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The Market for Elite Law Firm Associates

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## Abstract

This article focuses on three information-related puzzles related to how large law firms recruit entry-level lawyers. First, firms hire on the basis of limited information, usually restricted to two semesters of grades. Second, firms do not rely primarily on laterals, who are already trained. Third the recruiting process involves considerable redundancy, with both students and firms spending much time and energy talking with interlocutors they will not work with.

The article first develops a descriptive narrative based on an empirical study of recruiting in the Chicago legal market. The article then goes on to argue that each of the recruiting puzzles can be explained as a “two sided matching” problem, a common feature of labor markets. In contrast with certain other matching markets (notably the market for medical residents), the market for law firm associates is decentralized, meaning that there is no mechanism to coordinate the participants in the market. The article speculates on why no centralized matching mechanism for placing young associates exists. Why some professions utilize centralized matching mechanisms and others do not is a question that has not been addressed heretofore, despite a fairly well-developed literature on matching markets. Given that Canada has some experience with such a mechanism for placing young lawyers, to say nothing of the medical profession, the question is most certainly a relevant one with respect to the market for elite law firm associates.. The empirical study helps us understand the conditions under which a decentralized matching market will remain decentralized (or conversely, why a centralized matching market will centralize), a question not yet considered in the literature.

This article is relevant not only to the economics literature on matching markets, but also an addition to the literature on the sociology, economics and organization of the large law firm as a professional services firm. Despite a fairly broad literature on how law firms maintain, motivate and jettison their members, there has been little attention to how large law firms select these members in the first place.

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It would be nice if we could just assign jobs, one student per firm. It would make it a lot easier.<sup>1</sup>

## I. INTRODUCTION

By the fall of the second year of law school, the vast majority of law students at top schools have entered a process that will determine their initial career assignments.<sup>2</sup> For the upper end of the market, this involves interviewing at elite law firms for summer

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1. Mark Jannot, *Pick Me: Recruiting Madness, Illustrated*, JD JUNGLE, Nov./Dec. 2002, at 48, 51 (quoting Wendy Siegel, Associate Director of Recruitment, New York University School of Law and omitting comments of Mark Jannot).

2. See Wendy L. Werner, *Radical Changes Make the Market Hard to Decipher: Revamped Salaries and Billing, Still Untested, Make for an Apples-and-Oranges Situation*, NAT'L L.J., Aug. 28, 2000, at C12 (noting that large law firms take approximately fifty-five percent of graduating law students).

associate positions.<sup>3</sup> During the recruiting process, firms expend substantial resources to narrow a large pool of law students to a few potential candidates to whom they extend offers.<sup>4</sup> The war to attract this talent results in stiff competition. We argue, first, that much of this war can be usefully characterized as risk-averse firm behavior in response to market-imposed uncertainty; and second, that this market structure is itself caused by the industrial organization of the elite law firm and the market for elite legal services.

Consider several related puzzles. In 2002-2003, at Harvard Law School, 730 employers conducted on-campus interviews to offer summer associate positions to a second-year class of around 550 students.<sup>5</sup> Since the very top firms will hire multiple law students, a substantial number of firms are expending significant resources without success. Why do some firms play the game when they are likely to strike out?

At our own law school, as at many others, firms are not allowed to pick who they will interview, or prescreen the resumes: if a student with a GPA below the firm's cut-off wishes to interview, the firm cannot prohibit him or her from wasting its time. Prestigious law firms will travel from cities some distance away, at a considerable expense, to spend one or two days of partner time interviewing forty students for twenty to thirty minutes each, despite the fact that interviews are notoriously poor indicators of future success.<sup>6</sup> Not only do interviews provide little real information, but the *objective* measures of student performance are a fraction of what they might be. Firms are making hiring decisions on the basis of first-year grades, arguably only one-third of the potential information on law school performance. These are examples of how the market provides less information than is potentially available. Why do firms not wait until the third year to recruit when more information is available?

Even if a firm is fortunate enough to *catch* a Harvard student for a summer associate position, the chance of that student remaining with the firm through partnership is declining significantly.<sup>7</sup> A 1998

3. In this Article we use elite and large as substitutes, although we recognize that there are elite *boutique* firms which are smaller in size. See Robert M. Sauer, *Job Mobility and the Market for Lawyers*, 106 J. POL. ECON. 147, 150 (1998).

4. See Werner, *supra* note 2 ("The cost of interviewing . . . is enormous.").

5. Interview 3 (see *infra* note 25 and accompanying text for a description of these sources).

6. ROBERT KLITGAARD, *CHOOSING ELITES* 138 (1985) (arguing that interviews are a poor predictor of future performance); cf. Devon W. Carbado & Mitu Gulati, *The Law and Economics of Critical Race Theory*, 112 YALE L.J. 1757, 1804-05 (2003) (explaining that employers can easily screen for similarity in interviews).

7. See Susan Saab Fortney, *Soul for Sale: An Empirical Study of Associate Satisfaction, Law Firm Culture, and the Effects of Billable Hour Requirements*, 69 UMKC L. REV. 239, 283 n.272 (2000).

study of 154 law firms showed that, of the classes from 1988 through 1996, nearly 10% of those recruited through the process had left the firm within a year, 43% had left within three years, and 66% had left within five years.<sup>8</sup> This attrition rate has increased substantially from an earlier study of the classes of 1971 through 1976, which showed 45% to 51% leaving before partnership.<sup>9</sup> These statistics are particularly troubling given that most firms *lose* money on associates for the first two to three years, because of training costs and more intensive supervision.<sup>10</sup> Attrition is a multiplier of the initial costs—an attorney who leaves after a year has not only cost the firm a substantial amount of money in recruiting and training, but hurts external reputation and internal morale, and puts the firm back into the market for an entry-level associate.<sup>11</sup> Rising attrition rates mean that there are an increasing number of lateral associates in the market.<sup>12</sup> That fact leads to another question: Why does no large firm specialize in laterals, who have by definition already undergone training at another firm?<sup>13</sup>

This Article seeks to answer these and other questions concerning the market for lawyers. It does so on the basis of an empirical study of law firm recruiting in Chicago, one of the most well-studied legal markets in the country. Despite fairly ample inquiry into the structure and functioning of large law firms, very few scholars of the legal profession have paid much attention to the process of recruiting lawyers from law schools.<sup>14</sup> To gain a better picture of the market, we

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8. TASK FORCE ON PROF'L CHALLENGES & FAMILY NEEDS, BOSTON BAR ASS'N, FACING THE GRAIL: CONFRONTING THE COST OF WORK-FAMILY IMBALANCE (1999) [hereinafter FACING THE GRAIL], <http://www.bostonbar.org/prs/workfamilychallenges.htm> (last updated Dec. 3, 2003) (citing NALP FOUND. FOR LAW CAREER RESEARCH & EDUC., KEEPING THE KEEPERS: STRATEGIES FOR ASSOCIATE RETENTION IN TIMES OF ATTRITION: A BEST PRACTICES NATIONAL RESEARCH STUDY ON LAWYER CAREERS 53 (1998)).

