't replenished their associate pools." Lawyers are not expected to bring in clients, though they do get a percentage of the fee if they hand off work to Custom Counsel.⁹⁶ Bradick said, "Custom Counsel does the marketing for the group we do the matchmaking and connect the working lawyer with the client." At the time of the interview, Custom Counsel had no physical offices, although CuroLegal does have one.

As in other similar companies, Custom Counsel attorneys work directly with law firms, thereby avoiding conflicts. Custom Counsel also handles the back-end invoicing, billing, and other administrative tasks. According to Bradick, lawyers set their own fees, with the average falling between \$100 to \$150 an hour. However, some experienced lawyers charged up to \$150 or \$200 an hour, while high volume work can drop below the \$100 per hour level. Public sources from 2012 indicate that the firm takes twenty percent of these fees.⁹⁷

Like the founders of Montage Legal and Counsel on Call, Bradick said, "we're frankly flooded with resumes." These firms are meeting an avalanche of pent-up demand. Custom Counsel regularly receives e-mails from attorneys stating that Custom Counsel is the alternative they had been looking for. Bradick ended the interview by saying, "this has absolutely become my passion."

D. CADENCE COUNSEL

Cadence Counsel's website begins, "FLEXIBILITY: Law firms need it. Lawyers want it. We provide it."⁹⁸ It is a California company, with lawyers chiefly in the Bay Area, Los Angeles, and San Diego, but they serve over a dozen jurisdictions. Their website currently lists offices in San Francisco, Los Angeles, and Cleveland. At the time of the interview, the company was a year and a half old.

96. Darren Fishell, *Freelance Attorney Network Offers New Flexibility*, MAINEBIZ (Nov. 26, 2012), <http://www.mainebiz.biz/article/20121126/CURRENTEDITION/311209991/freelance-attorney-network-offers-new-flexibility>.

97. *Id.*

98. CADENCE COUNS., <http://cadencecounsel.com/> (last visited Dec. 18, 2015).

We spoke with Danielle Lackey, now listed as President and CEO, and with Marc Morgenstern, Chairman.

Our attorneys are people who have left traditional practice. They want to continue to do sophisticated, high-end legal work. They don't want to do doc review. We also see it as a retention tool for the [client] firms themselves—it promotes more work-life balance for their attorneys because they know that when things get busy, they can call in some help. They have a safety valve.

Cadence Counsel requires a minimum of four years of experience and finds the most demand for attorneys at the fifth to twelfth-year level senior associates or junior partners. “That’s when we’re talking about adding capacity—‘I need extra hands on deck.’” If firms are seeking to augment a specific expertise that they don’t have, then they often want to tap into more senior attorneys. Lackey mentioned one Cadence attorney who had retired from a law firm after over thirty years of practice. Cadence Counsel advertises the elite credentials of its attorneys online, and Lackey stressed that the lawyers come from “top firms,” “top government jobs,” and/or “good law schools.”

Cadence Counsel lawyers are independent contractors, as at other similar companies. Law firms pay the company, which contracts with the attorneys and takes a percentage. Most engagements are hourly, although some, like patent prosecution, carry a flat rate. Some Cadence lawyers also run solo law practices. “We don’t ask them to make an exclusive commitment to us, and we can’t promise them a specific workload, either.” Sometimes, Lackey noted, “we might have seven months’ worth of work for someone in a row,” while at other times “it might be a few months between projects.” Attorneys can turn down assignments if they wish. “They don’t make a commitment in terms of time until they sign onto a project, and then of course they have made a commitment of time and A+ work.”

As for rates, “we believe we’re providing access as opposed to low cost,” although Lackey acknowledged that sometimes law firms charge clients more than their attorneys are being paid because “law firms are used to leveraging their people.” Thus, law firms can use Cadence Counsel as a way to bring down cost. Rates depend on the lawyer and the client firm involved, as well as the type of work. Cadence has a baseline rate they do not go below, but attorneys are also free to set their own baseline.

Cadence keeps track of hours, which helps the client as well as the lawyer involved. “We send progress billing, so they’ll get the hours throughout the month so they are able to say, ‘Oh, wait a second. This is supposed to be a five-hour project and she’s already spent twelve hours. Let’s rein this in.’” Cadence works with its clients to delineate the scope of a project up front to minimize surprises. In addition, they ask clients to spend time, “even if it’s only ten minutes,” providing regular feedback to

the Cadence lawyer. Hourly rates for Cadence lawyers are structured so that “if you turn it into a forty-hour week—and I’m saying forty, not eighty, as you would have at a firm—it comes out to a couple hundred thousand a year.” Although, Lackey said, they are not guaranteeing full-time employment. “You have the opportunity to make what you could make at a firm, but there has to be some risk tolerance.”

Again, Lackey highlighted her role in helping ensure against schedule creep:

Because we’re the interface [between client and attorney] it’s a lot easier to say, “Hey, this project was supposed to be three weeks during which I’m giving all my time and all the time they need. But it’s . . . starting to morph into something way beyond what I want to give.” We’re there to . . . advocate in both directions, to advocate on behalf of our client [and] our attorneys if somehow the parameters aren’t what they want.

Lackey also stressed that,

it was really important to me from the beginning that this be viewed as really a universal thing, not just a female thing. Our applicant pool has been consistently fifty-fifty. It really validates [the] idea that people across the board want to have a fulfilled life as opposed to women who are leaving the workforce.

Mothers are in their network, but that group is not their chief focus.

Cadence Counsel has office space for its central staff, but about eighty percent or more of the work for attorneys was remote, typically from home, with the remainder being in clients’ offices. Their sweet spot is with mid-sized firms of between fifty and 300 lawyers. Clients can range “from a solo attorney to a more mid-sized regional or national firm.” As of the time of the interview, “there has been more litigation than transactional, but not by that much.”

E. INTERMIX LEGAL GROUP

Leila Kanani is the founder of Intermix Legal Group, a company that provides experienced attorneys on a temporary basis to solo practitioners and small firms that are experiencing overflow work and other resourcing challenges. Kanani still practices as a patent attorney and has been doing so for almost thirteen years. Prior to founding Intermix, she worked at a large D.C. intellectual property law firm, which she left because of its lack of flexibility and excessive hours that she believed would prevent her from spending the time she desired with her family. After leaving the D.C. firm, Kanani began a solo practice and found that she had too much work to do on her own, but not enough work to hire a full-time associate. Upon contacting numerous staffing agencies, she realized they could not provide the caliber of attorney she needed. Kanani’s solution was to hire some of her attorney friends part-time, many of whom were women who left their large firms to have

children after many years in practice. These attorneys were exactly the kind of attorneys Kanani needed: they were very experienced with years spent at large law firms, did not need any hand-holding, and were able to provide excellent work efficiently. The arrangement worked well, as her attorney friends enjoyed doing the contract work. It helped fill a gap on their resumes with high-end work, and clients were happy because they were being serviced by very experienced attorneys at attractive rates.

Kanani realized that she had a potential business opportunity when she started to get solicited by both her attorney friends who were looking for part-time opportunities, and others who had their own firms that were looking for experienced attorneys to help them with overflow work. Starting Intermix was made easier in part by the experience Kanani had launching her solo practice; Kanani was familiar with tax structures, ethics rules, social media and IT systems. Because she had a degree in computer science, Kanani was able to build her own website and maintain the backend as well.⁹⁹ When she saw the market opportunity, Kanani's next steps to form the business seemed straightforward. "All I needed to do was register my company, and set up a website. I also got insurance. I had a marketing person do the logo and business cards based on designs I gave them. I designed it all. . . . I have the same bookkeeper that was doing my law firm books. I asked her to do the bookkeeping for this company." While building Intermix, Kanani contacted various bar associations around the United States. Their practice management groups mentioned what types of work law firms were looking for and what kind of help they needed. They also mentioned that they saw many women leaving law firms, which paralleled what Kanani saw happening among her friends.

As of this writing, Intermix had 102 attorneys nationwide, with roughly seventy percent of them being mothers, all doing project-based work for firms around the nation on an as-needed basis. A few of them are military spouses as well, for whom moving around the country makes permanent work at a large firm difficult. Intermix allows attorneys that want flexibility but do not want to stop practicing law or have a resume gap an opportunity to work remotely on a per project basis. This also allows them to spend time with their children. At the same time, Intermix allows law firms access to a group of experienced attorneys to help on an as-needed basis without the costs and challenges of hiring a full-time associate.