9. ROBERT L. NELSON, PARTNERS WITH POWER: THE SOCIAL TRANSFORMATION OF THE LARGE LAW FIRM 137 (1988).

10. FACING THE GRAIL, *supra* note 8 (“[d]uring his or her third or fourth year, the associate (who if still at the firm) begins to ‘break even’ and become profitable for the firm.”); see also Joan Williams & Cynthia Thomas Calvert, *Balanced Hours: Effective Part-Time Policies for Washington Law Firms: The Project for Attorney Retention*, 8 WM. & MARY J. WOMEN & L. 357, 367 (2002) (explaining that law firms do not make money on new associates until the third or fourth year). For a painstaking cost breakdown of new associate profitability (albeit one which admittedly is on the Greedy Associates message boards and thus may not be reliable), see Peter Jennings, *Profitability of New Associates*, at [http://www.infirmation.com/bboard/clubs-fetch-msg.tcl?msg\\_id=001vrL](http://www.infirmation.com/bboard/clubs-fetch-msg.tcl?msg_id=001vrL) (Nov. 12, 2002).

11. See Fortney, *supra* note 7, at 284; see also Williams & Calvert, *supra* note 10, at 366 (estimating the cost of replacing a second-year associate at \$200,000 to \$500,000).

12. Some attribute rising attrition to enhanced job mobility, caused in part by the high-tech boom of the 1990s. See generally John P. Heinz et al., *The Scale of Justice: Observations on the Transformation of Urban Law Practice*, 27 ANN. REV. SOC. 337, 352-53 (2001) (focusing on rising salaries and mobility).

13. See *infra* note 33.

14. But see NELSON, *supra* note 9, at 136-44; David B. Wilkins & G. Mitu Gulati, *Reconceiving the Tournament of Lawyers: Tracking, Seeding, and Information Control in*

solicited interviews with hiring partners at the thirty largest law firms in Chicago, measured by number of attorneys in the Chicago office, along with professional recruiting coordinators, career services officers, and others involved in the process. We use these to construct a snapshot of the market as it existed in 2003 and suggest how it may be changing in response to market forces.

The Article is organized as follows. Part II describes the relevant actors and procedures at both law schools and law firms regarding recruiting and hiring, in the hope of filling a previously unfilled gap in the literature on law schools, law firms, and the legal profession. It describes a process that is noticeably costly and time-consuming, and is perceived as such by market participants.

Part III tries to explain the market at the level of the firm. First, in Part III.A, we explain firm behavior as a function of the market's structure. Part III.A.1 identifies three particular sources of firm-level inefficiency, each related to lack of information and uncertainty. First, firms are forced to make hiring decisions with limited information. The primary source of new data is first-year law school grades, which constitute a fraction of potentially available information that is produced before the student is hired at the end of three years. Second, firms incur substantial training costs by hiring law students rather than laterals, since law students do not produce positive cash flow for two to three years after hiring.<sup>15</sup> Third, the interviewing process is highly redundant, with both students and firms spending much time and energy talking with interlocutors they will not work with.

Part III.A.2 explains how each of those inefficiencies can be linked to the structure of the market. Law firm hiring is an example of a *two-sided matching* problem, a common feature of labor markets. Two-sided refers to the fact that agents are in two distinct sets: law firms and students, for example. Matching refers to the fact that both agents seek to match with each other.<sup>16</sup> In contrast with certain other

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*the Internal Labor Markets of Elite Law Firms*, 84 VA. L. REV. 1581 (1998) [hereinafter Wilkins & Gulati, *Reconceiving*]; David B. Wilkins & G. Mitu Gulati, *Why Are There So Few Black Lawyers in Corporate Law Firms? An Institutional Analysis*, 84 CAL. L. REV. 493 (1996) [hereinafter Wilkins & Gulati, *Black Lawyers*].

15. See sources cited *supra* note 10.

16. See C. NICHOLAS MCKINNEY ET AL., THE COLLAPSE OF A MEDICAL LABOR CLEARINGHOUSE (AND WHY SUCH FAILURES ARE RARE) (Nat'l Bureau of Econ. Research, Working Paper No. 9467, 2003), available at <http://www.nber.org/papers/w9467>; Christopher Avery et al., *The Market for Federal Judicial Law Clerks*, 68 U. CHI. L. REV. 793 (2001); John H. Kagel & Alvin E. Roth, *The Dynamics of Reorganization in Matching Markets: A Laboratory Experiment Motivated by a Natural Experiment*, 115 Q.J. ECON. 201 (2000); Alvin E. Roth & Xiaolin Xing, *Jumping the Gun: Imperfections and Institutions Related to the Timing of Market Transactions*, 84 AM. ECON. REV. 992 (1994) [hereinafter Roth & Xing, *Jumping the Gun*]; Alvin E. Roth, *New Physicians: A Natural Experiment in Market Organization*, 250 SCI. 1524 (1990) [hereinafter Roth, *New Physicians*]; Alvin E.

matching markets (notably the market for medical residents), the market for law firm associates is decentralized, meaning that there is no mechanism to coordinate the participants in the market.<sup>17</sup> This creates the uncertainty that leads to the inefficiencies described.

Part III.B considers why the market is decentralized rather than centralized. Part III.B.1 looks at a similar market that, for a time, centralized and in part remains so today: the market for new lawyers in parts of Canada. Part III.B.2 considers some reasons why the United States market for elite law firm associates has remained decentralized. Part IV concludes.