Intermix's attorneys tend to have graduated with prestigious degrees from places like Stanford, Harvard, University of Chicago, and NYU, and to have worked for Big Law firms and in-house legal departments. Intermix gets numerous requests from attorneys to join

99. INTERMIX LEGAL LLC, <http://intermixlegal.com/> (last visited Dec. 18, 2015).

daily. However, only about four percent of the attorneys that want to work with Intermix are invited to do so. Their attorneys cover a wide range of industries and are admitted in nearly half of U.S. jurisdictions. Kanani also recently added two new regional directors.

Intermix operates by receiving requests from clients, and then e-mailing the clients with the profiles of the available attorneys, from which the clients create an interview list. Most of Intermix's clients are solo practitioners or small firms. Because many of Intermix's attorneys are parents, one of their highest priorities is ensuring the ability to work remotely. For this reason, Intermix does not usually provide attorneys to work with in-house legal departments, which typically require an on-site presence, even for temporary work.

As of this writing, Intermix's 102 attorneys had an average of seven years of experience, including some with solo practices. All bill between \$100 and \$175 an hour. It is up to attorneys to choose the rate, though Intermix advises them on what rate to choose based on their level of experience and practice area. In return for completing the administrative work and the marketing for the attorneys, Intermix takes twenty percent of every hour billed. "From the attorney's perspective, they love it, because they don't have to worry about marketing, billing, collection, anything like that," Kanani noted. Additionally, Intermix frequently makes presentations and runs CLE events and webinars. Most of their attorneys hear about the firm via word of mouth—primarily through referrals from satisfied clients.

V. VIRTUAL LAW FIRMS AND COMPANIES

"We're seasoned, accomplished lawyers, and we've embraced a different model. We provide sophisticated legal advice in a wide range of practice areas, but our overhead is low, our staffing lean, our fees flexible and value-driven. We've invested in top-tier technology, not in expensive offices. It's a new model, but only up to a point. The most important part—solid, savvy lawyering—is strictly traditional." The website of VLP Partners LLP aptly summarizes the philosophy of Virtual Firms.¹⁰⁰ In all of these organizations, most lawyers work "virtually"—from home—although some of the firms have a few offices, typically for management.

Virtual law firms preserve a lot more of the traditional law firm structure than do the organizations discussed thus far, not the least of which is that most are law firms. Some Virtual Firms are really law companies, typically businesses solely owned by one or two lawyers. Yet even those organized as companies tend to present themselves as law firms. They typically include only, or predominantly, senior level

100. VLP L. GROUP LLP, <http://www.vlplawgroup.com/> (last visited Dec. 18, 2015).

partners. Those that include nonpartners typically eschew the term “associate” and instead call nonpartners “of counsel.”

The other main difference between Virtual Firms and traditional law firms—other than that they are virtual—is that attorneys only get paid when they work (or, often, when they collect). One founder said, “We stopped paying salaries. We just shifted entirely to a basically results-oriented system.” This eliminates many of the pressures visited on law firm lawyers, but it also introduces an element of risk: if you don’t work (or collect), you don’t get paid. “We’re really focused more on senior lawyers who are a little bit more financially secure and confident in their abilities and can ride the ups and downs of the workflow,” one founder explained. Summarized one founder, “We run our business like a business. The bottom line is the bottom line.” He commented, “It sounds terribly radical because we happen to live in this weird world of lawyers.” Some firms use traditional billable hour arrangements while others offer flat fees. Much more so than other New Models, these firms seek to send the message that they offer legal services similar to Big Law.

A. VIRTUAL LAW FIRMS

1. *VLP Partners LLP*

VLP Partners LLP was founded (as Virtual Law Partners) in 2008 by Craig Johnson, a former partner at Wilson Sonsini Goodrich & Rosati. VLP is a virtual firm that uses an “eat what you kill” model. Many lawyers work from their own homes; some obtain office space on their own. The firm’s relative lack of overhead offers lower fees for clients and high salaries with less effort for lawyers. We spoke with Charulata Pagar, partner and member of the firm’s Executive Committee, who stressed that her views are her own and do not necessarily represent the views of the firm. Pagar mentioned that when she joined the firm, “I dropped my rate . . . close to thirty percent [and] my compensation’s gone up.” She continued, “My rates are down, my hours are down, my money’s up. So, yes, for me it’s been a great move.” What is valued in Big Law, she said, is “the big leveraged practice,” whereas her practice consists chiefly of clients who want her to work on an agreement or consult with her. She also stressed the benefits of being able to turn down business without having to worry that “I have to have a collections level of X or Y or Z or my group or my firm’s going to be unhappy with me. And if I don’t want to work with a difficult client, I don’t.” She concluded, “You run your practice to please yourself.”

Pagar, who at the time of interview was “at home with my seven year old who didn’t get into camp [that] week,” said that most (but not all) of her partners were working less than they had in Big Law with “many” working below 2100 hours. When asked about how many

billable hours VLP lawyers work, Pagar did not know but said, “I think it varies quite a lot from attorney to attorney, because you can have somebody who’s semi-retired who doesn’t really want to work that much, or somebody who’s a mom at home with a couple of kids who doesn’t want to work that much versus somebody who wants to support their family at a fairly high level.” VLP has been recognized by the Healthy Mothers Workplace Coalition for promoting a mother-friendly workplace.

Former Big Law partners with substantial practices can “do well for yourself at a firm like mine,” said Pagar. “You don’t have to have a book of business that’s as big as what you have to have at a big firm to generate relatively the same amount of income. So that’s one plus.” This helps with work-life balance—which is important to Pagar’s attorneys. Some are senior attorneys who have retired from Big Law but still want to work. Others are “quite a few partners who have younger kids. They want to work at a very high level, but they don’t want to deal with all of the grief that comes from being at a big law firm.” She said that the firm probably “skews fairly strong” toward lawyers with children.

At the time of the interview, VLP had between thirty to thirty-five lawyers, yet by the time of writing, their website listed fifty lawyers, including eleven women. The firm began with only partners. VLP requires a minimum of five years of experience but, said Pagar, “our actual average is probably more like fifteen or twenty” years’ experience. At the time of the interview, as “a relatively new program,” two more junior lawyers had joined with the title of “counsel.” It responded to a need: some of the attorneys who had a lot more work than they could do themselves were “clamoring for help,” said Pagar. Counsel need to have five years of experience.

VLP takes care to send the message that the lawyers could be at Big Law if they chose. “We are extremely picky about who we allow into our firm,” said Pagar. Elite credentials are “incredibly important to us. That’s because we’re kind of a new model” so “we look for people who’ve gone to the right schools, worked at the right law firms, worked at the right companies.” Aside from attorneys serving as “Counsel,” attorneys need to have a book of business as well. Pagar stressed that the firm wants to grow with “people with the right sort of credentials” and “sophisticated practices” and “personalities that fit with the rest of us.” It also “takes a certain kind of person to fit well in our firm.” Partners have to be entrepreneurial and either have their own book of business or be ready, willing, and able to develop one fairly quickly—without clients they won’t have income. Compensation is structured in much the same way it is at a traditional law firm: an attorney’s collections are important, but so is origination credit. As at a traditional firm, origination credit is sometimes split.

Lawyers bill work to their clients and “pay a percentage to the firm to run the firm, but the rest of the money comes to the attorney who brought in the work.” If the rainmaker brings in other people to work on a matter, attorneys “work out arrangements amongst [themselves] to share fees amongst the attorneys.” That happens frequently, said Pagar. The firm has internal guidelines, but those guidelines can be modified “so we have all kinds of different arrangements.” Partners typically make \$300 to \$500 an hour. One attorney, who previously billed out at \$950 hourly working in Morrison & Foerster’s tax practice, now bills at a rate of \$385 per hour.¹⁰¹ Yet Pagar estimated that lawyers take home roughly twice the percentage of their billings as at a law firm—at least sixty percent. According to another source, attorneys keep up to eighty-five percent of collections and the firm uses the rest to pay for operating costs.¹⁰² As at a traditional law firm, partners buy their own benefits.

“Outsourced expertise with in-house knowledge,” says the VLP website, which lists fifteen different practice areas, focused on corporate law and finance, technology transfer/intellectual property, tax, real estate, energy and environmental law, affordable housing, and advertising law.¹⁰³ A lot of their work is with tech companies. VLP does not do litigation.