This Article addresses a number of different literatures. Most obviously, it is an addition to the rich literature on the management and structure of the large law firm.<sup>18</sup> It does so by furthering the empirical study of the Chicago legal community, perhaps the best-studied legal services market in the United States.<sup>19</sup> In addition, by focusing on entry-level recruiting, it ties into the empirical literature on professions and their relation to its educational apparatus.<sup>20</sup> It

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Roth & Xiaolin Xing, *Turnaround Time and Bottlenecks in Market Clearing: Decentralized Matching in the Market for Clinical Psychologists*, 105 J. POL. ECON. 284 (1997); Alvin E. Roth, *The Evolution of the Labor Market for Medical Interns and Residents: A Case Study in Game Theory*, 92 J. POL. ECON. 991 (1984) [hereinafter Roth, *Evolution*]. For a broader bibliography of topics covered, see ALVIN E. ROTH, DEP'T OF ECON., HARVARD UNIV., AL ROTH'S GAME THEORY AND EXPERIMENTAL ECONOMICS PAGE, at <http://www.economics.harvard.edu/~aroth/alroth.html> (last updated Jan. 8, 2004).

17. Note that the scale of the market alone cannot explain the different structure of the matching process. The National Resident Matching Program matched nearly 24,000 applicants in 2003. Press Release, National Resident Matching Program, Record Number of Residency Positions Offered and Filled in 2003 Match (Mar. 20, 2003), available at [http://www.nrmp.org/res\\_match/matchday03.pdf](http://www.nrmp.org/res_match/matchday03.pdf). It encompasses more than ninety-two percent of graduating seniors from medical school. See NAT'L RESIDENT MATCHING PROGRAM, WHY THE MATCH? (2003), at <http://www.nrmp.org/whythematch.pdf> (last visited Feb. 2, 2004). By contrast, the total graduating classes of the top fifty law schools in the United States totaled 13,043 for the 2001-2002 school year. This figure was derived first by taking the top fifty law schools as determined by the 2004 *U.S. News & World Report* law rankings. *America's Best Graduate Schools 2004: Law Rankings, Tools, and Articles*, U.S. NEWS & WORLD REP. [hereinafter *Law Rankings*], [http://www.usnews.com/usnews/edu/grad/rankings/law/lawindex\\_brief.php](http://www.usnews.com/usnews/edu/grad/rankings/law/lawindex_brief.php) (last visited Feb. 3, 2004). The figures "indicate[] the total number of J.D. degrees awarded during the 2001-2002 academic year" for these top fifty law schools combined. LAW SCH. ADMISSION COUNCIL & THE AM. BAR ASS'N, ABA•LSAC OFFICIAL GUIDE TO ABA-APPROVED LAW SCHOOLS 75 (Wendy Margolis et al. eds., 2004).

18. See RICHARD L. ABEL, *AMERICAN LAWYERS* (1989); MARC GALANTER & THOMAS PALAY, *TOURNAMENT OF LAWYERS: THE TRANSFORMATION OF THE BIG LAW FIRM* (1991); NELSON, *supra* note 9; Ronald J. Gilson & Robert H. Mnookin, *Coming of Age in a Corporate Law Firm: The Economics of Associate Career Patterns*, 41 STAN. L. REV. 567 (1988); Wilkins & Gulati, *Black Lawyers*, *supra* note 14; Kevin A. Kordana, Note, *Law Firms and Associate Careers: Tournament Theory Versus the Production-Imperative Model*, 104 YALE L.J. 1907 (1995).

19. See, e.g., JOHN P. HEINZ & EDWARD O. LAUMANN, *CHICAGO LAWYERS: THE SOCIAL STRUCTURE OF THE BAR* (rev. ed. 1994).

20. See ANDREW ABBOTT, *THE SYSTEM OF PROFESSIONS: AN ESSAY ON THE DIVISION OF EXPERT LABOR* (1988).

also tracks the development of two new professions: professional recruiting coordinators at law firms and professional career services officers at law schools. Finally, by examining recruiting in a particular market for professional services, it contributes to the literature on matching markets, developed most notably by Alvin Roth.<sup>21</sup> In particular, the empirical study helps us understand the conditions under which a decentralized matching market will remain decentralized (or conversely, why a centralized matching market will centralize), a question not directly addressed in this literature to date.

## II. THE MARKET: ACTORS AND PROCESSES

This Section describes the market for entry-level associates through the eyes of large law firm hiring partners and others closely involved in the process. The data was primarily gathered in Chicago, one of the largest markets for legal services in the United States. We chose Chicago as a market that has been particularly well studied and is large enough to provide general insight into market dynamics.<sup>22</sup> Some caution should be used, however, when drawing conclusions from our findings for other legal services markets—larger markets such as New York have different equilibria in certain respects.<sup>23</sup>

We first identified the largest thirty firms in Chicago, as determined by number of lawyers.<sup>24</sup> We then contacted the firm to identify the hiring partner. Interviews were conducted in random order, rather than proceeding from the largest to smallest firms. Our interviews consisted of sessions between thirty and sixty minutes. Some of the interviews were recorded, though in certain cases discovery concerns led firms to deny our request to record the interviews. The majority of the interviews were conducted in person, though schedules of some partners and the physical location of others required us to conduct some interviews by phone. In total we talked with twenty-three hiring partners out of thirty targeted. In addition to hiring partners, we interviewed approximately ten recruiting

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21. See sources cited *supra* note 16.

22. See HEINZ & LAUMANN, *supra* note 19; NELSON, *supra* note 9; David B. Wilkins, *Rollin' on the River: Race, Elite Schools, and the Equality Paradox*, 25 LAW & SOC. INQUIRY 527, 544 (2000) (analyzing preliminary empirical research on black lawyers in Chicago). None of these authors, however, focus on the recruiting process.

23. For example, the ratio of callback interviews to offers for a summer associate position. See NAT'L ASS'N FOR LAW PLACEMENT, PERSPECTIVES ON FALL 2002 LAW STUDENT RECRUITING 13 (2003) [hereinafter PERSPECTIVES], available at <http://www.nalp.org/nalpresearch/fall2002.pdf> (last visited Feb. 2, 2004).

24. As reported in *Crain's Chicago Business*, the business weekly of Chicago, based on the number of attorneys as of Aug. 1, 2002. Katrina Fenrick & Marie Pospichal, *Crain's List: Chicago's Largest Law Firms*, CRAIN'S CHI. BUS., Sept. 30, 2002, at 19.

coordinators and on-campus placement directors. All interviews below are with hiring partners unless noted in parentheses after the interview.<sup>25</sup>

### A. Actors

There are several sets of actors who participate in the market for law firm hiring. Most obviously there are the student interviewees and the law firm hiring committees. In addition, there are two new professions that have grown up in recent decades around recruiting: the law firm recruiting coordinator and the dean or director of career services at the law school. These new professions mediate between the two main sets of actors, the students and the lawyers who make hiring decisions.