The firm is run by a five-member executive committee, of which Pagar was a former member. They also have a CEO of the firm, who is “a partner, but she is also CEO and her job is to run the firm.” This, of course, is not typical at Big Law. But the firm has committees much like a traditional law firm; Pagar mentioned the Hiring Committee. Another difference is that, Pagar said, “We may have some colleagues . . . who are independent contractors” rather than true partners. The firm does not provide secretaries, but provides accounting and technical support. Their Vice President for Technology works from home. The firm has only four in-person meetings a year.

2. *Rimon PC*

Rimon PC¹⁰⁴ is another Virtual Law Firm founded by Big Law refugees for Big Law refugees. The word *rimon* means “pomegranate” in Hebrew, Arabic, and Aramaic, and in some cultures it is a symbol for law and equality. Its website prominently displays the alma maters, Big Law firms, and major companies at which Rimon attorneys previously

101. William-Arthur Haynes, *Law Group Goes Virtual to Offer Big Alternatives*, SILICON VALLEY BUS. J. (May 11, 2009, 12:01 AM), <http://www.bizjournals.com/sanjose/stories/2009/05/11/story2.html?page=all>.

102. *Id.*

103. VLP L. GROUP LLP, <http://www.vlplawgroup.com/> (last visited Dec. 18, 2015).

104. Stephanie Francis Ward & Rachel M. Zahorsky, *Legal Rebels 2012: If the Shoe Fits . . .*, A.B.A. J.: LEGAL REBELS (Sept. 1, 2012, 10:40 AM), http://www.abajournal.com/magazine/article/legal_rebels_2012_if_the_shoe_fits/.

worked.¹⁰⁵ Launched in 2008, Rimon combines lower overhead, yielding lower fees for clients, with a compensation model that pays attorneys only for the work they do, which leaves them free to work less than is typical in Big Law.

Rimon is “very top-heavy. We do very high-end legal work.” Many partners have over twenty years of experience; all have more than ten. Rimon has only three associates. They also have contract lawyers—the “Rimon Network”—whom they can bring in to do more routine work like due diligence. At the time of writing, Rimon’s website lists forty-two attorneys, nine of whom are women. The Rimon Network has eleven attorneys, including two women. Rimon expressed interest at the time of the interview in recruiting more women.

Rimon has no billable hours requirements and attorneys can set their own hourly rates. Founder and CEO Michael Moradzadeh said they conducted a survey of 3000 lawyers at Big Law and found that the number one concern of the lawyers surveyed is that they wanted to set their own rates. Number two was work-life balance. At Rimon, this does not mean part time; Moradzadeh estimated that Rimon lawyers typically work forty to forty-five hours a week—a lot less than the eighty hours a week he estimated it takes to make partner in Big Law (using an estimate we also heard at other New Models firms). But lawyers can work “anytime anywhere,” he said, “without having the bureaucracy or the politics of having to be in the office at a certain time or to be on certain committees.” This “allows them to work from home and be with their families. They might work at 8:00 at night or 11:00 at night. But . . . they might take three or four hours in the middle of the day to spend with their family.”

Rimon’s recruiting stresses rainmaking and collaboration, and its business model gives attorneys an incentive to bring in clients. Despite having flexible schedules, “To develop business, you really need to be out there at night, and you might have to travel. So even if you’re working fewer hours it is not necessarily family friendly. And there’s no way to avoid that in a sophisticated practice,” Moradzadeh mused. Attorneys are expected to come in with a book of business, and the firm’s compensation system gives attorneys “a very high incentive to collaborate.” Attorneys receive origination credit that does not sunset: in other words, the attorney who brings a client into the firm gets twenty percent to twenty-five percent of the firm’s collections from that client’s billings for as long as a client remains with the firm. “If an attorney wants to focus entirely on business development . . . that’s fine,” said Moradzadeh. How are the rest of the fees divided? Approximately seventy percent goes to the attorney who did the actual legal work, while

105. RIMON PC, <https://rimonlaw.com/> (last visited Dec. 18, 2015).

the remaining thirty percent goes to the firm.¹⁰⁶ Rimon's pricing is structured with an internal market (what its attorneys charge the firm) and an external market (what the firm charges the client). "What the attorneys charge the firm is about half of what the clients are charged."

"[B]ecause we have lower overhead costs and we have a flat management structure and we don't guarantee any kind of salaries, our costs and risk profile are significantly lower," he said. Moradzadeh estimated that, "our bill for the same project in the end of the day, compared to Big Law, would be about sixty percent." Attorneys can choose how they bill their clients, but a lot use alternative flat-fee arrangements. Moradzadeh estimated that about thirty percent was flat fee, with the remainder under the traditional billable hours arrangement. As is true of other firms that do work in Silicon Valley, the firm also sometimes will take equity or contingency instead of a fee. He estimates that about forty percent of Rimon's work is business law, mostly technology-company related, while twenty percent is finance, mostly for hedge funds and private equity. Another twenty percent is intellectual property, and twenty percent is general business corporate litigation. Clients include Fortune 100 companies and hedge funds, several midcap companies, as well as very early stage startups. Rimon practices chiefly in business law, with a focus on finance, technology transactions, intellectual property, and litigation.

When asked what motivates partners from Big Law to join Rimon, Moradzadeh said "they want more freedom and higher profitability while maintaining their high-end practice." Some solo practitioners "want firm infrastructure. They want the support, the branding. They want the other attorneys to bounce ideas off of, to give work to and get work from, and all the benefits of a law firm, but they don't want the hierarchy or bureaucracy that comes with a law firm." One of the challenges, in a virtual firm, is creating a sense of community. Rimon has partners meetings twice a month to address this, several practice group meetings per month, three yearly retreats, and an internal social network to share experiences, both professional and personal. Yet Rimon has offices or "collaboration space" in fourteen cities in the United States and Israel. Many are at prestigious addresses, but they are not offices in the traditional sense. There are six traditional offices, but "most of the rest uses hoteling," where attorneys use office space that can be reserved in advance but that's also used by others. "It basically Class A office space that you pay for by use," noted Moradzadeh.

Rimon is proud of its "spherical structure," which it contrasts with the pyramid structure typical of law firms. There is no hierarchy among the partners, its website explains, so lawyers' relationships with clients

106. *Id.*

are not affected by internal political dynamics, including client hoarding, which sometimes occurs at Big Law when lawyers avoid bringing in their partners to work on a matter in order to avoid splitting origination fees and/or hourly billing. If a Rimon lawyer needs help on a matter, other lawyers “pitch in at agreed-upon rates paid out of the business originator’s percentage.”¹⁰⁷ Rimon is organized as a California Benefit Corporation. The “B corporation” allows organizations to pursue the “triple bottom line” or “people, profits, and planet.” The founders, Moradzadeh and Yaacov Silberman, remain the only shareholders. The other partners are, in effect, income partners. The two founders are “ninety percent businessmen, ten percent still practicing lawyers.” They are trying to focus on the business side, and only serve existing clients that contact them, typically referring work to their partners.

3. *Potomac Law Group*

Benjamin Lieber founded the Potomac Law Group in 2011, which he described as a “traditional firm—but with a modern twist.” At the time of interview, the firm had twelve partners, six of them women, and thirty-three counsel, twenty of them women. Today the firm has about fifty attorneys, comprised of sixty-one percent female attorneys and fifty-five percent female partners.¹⁰⁸ Its website notes that “We are proud of our diverse group of attorneys of various ethnicities and religious beliefs. Half of our attorneys, partners, and management are women.”¹⁰⁹ Lieber and his co-founder are the only equity partners. The remaining partners are akin to income partners, while counsel are independent contractors. Attorneys can set their own rates.

About eighty percent of Potomac’s lawyers are in the D.C. area and although they typically work from home, “we still get together a lot. We have lunches and lunch-and-learns and . . . happy hours,” Lieber told us. It is easier to build community when most people are in one place, he said. The firm is “thinly staffed,” with a “handful of paralegals, primarily for litigation,” two support staff, a Chief Operations Officer, and a Director of Operations. The firm does have “nice office space downtown [in D.C.],” and some in Connecticut, but “it’s flex space, so we don’t have very much of it.” When Lieber was a tax lawyer at a Big Law firm, “I always felt I was a couple of steps removed from the really interesting decisions, which were all the business decisions.” So he left the law for five years to work at McKinsey & Company. When he decided to do “something at the intersection of business and law.” “Any commentator in the industry could see that . . . it was broken in many ways, the big firm

¹⁰⁷. *Id.*

¹⁰⁸. Bradick, *supra* note 2.