#### 1. The Candidates

Law students seeking an elite firm job usually begin the process by interviewing no later than the fall of their second year for summer positions that follow their second year.<sup>26</sup> For some students, the process begins earlier. Firms do hire students for the summer after their first year, but this is viewed as risky because it may not lead to permanent employment. This is because 1Ls will usually work at another firm during their 2L summer. One typical firm reported hiring a 1L from Harvard who “took the credential [of having worked at the firm] and ran.”<sup>27</sup> Since 1L summer associates cost the firms the same as the 2Ls—roughly \$40,000 to \$50,000 when salary, secretarial time, and the recruiting coordinator’s time are taken into account—firms want to ensure that the person is likely to stay.<sup>28</sup> To try to keep students who have worked the first summer, firms may require the student to return at the end of the 2L summer for two to three weeks.<sup>29</sup>

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25. To preserve anonymity, these interviews have been cited for the appropriate information in a general manner. Further inquiries about the interviews, methodology employed, and data gathered should be directed to the author.

26. First-year law students are termed *1Ls*, second-years *2Ls*, and third-years *3Ls*. Some schools have on-campus recruiting programs for 1Ls, held during the spring of the first year. These programs are much smaller than the 2L programs. For example, at Harvard the program attracts thirty to thirty-five firms compared with the 730 employers that attend the 2L on-campus interviewing (OCI) program. Personal conversation between one of the authors and Mark Weber, Assistant Dean for Career Services, Harvard University.

27. Interview 22.

28. Interview 14; Interview 27. For figures on the cost of summer programs, see NALP FOUND. FOR LAW CAREER RESEARCH & EDUC., *THE SIGNIFICANCE OF SUMMER PROGRAMS: LAW STUDENTS AND LEGAL EMPLOYERS REPORT 89* (2003) [hereinafter *SIGNIFICANCE*].

29. Interview 29 (“We like to think . . . they’ll pick us because [we are] freshest in their minds.”).

Sometimes, however, firms view hiring 1Ls as serving a marketing function.<sup>30</sup> Firms recognize that law students do not have much information to distinguish reputations of different firms and draw a good deal of information from other students who have worked at the firm. A 1L who returns to campus with a positive report on her summer experience can positively influence the general perception of the firm the following fall. Three Chicago firms reported hiring 1Ls from Harvard and Stanford—nonregional but elite schools—for just this reason.<sup>31</sup>

Third-year law students and law clerks are another source of entry-level talent. As a group, 3Ls are perceived as being somewhat risky, in the sense that it is not always clear why the person did not work or was not given an offer after the 2L summer. Law clerks, on the other hand, are highly desirable candidates, with prestigious clerkships being rewarded with large bonuses upon joining the firm.

In addition, it is important to recognize that law students are not the only source of legal talent. Laterals are a substitute for students and have particular advantages. They are pretrained to a certain degree. At least one of the firms we interviewed reported having considered seriously the possibility of hiring only laterals.<sup>32</sup> Yet ultimately no large Chicago firm has adopted this strategy (though at least one smaller Chicago firm has done so).<sup>33</sup> We return to the puzzle of why few firms specialize in laterals later in this Article.<sup>34</sup>

For these reasons, the primary focus of recruiting activity is on 2Ls. The most desirable candidates will have good grades from the first year, will have been accepted onto the law review, and will demonstrate a genuine interest in working for a large firm. They will also meet the ubiquitous but ambiguous requirement of *fit*. Fit is the quality for which interviewers select, since most of the other determinants can be gleaned from the paper record.

30. Interview 8.

31. Interview 8; Interview 16; Interview 22.

32. Interview 21;

A couple years ago, we considered going only for laterals. But our success rate for summer associates exceeds that of laterals. Laterals can be naïve regarding the market and their expectations. Also, sometimes there are perfectly good reasons to change jobs, but just as often there are some issues. The best laterals are those associates that are referred to us by other associates.

*Id.* Note how the comment suggests the need to stay in the market for associates.

33. See, for example, the Web site of Grippo & Elden, a thirty-seven-lawyer firm in Chicago: “since we hire most attorneys laterally, we do not have the expense of recruiting and training attorneys out of law school (nor do we have the stop-and-start inefficiency of bringing new associates and summer associates up to speed each June to gain traction on ongoing matters).” GRIPPO & ELDEN, LLC, ABOUT US, at <http://www.grippoeelden.com/about.html> (last visited Feb. 2, 2004).

34. See *infra* Parts III.A.1.(b), III.A.2.(c).

## 2. *The Law Firms: Committees and Their Chairs*

### (a) *Hiring Committee Composition*

Law firms devote substantial resources to hiring. All firms we sampled have a hiring committee, usually but not always consisting of a mix of partners and associates, averaging 10.4 committee members per firm. Some firms explicitly strive for diverse representation on these committees.<sup>35</sup> There is no uniform voting procedure: some committees operate by consensus while others take decisions by majority vote.<sup>36</sup> Firms also have at least one full time professional recruiting coordinator, who also may handle associate development.<sup>37</sup>

### (b) *Hiring Partners*

Typically, firms will have a hiring partner or chair of the hiring committee who rotates through the position. We found that law firms tended to fall into two categories. At some firms, chairs were relatively junior partners, sometimes laterals, who rotate through the position for roughly two years. At a slightly larger number of firms, a relatively senior lawyer who had developed a kind of specialization in recruiting held the position. The mean number of years served among the hiring partners we interviewed was 2.88; the median was 2.5. Many of the senior partners reported having been involved in recruiting on the committee for upwards of ten years.

### (c) *Committee Service as Corporate Governance*

Law firms view service on the committee as a form of internal or self-governance.<sup>38</sup> “It’s a way of distributing governance within the firm, getting people involved who otherwise would not be. [It] [m]akes people feel like they are part of what is going on.”<sup>39</sup> Others reported that it could be a way for young lawyers or “income partners” to show they are involved in firm governance.<sup>40</sup> As one partner told us, “I like to use the committee as a forum for larger governance issues in the firm; for example, women associates here

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35. Interview 20 (“We strive for a diversity of practice groups, ethnic and gender factors.”).

36. Heinz et al., *supra* note 12, at 354 (“As the size of the organization increases, formal votes tend to replace informal consensus as the typical governing mode . . .”).

37. See *infra* Part II.A.3.(a).

38. Interview 19 (We don’t have as much trouble getting committee members as in other committees. Many “income partners” want to do this to get a notch in their belt, hoping to move to equity partners. It shows they are involved in firm governance. (paraphrasing the interviewee)).

39. Interview 7.

40. Interview 19.

[and other] diversity issues. I believe an organization that has open lines of communication is a happier one.”<sup>41</sup>

Firms also seek to involve associates in the recruiting process (note that this is not necessarily the same as membership on the hiring committee). In part, this is because of a perception that they are younger and closer to the process, having recently gone through it themselves. It is also an opportunity for getting involved in firm governance and improving morale.<sup>42</sup> “Associates play an important role on the committee. They are happy to be asked. It helps them get involved in the firm’s future. They like the campus visits; it’s almost considered a perk.”<sup>43</sup>

*(d) Lack of Compensation for Recruiting Activities*

Firms do not, however, typically take recruiting into account in compensation.<sup>44</sup> This is so despite substantial time commitments on the part of the hiring partners in particular, who are still expected to serve clients. We found that the estimated number of hours served on hiring committees per year by hiring partners ranged from 200 to 1200 and was roughly proportional to the number of lawyers in a firm. With weekly meetings of the hiring committee, the amount of time spent on recruiting is substantial.

*3. The Intermediaries*

The above participants are by their nature transient. A successful entry-level candidate is a one-shot participant in the market. Similarly, firms rotate the membership of their committees and the identity of the chair or hiring partner. These persons are practicing lawyers with obligations like any other partner; hence, they are unable to devote full attention to rationalizing the process or following developments in the market. In many ways, therefore, firms have difficulty maintaining information on the market. Students, too, have classes to contend with, to say nothing about relative youth and inexperience in many cases with the ways of the workplace. To provide institutional memory and facilitate the process for the respective interests of firms and students, two sets of intermediaries have arisen.

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41. Interview 28.

42. Daniel J. Micciche, *Finding the Keepers*, AM. LAW., Sept. 1998, at 51, 51 (explaining that associate interviewing builds morale and signals that associate judgments are valued).

43. Interview 26.

44. Only three of the thirty hiring partners we interviewed reported taking recruiting directly into account in the compensation process. Interview 19; Interview 22; Interview 25. At other firms, it may be considered as part of an intangible or service requirement.

(a) *Recruiting Coordinators*

i. *Origins*

Every firm we interviewed has a professional recruiting coordinator. This profession has emerged as a result of the growth in large firms. The position originated in the early 1970s, but it was not widespread until later.<sup>45</sup> This parallels the general growth of the large law firm during this period.<sup>46</sup> As the number of candidates for practicing in law firms has expanded, a need arose for logistical coordination, and the recruiting coordinators began to develop specialized knowledge as well.

ii. *Function*

Unlike hiring partners, recruiting coordinators tend to be permanent positions and provide “institutional memory” for the process.<sup>47</sup> Permanence allows the development of a reputation and allows repetitive interactions with campus staff to provide the basis for such a reputation. Recruiting coordinators become the public face of the firm during recruiting.

Their function involves the hiring of both entry-level and lateral lawyers. They typically will run the summer program, dealing with logistics and social events as well as budgeting. They also deal with laterals, often brought in by headhunter firms. In addition to recruiting, some recruiting coordinators are responsible for associate development, evaluation, and other tasks related to young lawyers. This function involves tracking associates during the first few years of their legal careers, assigning mentors, running social events, and organizing evaluation processes.<sup>48</sup>

iii. *Gendered Profession*

The recruiting coordinator profession is nearly entirely female. We did not meet a single male recruiting coordinator in our study. Typically, the recruiting coordinator was originally a secretary or paralegal who evolved into the position as the amount of time required became more intense during the 1980s and 1990s. Only one recruiting coordinator we met had a professional human resources background.

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45. See NAT'L ASS'N FOR LAW PLACEMENT, HISTORY, at <http://www.nalp.org/about/history.htm> (last visited Jan. 30, 2004) [hereinafter HISTORY].

46. See, e.g., Heinz et al., *supra* note 12, at 345.

47. Interview 20; see also Interview 19 (remarking that recruiting coordinators provide “a wealth of institutional knowledge”).

48. One large firm assigned this function to a new partner. Interview 9. The firm explicitly identified this as indicating the importance they assigned to the task. *Id.*

*iv. Status as a Profession*

New professions seek to bolster their claim to specialized professional knowledge.<sup>49</sup> Recruiting coordinators do this through the development of professional associations that allow them to exchange information, and many of them attend various meetings sponsored by the National Association for Law Placement (NALP), including its annual conference. The NALP annual conference features presentations on subjects such as managing summer programs, diversity, attorney retention, public speaking, and effective networking.<sup>50</sup> Most coordinators reported that the meeting was useful for networking.<sup>51</sup> In addition there are thirty-eight local groups, varying in institutional formality, of recruiting coordinators in various markets.<sup>52</sup> Chicago recruiting coordinators have created a local Chicago Association of Legal Personnel Administrators (CALPA), which meets monthly.<sup>53</sup> CALPA will bring in outside speakers for workshops on particular topics of interest. Recruiting coordinators varied in terms of their perceived benefits of CALPA events. Several reported great benefit in sharing information on personnel practices, such as the amount of vacation time granted to summer associates.<sup>54</sup> Others reported attending only occasionally.

*(b) Career Services Officers*

*i. Origins*

Finally, law school career services officers form another professional group with a stake in the process. Career services offices existed as early as the 1950s, but have seen substantial expansion in recent decades as recruiting has expanded in intensity and scale.<sup>55</sup> Career services officers form a network, with a list-serve and regional groupings in large markets, coordinated through NALP.

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49. See Richard A. Posner, *Professionalisms*, 40 ARIZ. L. REV. 1, 2 (1998).

50. See NAT'L ASS'N FOR LAW PLACEMENT, 2004 ANNUAL EDUCATION CONFERENCE, at <http://www.nalp.org/events/2004.htm> (last visited Feb. 14, 2004) (click on *View the Schedule* link).

51. See, e.g., Interview 24.

52. See NAT'L ASS'N FOR LAW PLACEMENT, CITY GROUPS/CONSORTIA, at <http://www.nalp.org/about/city1.htm> (last visited Jan. 30, 2004).

53. CHI. ASS'N OF LEGAL PERSONNEL ADM'RS, ABOUT CALPA, at [http://www.calpa.info/1024\\_res/hmpg\\_frm\\_hist.html](http://www.calpa.info/1024_res/hmpg_frm_hist.html) (last visited Feb. 3, 2004).