¹⁰⁹. POTOMAC L. GROUP, PLLC, <http://www.potomaclaw.com/> (last visited Dec. 18, 2015).

model,” said Lieber. In the decade after 1997, he said, inflation rose twenty percent—but Big Law fees rose eighty percent.

When it comes to his firm’s model, “The difference is not so much from the client’s standpoint,” said Lieber—except that fees are lower. The difference is from the lawyer’s standpoint, in that lawyers are paid only for the time they work, so “we’re indifferent, in a sense, financially” as to how much they work. This model makes for better work-life balance, but it also means “we’re not bringing lawyers who are fourth-year associates with mortgages and young families. At the time of the interview, no lawyer at the firm has fewer than eight years’ experience, “so they all know what they’re doing.” Additionally, “there’s not a lot of pressure to develop business,” which diminishes work demands substantially. The firm has almost no attrition.¹¹⁰

Of the attorneys who join the group, “We have lots of people who are like eight-year associates who may be parents, often they’re women, but they’re men, too. Either they don’t want to be partner, or they don’t make partner, or . . . they’re just burned out after eight years.” The first ten lawyers at Potomac were all women. “We evolved from that, but that was certainly true at the beginning.”

Potomac’s website lists twenty-six different areas of legal practice. Lieber said, “I think the highest paid lawyer was [at] about \$350,000, which is more than they would make as a senior associate at a big firm, but less than they would make as a partner at a big firm.” In addition, counsel are not getting benefits, which they would at a law firm. “I think it’s probably fair to say that the lawyers, on average, are taking a slight haircut to come here, in return for all the benefits of flexibility and no pressure to bill and so forth, but not that much of a haircut.” Lawyers are paid “\$125 to \$150 an hour, depending on the seniority of the lawyer and the practice area.” At 2000 hours a year, Lieber pointed out, this adds up to \$250,000 to \$300,000 a year. The firm also has origination credit: an attorney who both originates the work and does the work gets seventy-five percent of “what they bill and collect.” In addition, said Lieber, you get “recognized for being a good ambassador for the firm, that kind of thing. That determines your compensation at the end of the year, but it’s all very clear to the lawyers as they are doing the work what they are going to get paid.”

Founding the Law Group was “nerve-wracking” because he took out a line of credit on his house. But, he said, because “the nice thing about law is it’s not a capital-intensive business.” It is about “human capital, so it was a lot more of finding the right people and then getting in front of clients and prospects. The actual physical cost to start it might have been \$75,000.” It took six months or a year to build up the

110. Bradick, *supra* note 2.

relationships that lead to clients: “You don’t just Rambo into a general counsel’s office and walk out of there with an engagement letter.” “It’s a relationship-based industry,” he mused. You have to be patient, and take the five or six meetings it takes to build a relationship because “law is one of those industries where if you push too hard . . . you’re an ambulance chaser.”

Lieber noted that founding a firm was not for the faint of heart. “It’s hard work. There’s no longer a division between work and personal life,” he said. “All I’m ever doing is working. My laptop comes with me everywhere, even to kids’ soccer games. I play poker once a while. I handle invoices between hands. You have to feel passionately about it if you’re willing to throw everything into it and have a chance of success.”

4. *Rosen Law Firm*

Rosen Law Firm is a North Carolina family law firm with offices in Raleigh, Durham, Chapel Hill, and Charlotte. It was founded by Lee Rosen over two decades ago, although they had eliminated attorney offices only recently. “More than anything,” said Rosen, “it seemed to me that the really profitable businesses were moving toward a work-from-home model.” They try to “keep our firm as lean and flexible as possible by outsourcing everything we can possibly outsource,” including financial functions, IT, and the phone system, as well as practice and document management systems. They also outsource some legal work, including ERISA and legal assistant work. “We try to stick to our core competencies,” said Rosen. They are entirely paperless. “We’re literally conference rooms and laptops. That’s about all the firm owns.” They also have very few administrative personnel. At some offices, even the reception desk function is outsourced. Yet, they have an attorney whose time is totally dedicated to managing and training attorneys. “That’s all she does. She will accompany them to events. She is there for them all the time on the telephone. She does meetings with them a couple of times a day.” Rosen noted that she had “been a huge help in terms of retaining attorneys.”

Rosen Law Firm also shifted its compensation system and gave attorneys the choice between remaining salaried or shifting to a model where lawyers get paid based on the amount they work. “Within a year, they had all made the shift because they realized they would make more money, and the fear they had about the plan wasn’t being realized by anyone,” Rosen said. “We just shifted entirely to a results-oriented system.” The firm’s attorneys are “all incredibly competitive and incredibly aware of what one another are earning. They talk about it. They all knew what was going on. They wanted to keep up.” He added, “We sort of gamified the compensation system. Attorneys love a good

game. They like to win. Every single one of them is earning more than they did before.”

“It’s all based on revenues,” Rosen said. “The bottom line is the bottom line. We compensate people by paying them a percentage of the business they generate, the origination business. Then we pay them a different percentage of the work they produce, the actual revenues they generate from billable hours or fixed fees.” The “tricky piece” is to identify which attorney originated a given client. “We’ve come up with a system for doing it that’s probably not perfect, but it works reasonably well.” Attorneys who generate a lot of revenues “get a higher percentage of every dollar they bring in than the ones who generate fewer revenues.”

Rosen Law Firm also does “a lot of client surveying. If our client satisfaction numbers go down that’s usually a kind of heads-up that they’re taking on more work than they can reasonably handle. That will often be a sign to us that we need to go ahead and start looking for somebody.”

Rosen tends to hire younger lawyers with a couple of years of experience, although they also hire experienced lawyers who have relocated to the area. “We’d rather hire somebody who is on their second job,” typically from a small firm. Those who start out at big firms do not tend to work out, he said, because they “romanticize the idea of family law.” Rosen noted that attorneys from top-tier schools tend not to go into family law. “[P]art of the reason we did it is we really did believe that it would give people more control over their lives in terms of working out work-life issues, dealing with their kids, deciding when they needed to set their meetings, and when they needed to come into the office.”

5. *Natoli-Lapin LLC*

Natoli-Lapin LLC was founded in 2008 by Frank Natoli, who was later joined by Moshe Lapin, one of Natoli’s law school colleagues. They bill themselves as an entrepreneurial boutique that does both business law and intellectual property—a “one-stop shop” for entrepreneurs, independent inventors, small businesses, and artists. They have close to 800 clients across the United States and in around forty other countries. At the time of our interview with Natoli, they had recently been recognized by the American Bar Association with the Louis Brown Award for delivery of legal services. Currently, the firm is staffed by the co-owners and an of counsel colleague to whom they refer their patent matters. They have off-site administrative staff and occasionally hire additional contractors to meet workload demands.

Although Natoli started the firm straight out of law school, he has always had an entrepreneurial bent. Prior to law school, he had been

involved in several entrepreneurial ventures and worked at *The Economist* for two years. According to Natoli, what distinguishes their firm is that, unlike some other virtual firms, they market themselves to small and mid-market businesses as a mid-market firm themselves—rather than being small and trying to look big. As Natoli put it:

Even though they really are small business lawyers, they kind of want to present themselves as big corporate guys. This can be slightly intimidating. My angle was user-friendly. You know in an instant when you go to my homepage what we do, and who we are and who we're serving. If you're a small business, that's really refreshing because you want to feel like you're bringing your business to somebody who's there for you, that they're not there for IBM, and you just happen to be one of many others that showed up.

They use a flat fee model; making it work took a lot of tweaking. When they first implemented the model, they would occasionally encounter project creep, where a client that is paying for transactional work may try to sneak in tax advisory or litigation work. These days, a typical service agreement would include a flat fee for particular services *and* a cap on hours worked to deliver these services. Any work beyond the time required is negotiated. Additionally, Natoli-Lapin has some threshold items like entity formation and trademark clearance filing that have a set price tag.

Although the business has grown every year they have been in business, Natoli does not want to grow too much more. The way it works now is that Natoli is the “front of the house and [his] partner is the back of the house.” For the future, Natoli anticipates that Lapin will begin to step more into his shoes working on business development, and then they can hire somebody to deal more with the substantive legal work.

6. *Landmark Law Group*

Gullu Singh is the owner of Landmark Law Group, open since 1998. Landmark has one attorney working for him, Nazanin Nassir, a woman Raymond has mentored since she graduated college and who was recently recognized by Super Lawyers as a “rising star.” The firm used to have a few more lawyers, but contracted in the economic downturn. Their biggest clients are real estate investment firms who go to Landmark for their transactional work. They also helps clients with bridge loans and also assist real estate entrepreneurs who need help negotiating leases.