54. Interview 20; Interview 24; Interview 28.

55. See HISTORY, *supra* note 45; Interview with Lois Casaleggi, Dean of Career Services, University of Illinois College of Law, Champaign, Ill. (July 11, 2003); Interview with Virginia Vermillion, Dean of Academic and Student Administration, former Dean of Career Services, University of Illinois College of Law, Champaign, Ill. (July 14, 2003); Telephone Interview with Jerry Nash, Deputy Director, National Association for Law Placement (July 17, 2003).

*ii. Function*

Many law schools have recently devoted resources to expanding and professionalizing their offices of career services.<sup>56</sup> For large law firm recruiting they play the crucial function of facilitating the on-campus interviewing (OCI) process. This involves not just logistics, but preparing students to be good interviewees, screening resumes to ensure they are in a format useful to the firms, and providing information on the state of the market.<sup>57</sup> They also provide support for students engaged in making difficult decisions. In terms of information-gathering and provision, they serve to counterbalance professional recruitment coordinators.

*iii. Position or Role Within the Law School*

Offices of career services have become a crucial component of a law school as pressures to place students in high-paying law firms have increased. The placement rate for students is a component of the influential *U.S. News & World Report* ranking system,<sup>58</sup> which has significantly modified internal aspects of law school organization. One component of this has been greater pressure on schools to devote resources to placing students.

*(c) National Association for Law Placement**i. Origins*

The National Association for Law Placement is the central professional organization for those involved in recruiting lawyers. The organization was formed in 1971, following an earlier attempt to establish such an organization in the late 1950s.<sup>59</sup> The late 1960s saw a rapid increase in law school enrollments and the beginning of large scale on-campus recruiting by law firms.<sup>60</sup> The organization remained somewhat small until the late 1970s when it began to attract law firms as members.<sup>61</sup> During the rapid expansion of the profession in the 1980s, NALP became more institutionalized and moved away

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56. See, e.g., David Van Zandt, *Planning for Career Detours: In a New World Where Attorneys No Longer Land at a Firm and Stay Forever, Law Schools Play a Role*, NAT'L L.J., Apr. 8, 2002, at B13 (describing how Northwestern Law School doubled the staff of its career services office and hired two M.B.A.s).

57. See *id.*

58. *Law Rankings*, *supra* note 17.

59. See HISTORY, *supra* note 45 (indicating that there is some evidence that placement officers at lower ranked schools pushed the initial attempt in an effort to increase salaries and substitute criteria other than academic standing).

60. *Id.*

61. *Id.*

from a voluntary model, hiring a full time executive director and doubling its budget in three years.<sup>62</sup>

*ii. Functions*

NALP's chief functions are to organize meetings (including a major annual conference), educate its members, and compile information from annual employment reports submitted by law schools.<sup>63</sup> It now publishes a wide variety of information on salaries, employment patterns, hiring information, and annual surveys on the fall recruiting process.<sup>64</sup> The related NALP Foundation conducts intensive social science research into questions of interest to NALP members.<sup>65</sup> NALP also engages in some collective action for law firms, such as negotiating group rates with moving companies.<sup>66</sup>

In terms of the recruiting process, NALP's most important function is to promulgate the *Principles and Standards for Law Placement and Recruitment Activities*, which was begun in 1979 and have been modified several times since.<sup>67</sup> These regulate, among other things, the timing of offers and decision deadlines in the hiring process.<sup>68</sup> Currently 2L students who worked for a firm the previous summer must be given until November 1 to respond to an offer of permanent employment made before September 15.<sup>69</sup> Students not employed the previous summer, as well as those who were employed but whose offer was issued after September 15, must be given until December 1 to respond.<sup>70</sup> Those who were employed but who agree to hold only one other offer can ask for the December 1 deadline as well.<sup>71</sup> First-year law students are not to be contacted by Career Services until November 1 of their first year, by firms until December 1.<sup>72</sup> These guidelines are technically unenforceable, though

62. Ken Myers, *A Smooth Transition Envisioned for NALP's Executive Director*, NAT'L L.J., Dec. 3, 1990, at 4.

63. See HISTORY, *supra* note 45.

64. NAT'L ASS'N FOR LAW PLACEMENT, NALP RESEARCH, at <http://www.nalp.org/nalpresearch/index.htm> (last visited Feb. 4, 2004) (listing all research areas).

65. See NALP FOUND. FOR LAW CAREER RESEARCH & EDUC., HOMEPAGE, at <http://www.nalpfoundation.org> (last visited Feb. 4, 2004).

66. See, e.g., NAT'L ASS'N FOR LAW PLACEMENT & CERTIFIED TRANSP. GROUP, HOUSEHOLD GOODS RELOCATION PROGRAM, at <http://www.certifiedtransport.com/nalp.htm> (last visited Feb. 4, 2004) (attributing low moving rate to cooperation with NALP program).

67. See HISTORY, *supra* note 45.

68. See NAT'L ASS'N FOR LAW PLACEMENT, PRINCIPLES AND STANDARDS FOR LAW PLACEMENT AND RECRUITMENT ACTIVITIES, pt. V, at <http://www.nalp.org/pands/pands.htm> (last visited Jan. 30, 2004) [hereinafter PRINCIPLES].

69. *Id.* at pt. V.C.2.

70. *Id.* at pt. V.C.1.

71. *Id.* at pt. V.C.2.

72. *Id.* at pt. V.D.2.

our interviews did not reveal a perception of widespread violation.<sup>73</sup> Indeed, the worst violation we heard about was a student who reneged after accepting an offer for permanent employment with a firm as a 3L.<sup>74</sup>

(d) *High-End Consultants*

In recent years, a small handful of consultants have emerged who focus on various aspects of the recruiting process. Some of these provide general skills for professional recruiting, such as interviewer training to help lawyers get the most out of the twenty minute interview.<sup>75</sup> Another function for which consultants are perceived to be useful is to conduct focus groups for summer associates at the end of their term, either to understand what was effective and what was not during the summer program, or in cases where students reject the firm's offer, to understand why the student found another firm more attractive.<sup>76</sup> Some firms consult on how to enhance diversity at firms.<sup>77</sup> In addition, we identified at least two former hiring partners in the Chicago market who charge law firms significant fees to consult on the overall process of recruiting.<sup>78</sup>

B. *Process*

The process by which firms and candidates match for summer associate positions following the 2L year is lengthy; it begins well before one actually becomes a permanent associate and contains multiple steps.

1. *Step 1: The Choice of Schools by Firms*

The first step is on-campus interviewing, and it begins with firms choosing the schools at which they wish to interview. The process begins in February or March of each year when law firms fill out applications to attend fall recruiting sessions on campuses. Typically firms will continue to interview at schools they have gone to in the past. Nationally, the median number of schools interviewed at for

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73. Cf. Roth & Xing, *Jumping the Gun*, *supra* note 16, at 1007 (describing "lawyerly changes in strategy" to evade NALP recruitment regulations).

74. Interview 24.

75. An early effort to have consultants actually conduct the initial interviews has not seemed to catch on. Ken Myers, *Law Firms Wondering Whether Consultants Should Do Interviews*, NAT'L L.J., July 16, 1990, at 4.

76. Interview 9; Interview 14.

77. Kristi O'Brien, *Committee Hires Consultant to Boost Minority Retention*, CHI. LAW., July 2002, at 9, 9.

78. See, e.g., KANTER PROFESSIONAL MANAGEMENT, FEES, at <http://www.kanterprofessional.com/fees.html> (last visited Jan. 30, 2004) (reporting daily fee of \$10,000).

law firms in the category we looked at is 16.5.<sup>79</sup> The process of picking schools changes only slightly year to year at firms. Most firms select schools by reputation, by past success at the school, and by special factors such as alumni partners.<sup>80</sup> As one partner told us, “we go to forty schools. It’s a function of we’ve been going to forty and it’s hard to cut—especially if you have got alums from those schools.”<sup>81</sup> An additional factor is the need for diversity; several firms reported recently adding minority schools, such as Howard.<sup>82</sup> Firms can also participate in minority job fairs.<sup>83</sup> Given the lack of diversity at senior levels of large firms, “[t]he entry level market helps [firms] recruit women and minorities.”<sup>84</sup>

Certain schools develop particular reputations. Most of the lawyers we talked to felt that it was not worthwhile to interview at Yale, since so many Yale graduates end up in academia or government. Nonetheless, as with Harvard, more employers interview at Yale than there are members of the second year class.<sup>85</sup> One factor contributing to firms’ willingness to engage in this interview lottery may be the need to signal quality to future clients and competitors, rather than simply the prospects of hiring a student.

Chicago itself has six law schools, and many elite firms reported interviewing at all six, though they were more selective at the lower

79. See PERSPECTIVES, *supra* note 23, at 6. Most Chicago firms decreased the number of schools at which they interviewed from Fall 2001 to Fall 2002. *Id.* at 7.

80. See SIGNIFICANCE, *supra* note 28, at 61-62 (discussing how some firms have expanded the number of schools at which they interview while other firms have reduced their recruitment efforts).

81. Interview 12.

82. Interviewees 5, 17, 22, and 27 reported recruiting at Howard. Howard is ranked as a “Tier 3” law school in the 2004 U.S. News & World Report Law Rankings. *Law Rankings*, *supra* note 17. Howard reports 200 employers participating in its on-campus program. HOWARD UNIV., SCHOOL OF LAW ADMISSIONS CATALOG, <http://www.law.howard.edu/info/admissions/pg22catalog.htm> (last updated Aug. 6, 2002). Higher ranked American University Washington College of Law, in the same metropolitan area, lists 100 on-campus employers but is currently ranked 55th in the *U.S. News & World Report* law rankings. *Law Rankings*, *supra* note 17; WASHINGTON COLL. OF LAW, AM. UNIV., ALPHABETICAL LIST OF EMPLOYERS, at <http://www.wcl.american.edu/ocs/Docket%20forms/fr2002/list%20of%20employers.pdf> (last visited Feb. 4, 2004).

83. Job fairs may be regionally based or targeted at diversity concerns. See, e.g., Heather Smith, *Bar Talk: Recruiting Comes Out*, AM. LAW., Apr. 2003, at 24 (reporting the first gay, lesbian, bisexual, and transgender recruiting job fair).

84. Interview 28.

85. YALE UNIV., BULLETIN OF YALE UNIVERSITY, Series 99, Number 8, YALE LAW SCHOOL 2003-2004, at 128, 148 (Aug. 10, 2003) (reporting that every year approximately 250 employers register to interview on campus and that there were 196 members of the 2002 second-year class), <http://www.yale.edu/bulletin/pdffiles/law2003.pdf>; cf. *supra* text accompanying note 5 (noting the ratio between prospective employers and students interviewing at Harvard Law School).

ranked schools.<sup>86</sup> One firm reported it liked to recruit at schools like Chicago-Kent and Depaul because “nowadays a lot of judges are from these schools.”<sup>87</sup> In addition, firms vary in terms of their self-perception as elite or not. Some firms reported a preference for people who were at the top of their class at lesser schools, since they were perceived to have a chip on their shoulder and would work hard once in the firm.<sup>88</sup> Firms also recognize that there are many career patterns or life circumstances that could lead very smart people to attend a less elite school.<sup>89</sup> “Why do we go to these schools? In part to generate goodwill in the community. There are also always some people there who are very talented and went there either because it was a second career or for family reasons, or did poorly as undergrads.”<sup>90</sup> “We go to all the Chicago schools, even though we don’t take a student from each of the lesser schools each year. We want to provide a role model for people. These schools let us prescreen to entice us there, but we don’t usually do so.”<sup>91</sup> Other firms, however, choose not to go to the lower ranked Chicago schools. “In Chicago, we only interview at Chicago, Northwestern, and DePaul. The latter has political clout within the firm, and I didn’t want to have to fight that political battle.”<sup>92</sup>

Many firms are willing to expend resources on interviewing on campus, even if they are not certain to be ultimately successful. In part, this is because they perceive it as fulfilling a marketing function by signaling the firm’s quality to competitors, future recruits, and potential future clients.<sup>93</sup>

Many of our summer associates will go on to clerk at the Supreme Court or other prestigious clerkships. Even if they don’t work for us in the end, they’ll help us hire other Supreme Court clerks. We’re also a launching pad for academics, who can help send us talent down the road. Our firm has an extended network out there.<sup>94</sup>

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86. The six are the University of Chicago, Northwestern, Chicago-Kent, Loyola, Depaul, and John Marshall. There are at least three others in fairly close proximity: Valparaiso Law School in Indiana, Northern Illinois University in DeKalb, and our own school located two hours away. Wisconsin and Notre Dame are also close. *See also* Heinz et al., *supra* note 12, at 349 (demonstrating statistically that the share of lawyers from lesser ranked schools increased between 1975 and 1995 in large Chicago firms).