The firm is entirely virtual. His practice area lends itself to a non-brick-and-mortar environment because “almost all the negotiations for real estate transactions are done by teleconference—different people in different places”—so it requires few in-person meetings. The decision to start a virtual firm was primarily economic driven and happened around 2010. Singh said that he is lucky to have gone virtual in 2010, as cloud

computing had just begun. While trying to cut overhead costs by looking for a new space, Singh realized that the space occupied by filing cabinets was full of mostly archives, and they weren't generating much new paper. They purchased a "polished . . . automated attendant [that said] 'You've reached Landmark Law Group. If you know the extension . . .'" Voicemails come as emails and so for someone calling, they don't have the sense that you don't have a physical [space]." Although Singh said, "We actually didn't even really tell our clients for about a year because we didn't want it to be perceived as some diminution in our enthusiasm to practice law or some surrender," but once he told clients, they did not seem to mind at all. Perhaps part of the reason for this was because the low overhead enables him to charge rates that are significantly lower than his competitors.

When asked about whether he had any difficulty with clients in switching to a virtual firm, Singh explained,

People were seeing that there were other career paths [such as tech] that could be satisfying and lucrative, rather than working at a big firm . . . What was also happening—salaries were going up, so rates were going up. I think there was just the change in the culture of the way things are done. . . [which] made it easier for people to see that maybe there's not as much value in paying extra for this guy that we like, who does good work for us, because he works in a fancy law firm with a 100-year-old name on the building.

Singh is able to provide good work/life balance for both himself and Nassir by partnering with clients who respect their desire not to work late into the evening or on weekends: "I think I've trained our clients to know that if they send an email after hours, they'll get responded to in the morning or on the weekend." Nassir does not have a billable hour requirement, in spite of being salaried. This is common among Singh's hires, as he tends to find people who are self-motivated and do not need a billable hour minimum to pay for their overhead. And of course, the overhead is very low to begin with. Landmark is considering expansion but faces the classic "chicken and egg" conundrum—Singh feels he could generate more business to justify expansion, but this would mean he is so busy that he might not have the time to do an effective job with recruiting. When Singh is evaluating potential attorneys for hire, while academic credentials matter, he believes that in the long run "it correlates very poorly with how good a lawyer you are."

B. VIRTUAL LAW COMPANIES

I. *Berger Legal LLC*

Berger Legal LLC is a Virtual Law Company, founded in 2002 and solely owned and founded by Garry Berger that operates mostly in New York, New Jersey, and Connecticut but also has attorneys scattered

around the country, servicing clients around world. At the time of interview, Berger had thirteen attorneys (ten women). Most had been practicing between ten and twenty years, with a “couple” having been in practice seven or eight years, and some who had spent time at home full-time. The website lists “representative clients” that range from smaller companies to very large ones like Credit Suisse, Morgan Stanley and Expedia.¹¹¹

“Virtually all of my attorneys currently and through the years are parents, mostly stay-at-home moms,” Berger said in our interview. “I’ve had a couple of stay-at-home dads, including myself.” He started out in Big Law, and then went in-house. Attorneys at Berger can take whatever work they are interested in, and can decline work for any reason. “I’m the kind of person who doesn’t really need to be in an office,” said founder Garry Berger. “I know I could work from home very efficiently.”

Originally he was the only attorney, but “I was very good at bringing in clients” so he decided to find other lawyers who wanted to work from home. He estimated that about half the attorneys at Berger Legal “bring in at least some business . . . obviously, some bring in more than others.” Berger does not look only for candidates with the most elite credentials: “I know as well as anyone that some of the best lawyers went to schools outside the ones ranked in the top ten. . . the name of the school doesn’t make the lawyer.” He does seek “top lawyers” from “good schools,” trained at top firms or working in-house with “brand-name” clients.

As in other Virtual Firms and Companies, Berger Legal does not guarantee anyone forty hours a week with salary. He found the best matches were “these stay-at-home moms who worked at the big firms, had great experience and were looking for five or ten hours a week and it was okay if it was fifteen one week and five the next or zero the next.” Eventually, he also found men who were interested, either because they were semiretired, or had partners with demanding careers. Of course, “once someone takes on the work, they’re doing the work. These are responsible attorneys, and the clients are important clients, and the work gets done.” He estimated that about half of his lawyers “take on substantial work during portions of the year,” a couple of lawyers work “very part-time,” and the remainder are somewhere in between. Many had schedules that vary throughout the year.

Berger is the sole proprietor of the business, and estimated he spent about thirty percent of his time practicing law and seventy percent in management. His attorneys are all independent contractors; Berger said many of his attorneys get benefits through their spouses. He estimated that eighty percent had Big Law experience; about twenty percent to twenty-five percent came directly from Big Law while others had also

111. BERGER LEGAL LLC, <http://www.bergerlegal.com/> (last visited Dec. 18, 2015).

practiced in-house. Still others had taken time off to raise families. “I work full-time,” Berger said. He also co-founded Bliss Lawyers,¹¹² so “between the two, I’m certainly full-time.” He has a full-time bookkeeper and office manager, and a paralegal who is “very part-time.”

When asked how much his attorneys work, he responded, “the answer is a wide variety of schedules. I don’t keep track. I have no interest in keeping track. I don’t care. I want them to be happy and enjoy their lives and if someone taking the day off and going to the beach that’s great. The deadline’s two days off and they get done, then that’s wonderful for them.” He mentioned one lawyer who was starting a gym and personal training business, but also worked with Berger Legal.

The firm does “corporate work of various types” including transactional work, M&A, finance, intellectual property, real estate, HR/employment, marketing compliance, and litigation. Their hourly rates are generally between \$300 and the low \$400s—about half of what clients would be paying for equivalent work from Big Law,” he estimated. Berger estimated that his attorneys take home about what they would take home at Big Law on an hourly basis. About half the attorneys brought in at least some business with them, and they get rewarded for origination (but Berger did not say how much).

2. *Burton Law LLC*

Chad E. Burton founded Burton Law LLC in Ohio about two years before our interview. As of the time of writing, the firm has seven attorneys: five in Ohio, one in the Washington, D.C. area, and one in Lexington, Kentucky. They have centralized office space for meetings, but everyone “generally works from their own environment, whether it’s home or otherwise.” Meaning, “If you take your traditional brick-and-mortar firm, blow the walls off it, get rid of the onsite staff, that’s how we operate.” A virtual assistant company provides administrative support, and the firm has cloud-based systems.

“Entrepreneurial drive is a necessary part of what we do, the ability to already understand the technology or being able to learn it and adapt,” Burton said. When asked about work-life balance, Burton said that “the entire concept [of the firm] promotes it.” The primary focus is results, so people can work when they are most efficient; Burton is typically at work by 4:00 or 5:00 a.m. At the time of our interview, all but one attorney had children, although some were grown.

“I really wanted to have a culture where people were collaborating on client work all the time,” Burton said. The firm uses social networking

¹¹². See *supra* Part II.B.2.

tool Yammer to keep attorneys connected both for “water cooler” talk and legal issues.¹¹³

The firm does hourly billing and lawyers can set their own fees, but they are pushing away from hourly billing because “clients don’t like it as much.” They have flat rates for a wide variety of routine business activities. In addition, the firm has made novel fee arrangements; for litigation with prospects for settlement immediately or in the near future, as example, they might do hourly billing capped at \$20,000, then shift over to a contingency fee arrangement. “It provides a nice balance between assessing risks for both sides.” If a case starts out hourly and goes on for much longer than expected, the firm might adjust to a contingent fee. Burton estimated that the firm’s hourly rates are about \$100 per hour cheaper than in Big Law. The firm uses the Dayton Bar Association to recruit new lawyers and advertises open positions through online job sites and networking.

3. *Cognition LLP*

Cognition LLP is a company owned by its co-founders, Joe Milstone and Rubsun Ho, who started it in Toronto in 2005, pioneering embedded lawyers. We spoke with Lesley Henry, who was then Director of Lawyer and Client Happiness. The company’s website aptly summarizes its founders’ goals, “Two over-achieving, over-worked, over-wrought lawyers talking about grueling 100-hour-plus work weeks. How they wanted to continue doing what they were passionate about . . .” Cognition was the answer.¹¹⁴ It provides a cost effective alternative to going in-house, with critical savings for smaller companies and startups. As stated on their website, “The bottom line? Working with Cognition saves the average business tens of thousands of dollars each year and virtually none of the money you spend goes towards keeping our lights on. Or pinstripe suits, imported stogies, or corporate jets.”

Overall, these savings mean Cognition is sixty percent to seventy percent cheaper than a large firm.¹¹⁵ Generally, Cognition attorneys charge by the hour, but “will do the firm offers and encourages flat rates and alternative arrangements.” Hourly rates range from \$225 to \$275, depending on the nature of the task.¹¹⁶ Their firm’s practice areas are wide, including commercial leasing and litigation; corporate governance,

113. Olivia Barrow, *Q&A: Chad Burton, Burton Law*, DAYTON BUS. J. (Jan. 29, 2013, 3:18 PM), <http://www.bizjournals.com/dayton/news/2013/01/28/qa-chad-burton-burton-law.html>.

114. COGNITION LLP, <http://www.cognitionllp.com/> (last visited Dec. 18, 2015).

115. Max Fawcett, *Some Lawyers Are Challenging the Partnership Model and It’s Changing Everything*, ALTA. VENTURE (Oct. 6, 2014), <http://albertaventure.com/2014/10/law-disorder-katherine-kowalchuk/>.

116. Julie Stauffer, *The Lure of Project Lawyers*, CAN. LAW. MAG. (Dec. 17, 2012), <http://www.canadianlawyermag.com/4446/the-lure-of-project-lawyers.html>.

secretarial, structuring, transactions, and financing; employment and labor; franchising law; information technology law; intellectual property law; marketing and advertising; media and entertainment law; not-for-profit; privacy law and data security; regulatory law; and securities law. Cognition does a combination of law firm work and in-house Secondment work, according to Henry, and its lawyers are “generalists and focus primarily on in-house type work,” bringing in “outside counsel with more expertise where any specialized knowledge is required, or where a team of people and administrative infrastructure is needed for complex or document intensive issues.”¹¹⁷ Cognition typically will not represent a client on a matter that proceeds to litigation.¹¹⁸

As of the time of writing, Cognition’s website lists forty-seven lawyers practicing in association with the firm (thirteen of them women). They offer “seasoned and experienced legal counsel at a lower rate,” Henry told us. Typically the lawyers come from Big Law or in house to ensure that they hire “the best of the best” who are able to then “run their own practice” and manage files on their own, she said. Cognition also has a small team of associates who are able to assist the senior lawyers on larger files and transactions, and have sufficient experience to handle more routine client matters on their own. No billable hours targets exist but lawyers generally work full time, Henry said—but not Big Law full time, “2100 [billable hours]—our firm doesn’t run like that.” The firm is experimenting with “gamification” incentives wherein lawyers are rewarded for providing extra value to the firm or clients.¹¹⁹

The company has very low turnover, Henry said, largely because “there’s so much flexibility. If they need to reduce the amount of hours they work at a given time, they have that flexibility.” Cognition finds that “it’s always easy to hire,” Henry said. Cognition’s team of attorneys “really appreciate the flexibility, the range in client work, the control, the hands-on interactions with their clients at client sites. There’s no need for face time, right? They can do the work from home.”

Lawyers work either from home, at client sites, or a mixture of the two. The firm does have “no frills office space” but that is chiefly for company employees who form the infrastructure of the company firm, serving such functions as office support, human resources, marketing, operations, and various personnel dedicated to client service. The space was formerly a studio for pole dancing classes, and mirrors still run the

117. Michael Rappaport, *Outsourcing In-House Counsel: Trailblazing Firms Lead the Way*, <http://www.mrlegal.ca/articles/article15/default.html> (last visited Dec. 18, 2015).

118. *Id.*

119. Mitch Kowalski, *Small, Nimble Firms Challenge ‘Big Law’*, FIN. POST: LEGAL POST (July 3, 2013, 6:35 AM), <http://business.financialpost.com/2013/07/03/mitch-kowalski-small-nimble-firms-challenge-big-law/>.

length of one of the walls.¹²⁰ The only art in the office is a Van Gogh print which hangs next to the firm's air-hockey table.¹²¹ The firm has a small satellite intake center in Toronto's MaRS Centre, which has become an incubator for innovative science and technology companies. Once a week, Cognition lawyers offer informal counsel and free donuts, hoping to catch an early in with the nearby startup companies.

Cognition is organized as a company rather than as a law firm, with Milstone and Ho as the sole owners who dedicate themselves largely to management rather than legal practice. Milstone and Ho, bitten by the entrepreneurial bug, also created CounselQuest, a company that provides due diligence and other contract lawyer work previously outsourced to low-cost countries such as India and the Philippines.¹²² Though our interviewee described Cognition as a "virtual law firm," the attorneys are independent contractors to whom the firm does not provide health benefits, malpractice insurance or retirement, although the firm does provide continuing legal education for the lawyers. Cognition in essence operates as a broker. "When an opportunity comes in and we think it's a good fit for a lawyer, we contact the lawyer, we tell them about the opportunity, and if that lawyer has the capacity and the interest and the skill set to take that engagement in, we'll make the pairing up," said our informant. "Our lawyers are free to say no . . . they run their own practice under our umbrella." If lawyers want to bring in clients, "we encourage that. But there's no pressure to do that." The firm chose not to answer questions about how the firm's revenues are distributed between the firm and its lawyers.

4. *Raymond Law Group LLC*

The Raymond Law Group was founded in 2007 by Bruce Raymond, who was formerly an equity partner at a large Connecticut firm. Raymond founded the firm after reading David Maister's *Managing the Professional Service Firm*, and calls his firm "The Lean Law Firm Alternative." The Raymond Law Group is a litigation and trial firm which focuses on business law with employment law, personal injury, and technology as other areas of specialty. It practices in Connecticut, Massachusetts, New York, and Colorado and currently has four attorneys (including one woman), all with over ten years' experience. Raymond, at the time we interviewed him, was the sole owner of the firm; another senior lawyer was of counsel. The attorneys are employees, however the attorney who is part time only receives some benefits.

120. Rappaport, *supra* note 117.

121. Arshy Mann, *How Entrepreneurs are Transforming Corporate Law in Canada*, CAN. BUS., (Mar. 20, 2014), <http://www.canadianbusiness.com/companies-and-industries/how-entrepreneurs-are-transforming-corporate-law-with-new-business-models/>.

122. Kowalski, *supra* note 119.

Raymond has a small suburban office in Connecticut, an executive suite in Boston and executive offices in Denver and New York City; the firm also has conference room space on a pay-as-you-go basis. Some attorneys work on-site, while others work from their own homes. Raymond sensed that a more virtual firm would appeal to clients. “I was seeing clients like insurance companies that were moving away from brick-and-mortar and allowing senior people even to work from home,” he said.

When Raymond finds an attorney whose qualifications appeal—all his attorneys have practiced at top law firms—he then asks, “How many hours would you ideally want to work? Would you ideally want to appear in court, or would you want to work principally as a brief writer from home?” At the time of our interview, one associate was targeting twenty hours a week, while another’s was only a day and a half a week. Another worked full time, but typically from home.

Raymond’s goal is “just-in-time resources” that are available as needed when a trial ramps up. His ideal is a firm of fifteen lawyers, and for his current lawyers to scale up as the firm grows. With the virtual model this expansion is easier to accomplish. One benefit of the virtual model, Raymond said, is that he can hire a new attorney for just \$3000 additional cost in software and equipment; he estimated that the cost at a traditional law firm would be \$15,000.

Although a majority of the firm’s work is still hourly as a result of client demand, alternative fee arrangements are central to the firm’s concept; its website lists “alternative fees, fixed fees, guaranteed phase budgets, contingency fees, retainers, and success fees.”¹²³ Some fee arrangements stake a lot on the result. Yet, “because I’m more of an entrepreneur,” said Raymond, “I’m willing to take more risk.” He added, “I’ve had a very successful track record in making the right calls in what’s going to happen with litigation.” Some large companies work with the firm “because they value my advice on how to make value decisions.” According to Raymond, assistant general counsel are getting rewarded for finding creative ways to control legal costs, which is cutting into Big Law’s share of the market. Some insurance companies, he noted, are now only working with outside counsel on an alternative fee basis. Raymond said that his business model is to have “price-sensitive commodity work” that produces volumes of litigation, along with “more lucrative one-off cases.”

“Right out of the gate, I know I can save them twenty percent and have the same margin,” Raymond told us. He may tell a client “we’ll guarantee you a \$200,000 savings out of the gate. Then let’s set up some metrics that are performance-based.” Raymond estimates that his hourly

123. RAYMOND L. GROUP LLC, <http://www.raymondlawgroup.com/> (last visited Dec. 18, 2015).

rate would be \$700 in Boston and in the \$500s in Hartford; he charges out at \$365 per hour. The kind of companies who will seek him out, he said, are “looking for people who ‘get it’ business-wise. These guys are not trying to impress people with their marble pillars, the foyers, and their caviar lunches.”

5. *The California Appellate Law Group*

Bill Hancock founded the California Appellate Law Group in 2012. All attorneys are experienced appellate litigators and specialize in appellate litigation before the Ninth Circuit Court of Appeals and California State Appellate Courts. In early 2015, Hancock sold control of the firm to Ben Feuer, but continues to practice with the firm. The firm is premised on a wheel-and-spoke model, with some attorneys owning the firm and other attorneys serving as independent “of counsel” to the firm.

The structure was initially designed to address a reality of appellate litigation, which can be “very up and down,” according to Hancock. Hancock founded the firm during a period when “I had more work than I could handle on my own, and I wanted people to help me with it, but on the other hand I also know that if I hired somebody that I might have to fire them in six months.” This way, “I can martial four lawyers to work on a big case if I need to.”

Appellate law is, “accurately” said Hancock, perceived to be “one of the more lifestyle friendly areas of law.” The firm seeks out talented individuals with successful solo appellate practices, law professors who practice part time, experienced appellate attorneys who have left large firms to raise a family, and others who value flexibility and are willing to take a little risk for a lot of potential reward. In particular, the ability to work from home is unusual, and highly valued by some.

Depending on how a case is staffed, most of the firm’s attorneys earn a percentage of the income collected (not billed) based on the number of hours they work. “For the number of hours they put in, [the firm’s attorneys are] well compensated,” Hancock concluded. Attorneys are not on salary, and have no guarantees, but when they are working on cases they are compensated at a significantly higher per-hour-worked rate than at almost any other law firm, including large law firms. The firm puts no pressure on its lawyers to work a set number of hours or bring clients into the firm. This structure allows its attorneys access to support and enhance one another’s practices, but without the overhead of salaries or significant office space.

To set fees, Hancock says, “I try to figure out what people are billing in the big firms, and discount that.” He estimated that, if his attorneys were at conventional law firms, they would be charging significantly more. “This allows us to charge higher than probably the lower rates, but lower than the higher rates,” Hancock noted. Clients

include large and small businesses, national corporations, and individuals with significant judgments on appeal.

The firm has offices in downtown San Francisco for some of its lawyers, with access to a conference room and a full-time paralegal. But in general the attorneys work from home, or rent offices near where they live. The firm does all the billing and administration and provides the paralegal and malpractice insurance. “I think [in] this day and age, the idea that we all have to rent all this office space and all be together, maybe that makes sense for some practices, but it really doesn’t for a lot of other practices,” said Hancock. This model allows the firm to pass substantial cost savings to its clients, and substantial earnings to its attorneys.

VI. INNOVATIVE LAW FIRMS AND COMPANIES

Many of the fourth group of organizations retain much of the traditional law firm model: most are organized as law firms and have physical offices. Yet these firms pride themselves on doing things differently than traditional law firms. There is more variation in this group. Some are well-established firms that have been around for decades; others are only a few years old. Some have over a hundred attorneys, while others only two; most have between fifteen and fifty lawyers. Many, but not all, of the firms have specialized practices.

In this Part, we profile one example, Smithline PC, which has reinvented legal practice along lines that are remarkably resonant of those articulated by Zeynep Ton of the MIT Sloan School of Management.¹²⁴ Smithline’s new monetization model—a subscription service—allows the firm to offer high-quality jobs with 8:30 a.m. to 5:30 p.m. work hours, little or no weekend work, and three weeks’ vacation completely unplugged from client demands. Most of the other firms self-consciously value work-life balance, and many also have other novel elements including one or more of the following: alternative fee arrangements, team scheduling, elimination of the partner versus associate distinction, and rainmaking requirements. The other Innovative Firms are profiled in the full report.¹²⁵

A. SMITHLINE PC: THE GOOD JOBS STRATEGY

Smithline PC consists of six “internet and software lawyers” based in San Francisco, who cover all the legal needs of clients in return for a monthly subscription fee.¹²⁶ Smithline is the principal, with two lawyers as

124. See ZEYNEP TON, *THE GOOD JOBS STRATEGY: HOW THE SMARTEST COMPANIES INVEST IN EMPLOYEES TO LOWER COSTS AND BOOST PROFITS* (2014).

125. See WILLIAMS, ET AL., *supra* note 59.

126. SMITHLINE PC, <http://smithline.com/> (last visited Dec. 18, 2015).

“managing counsel” and three “associates.” The firm rethinks the law firm business model along lines that reflects “the good jobs strategy” articulated by Professor Ton.¹²⁷ Ton’s model is of organizations who provide “good” jobs through basic moves: (1) identify a laser-focus mission instead of trying to do everything; (2) standardize jobs and procedures, and empower employees to drive improvements; (3) cross-train employees so they can easily step in to cover for each other; and (4) make creation of good jobs central to an organization’s business goals.

The classic example of an employer who has adopted the good jobs strategy is Costco. It sells only a limited number of products. All procedures are standardized, from restocking to safety measures—including procedures encouraging employees to continuously improve procedures. Employees are cross-trained, so that they can do each other’s jobs, which allows for greater schedule stability amid absences. And providing good jobs is articulated as central to Costco’s corporate mission.

Although in a different industry, Smithline has been able to implement this model by changing how the firm charges for its services: by a subscription fee. For a monthly fee, Smithline takes care of all of the relevant matters for the client. The subscription fee model begins with an exploratory period, for which clients pay \$7000 (\$1000 lower than the lowest monthly subscription rate). At the start of that month, Smithline attorneys “go onsite for an initial kick-off and meet with the execs we’re going to be working with and get a product demo and learn about their business and learn about their needs,” Smithline told us. The exploratory month that follows gives a chance for the client to learn “who [we are] . . . what is our level of expertise, what are our response times, how efficient are we, did they like working with us, did we solve the problem they needed solved?” Meanwhile, Smithline learns “how many points of contact, how many different deals, how complicated are they, what’s the deal flow look like, what sort of resources is it going to take for us to support them.” At the end of the month, there is a conversation about the subscription fee. Any later changes to the fee are prospective.

Smithline points out how the subscription model eliminates a lot of “retrospect[ive]” friction between lawyers and clients: “I’ve come to realize when you send a monthly invoice you’re sort of jabbing your client every month.” Variable bills invite scrutiny, whereas “subscriptions, once you enter them, tend to continue.” And “you’ve relieved your client’s anxiety because ultimately the client, they’re more about predictability than price,” Smithline noted.

127. See Ton, *supra* note 124.

The subscription model also allows the firm to deepen relationships with clients and set some unusual limits: Smithline estimates that his attorneys leave between 5:00 and 6:00 p.m., and rarely work weekends. “We all go home and that’s an expectation that I have to set with the client, which is . . . we’ll start early. That’s basically our deal. If a client wants us to do an 8:00 call or a 7:00 a.m. call, we’ll do it” although the typical daily start time is 8:30 a.m. Attorneys typically do not respond to e-mails after business hours and have three weeks of “unplugged” vacation annually.

“I think you become more profitable because you are able to focus on taking care of fewer clients more deeply and become very focused on keeping them happy and so you have hopefully, and we’ve experienced, longer relationships with them and deeper relationships,” Smithline said. “You sort of self-select down to the clients, as I said, who appreciate the value of what you’re doing.”

The firm meets the “Laser Focus” goal by practicing “exclusively on technology transactions, product legal review and open source advising,” according to its website. Smithline PC does only intellectual property licensing and technology transactions for internet, software, and technology companies.

Smithline PC “standardizes practices and procedures” in a way unusual in the law—but similar to other employers who adopt the good jobs strategy. Said Smithline, “we call it the practice machine, we have a checklist and a template and a custom-made internal knowledge base, which drives how we practice.” Smithline attorneys “communicate constantly, all day long, and we all do things the same way. We have a method for everything we touch.” This includes the way they name documents “to how we mark them up to how we describe things to clients to how we write emails,” Smithline clarified. “We have figured out a way to do excellent work really fast A, because I hire unbelievably smart people, and B, because . . . every best piece of knowledge any of our lawyers have is captured and we all share it.” To ensure this sharing, the firm meets once weekly for training. For each engagement, one managing counsel leads the account, with a second (and sometimes third) associate backing them up. As principal, Smithline supervises all of the work of the firm.

The “practice machine” makes cross-training possible, because it makes it easy to “move work around and all associates can kick work around themselves.” Cross-training is vital because, under a subscription fee model, responsiveness is vital. Even if clients do not send work in a particular month, “they will pay you to have you available when they need you, but you better be able to deliver when they do,” said Smithline. He stressed, “You have to be performing at the speed they want to move at. It’s called the speed of the deal.” In a typical firm, this is

a recipe for requiring 24/7 availability, but Smithline has found a way to combine responsiveness with work-life balance.

The creation of good jobs is central to Smithline's business strategy. Said Smithline, "it's very important to me as a fundamental value that I go home every day by 6:00 and I can't be leaving if they're all still here." He noted that he could probably make more money by having fewer attorneys, "but I wouldn't be sending everybody home at 6:00 and I wouldn't be giving them three unplugged weeks' vacation a year and I wouldn't be giving them their weekends totally free of work and all the other things that we do. I keep that staffing" in order to ensure work-life balance for everyone.

Smithline talks widely about his subscription fee model and gets a lot of resistance. People often ask what happens if a client sends too much work. "I tell them, you don't spend any time worrying about the client sending you too much work. If the client's sending you 'too much work,' it's a client who's happy . . . who likes what you're doing and who's using you." Smithline continued, "The ones you worry about are the quiet ones." If they are paying for a service they do not use, that is a problem. "I lose no sleep over our clients who call us every day and they're sending us tons of work, because I know after an appropriate period of time, which may be three or six months, I'll get around to asking them to pay us a little more" said Smithline.

Smithline said pay has increased to be "close" to pay at Big Law. Attorneys also are attracted by the work-life balance and the access to "great work and great clients." Smithline attorneys do not do the kinds of work many attorneys dislike, notably due diligence. When attorneys leave, it is typically for in-house positions: "every one . . . has a standing offer, essentially, from every one of our clients. If they don't, they can get one in about four seconds." As such, Smithline mused "my number one worry is keeping associates." Attorneys are not expected to do business development. "My philosophy on business development is very simple, which is, do excellent work and be reasonably visible, and that will lead to clients," Smithline said.

VII. BIG LAW'S REVENGE

New Models of Legal Practice steal both clients and trained lawyers from Big Law. Big Law is beginning to return the compliment.

A. FLEX BY FENWICK & WEST LLP

Fenwick & West LLP ("Fenwick") is a full-service AmLaw 200 law firm in the San Francisco Bay Area, Seattle, and Shanghai. In 2010, it founded FLEX by Fenwick ("Flex"), based in San Francisco, which at the time of our interview had a bench of forty lawyers. The original idea was to find a way to support Fenwick's clients on matters where its fees

were too expensive, particularly day-to-day support on commercial transactions in tech companies. Flex by Fenwick began with Fenwick clients, but quickly included others, though it was a small portion of the business. Flex creates synergy by stepping in to support Fenwick's client when they no longer are interested in paying law firm prices for day-to-day work, and by integrating them back into Fenwick for more complex or major transactions.

Flex recruits Fenwick alums and other lawyers, focusing on those with in-house experience and has a prominent recruitment page on its website.¹²⁸ We interviewed Ralph Pais, a Fenwick partner, and Alex Smith, Senior Director, Product and Services Development at Fenwick, who run the Flex business. They described two major types of work. The first was commercial transactions ranging from routine work (nondisclosure agreements, software licensing agreements, and sales agreements) to more complex work (partnership deals, development deals). This includes having a Flex attorney serving as temporary general counsel of an earlier-stage company where Flex lawyers can actually be "the only lawyer in the building," said our informants.

The other major bucket of work is essentially secondment: "bigger companies [with] robust legal departments need interim staffing solutions because they either don't have headcount to hire more people or someone's going on a leave or they have more work than they can handle but they see it as a spike," Pais and Smith told us. Typically Flex attorneys work on day-to-day commercial work, but can also handle complicated merger and acquisition support or corporate governance and security.

Early on, roughly half of Flex attorneys were general counsel level attorneys with at least fifteen years' experience and multiple in-house experiences; at the time of our interview, with the growth of the other levels on the Flex roster, that ratio had fallen to roughly thirty percent. At that time, most general counsel-level Flex attorneys were men, many of whom also had their own solo practices. Looking at the entire roster, seventy percent to eighty percent were "commercial licensing lawyers." Flex did several marketing campaigns to encourage women and working parents to apply. At the time of writing, Flex reported that there was an overall increase in women on the Flex bench (slightly less than half), and approximately eleven percent to seventeen percent of women and twenty to twenty-five percent of men were working on part-time schedules.

As at other Secondment Firms, Flex attorneys sometimes are attracted to the Flex model in order to gain the kinds of legal experience they need to pursue an in-house job or make a change in their career. Our informants used the example of a corporate associate who might

128. FLEX BY FENWICK, <http://www.flexbyfenwick.com/> (last visited Dec. 18, 2015).

want to become a “widespread commercial transactional in-house lawyer,” or a patent lawyer who had the right kind of experience but wanted to switch industries.

At the time of the interview, Flex was finding that some clients were beginning to look for more junior attorneys, so their hiring profile was in transition. Flex also was finding that clients sometimes use it as a “try-before-you-buy” way to hire more junior attorneys. It also was expanding to include lawyers with backgrounds other than licensing, notably corporate, employment law, and intellectual property. Specifically, Flex attorneys help clients with all the preliminary legal work associated with going public: “that’s done by someone who can be resident in the building which is very hard to get associates to do at anything that resembles a reasonable price,” noted our informants.

Flex’s fees are one-third to one-half those of Big Law. Pricing follows two different models. One is a specific number of hours per month or per quarter, generally for earlier-stage companies that need someone in the general counsel role but do not have enough work to justify a full-time position. These engagements can go on for years; typically the Flex attorney works remotely. The expectation is that the average workload is small, but can vary significantly from week-to-week. Clients tend to be in Bay Area mid-stage companies in the tech sector, although Flex was beginning to do work for large public companies.

The other model is when a Flex attorney works a specific number of days per week, either part- or full-time. Those kinds of engagements, which typically involve the Flex attorney working at the client site, generally last six to nine months if full-time, longer for part-time. Flex attorneys work the typical business day worked by their colleagues at the company but if they find themselves working “until ten at night every day,” Flex will intervene and work with the client and attorney to manage expectations.

Unlike at some other Secondment Firms, Flex attorneys are paid not for the amount of time they actually work, but for the amount of time they make themselves available for work. Salaries vary based on the lawyer’s seniority and depth of relevant experience, but are at rates comparable to what an in-house lawyer would make “in a private company and at a junior level maybe even at a public company” and are aligned with those at tech companies. Flex lawyers are benefitted employees. As at Paragon, benefits availability for part-time lawyers can be limited, given many insurance companies’ rules offering benefits only for employees who work a minimum of twenty hours a week. At the time of interview, Flex also had a team of five professionals who handled marketing, attorney development, relationship management, business organization, and business development.

CONCLUSION

For decades, a market failure existed in the law. Many lawyers were dissatisfied with Big Law—but they saw no alternative if they wanted to remain in the profession. That market failure is now over. Entrepreneurship has hit the law, with entrepreneurs innovating a large variety of different models to offer not only a new value proposition for lawyers, but also a new value proposition for clients.

New models get rid of one or more of the elements that cause lawyers to bridle. First and foremost, they often change the time norms that have proved so resistant to change at Big Law. Big Law continues to work well for lawyers who want to earn Big Bucks by working very long hours. Big Law has tried to offer alternative schedules, but this has proven difficult to do without instituting some basic changes to its business model.

New Models of Legal Practice make those changes in ways that offer lawyers several different definitions of work-life balance, including Full Time Flex, short part-time hours, and schedules that allow attorneys to take substantial chunks of time off work and then return to the full-time practice of law. New Models also often offer attorneys an escape from other elements of Big Law that many attorneys detest, notably the mandate that every lawyer also be a salesperson—a “rainmaker.”

This is perhaps the first comprehensive report documenting law’s disruptive innovation. It will not be the last. New Models represent not the death of Big Law, but a growing segmentation of the legal market. What’s documented here is just the beginning.