87. Interview 12.

88. *See id.*; Interview 16.

89. *Cf.* Wilkins & Gulati, *Black Lawyers*, *supra* note 14, at 551-52 (acknowledging existence of other factors affecting law school choice, but emphasizing that law firms are not inclined to “dig deeper” and, instead, tend to rely on easily observable signs).

90. Interview 12.

91. Interview 11.

92. Interview 19.

93. *See* Wilkins & Gulati, *Black Lawyers*, *supra* note 14, at 549; Interview 16.

94. Interview 5.

This explains in part why firms do not send lower-cost surrogates to conduct interviewing.<sup>95</sup> In addition, firms feel that reputational considerations require staying in the entry-level market. When firms are banned from recruiting because of scandal or violating school or NALP rules, they perceive themselves as suffering a sanction.<sup>96</sup> When Altheimer and Gray, an eighty-eight-year-old Chicago firm that ultimately disbanded in June 2003, over-extended offers for summer associate positions and realized it could not employ all the students, it sought to find alternative jobs for students and paid students a significant portion of their summer salaries in a bid to preserve its reputation. For elite law firms, running a typically lavish and extensive recruiting program is what releasing a film at Sundance or Cannes is for a major studio: doing so is expected, and not to do so would be a major negative signal.

## 2. Step 2: Between School Selection and Interview

Once the schools are selected, the firms will contact the career services office. The actual process of recruiting varies across schools.<sup>97</sup> At many highly ranked schools, the firms identify the number of interview schedules they wish to fill, with each schedule typically consisting of twenty to thirty interviews of twenty to thirty minutes apiece. Most of the students are second-year law students. The firms also can identify criteria for students they are willing to interview, such as law review membership, class percentile, or grade point average. These criteria can be stated either as requirements or recommended qualities, and firms vary in the rigidity with which they apply their criteria. These criteria also serve as a signal of firm quality to a certain extent.

At some schools, students then bid on which firms they wish to interview with and the career services office will match the students' bids with the employers. This is done by computer program at many schools. At other schools, students submit resumes for the firm to decide whether they wish to interview the student. At these schools, the campus career services officers play a facilitative role in gathering and transmitting resumes as well as setting up interviews.

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95. See Myers, *supra* note 75 (adding, as another reason, that students value and expect face to face contact with firms).

96. See Ann Davis, *Baker & McKenzie AIDS Case Leads to NYU Ban*, NAT'L L.J., Mar. 27, 1995, at A4 (reporting that the New York University School of Law placement committee barred the New York office of the firm from on-campus interviewing for one year).

97. Interview with Virginia Vermillion, Dean of Student Services, former Dean of Career Services, University of Illinois College of Law, Champaign, Ill. (Aug. 4, 2003).

At some schools, firms are not allowed to prescreen who they will interview.<sup>98</sup> Firms must interview individual students even if before, during, and after the interview they have no intention of hiring him or her. This means that students who do not meet recommended criteria can still try to interview with the firm. Notice that firms have the option, if unhappy with the set of resumes on their interview schedule, to forgo the schedule entirely and not interview on campus, but this does not appear to be common. Some schools, such as Michigan, will not release information on grades prior to the interview.<sup>99</sup> These techniques of withholding information are thought to benefit the student body as a whole by allowing students who interview well, but who might not meet formal criteria, to benefit. It is arguable that the no-prescreen rules also benefit firms by allowing them to signal an image of high quality while maintaining more flexibility in practice (that is, firms can interview and make offers to students who fail to measure up to explicitly stated criteria, while presenting a façade of greater exclusivity).<sup>100</sup> Some firms, however, voiced resentment at the no-prescreen rules, arguing that they “hurt everyone.”<sup>101</sup>

Note that the timing of the interview schedules is moving up rapidly. Firms reported that up to half the schools are now moving their fall interview programs up to late summer, before school begins. This may make sense for the schools, which experience less disruption to fall classes. In addition, each school may be racing against the others to get its candidates to interview with the firms earlier in the hope of getting more placed with the large firms. For the law firms, however, this is less than ideal. Law firms will have to make decisions on how many offers to extend before they are finished with the current summer associates. In addition, the marketing function of on-campus interviewing to 1Ls cannot be effective when the 1L is still working while the 2L candidates are interviewing.

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98. Interviewee 26, however, who hires for a large national firm, said that of sixty interviewing locations nationally, most allow the firm to prescreen.

99. See UNIV. OF MICH. LAW SCH., RECRUITING AT MICHIGAN 2004-2005, at 7 (2004), available at <http://www.law.umich.edu/currentstudents/careerservices/recruiting.2004.pdf> (last visited March 22, 2004).

100. We thank Steve Ross for this observation.

101. Interview 31. The reasoning is that it does a student no good to expend time and psychic energy interviewing with a firm that will not take him or her. Nor, of course, does it do a firm any good to expend time and energy interviewing a student who does not meet its standards. Note the following comment from Interview 23:

I had an experience at a good law school that wouldn't give us the GPA prior to the interview even after the list was composed. I perceived them to be saying, "If the student is good enough to get into our law school they [sic] are good enough to work for you." I want to make these decisions. It harmed the students because it filled a bunch of interview slots with people we wouldn't take, and we then got resumes from qualified folks from the same school who said they couldn't get into our interview list.

Furthermore, student programming now may shift up to the second semester of the first year, causing further disruption to classes. The fact that interview programs are moving earlier in time is a point to which we will return in Part III.

### 3. *Step 3: On-Campus Interviews*

Once the schedule is set, the firms send teams of interviewers to campus. These teams are typically chosen because of school ties and who will make a good interviewer, both in terms of gathering information and serving as “ambassadors for the firm.”<sup>102</sup> Most firms reported sending pairs of interviewers, in part because it allows people to see more members of the firm, and also because it saves money later, since the largest recruiting expense is the callback interviews, which take five to six hours of office time. “Two interviewers will help each other to filter out marginal cases and make better decisions. Pairs also protect the firm [from allegations of improper conduct in the interview].”<sup>103</sup>

After the students interview on campus, firms must make decisions as to how many and whom to call back to the firm for further interviewing. We found substantial variance in terms of centralization in how firms made these decisions. Some firms would give each interviewing team a target number of offers to make and let them exercise discretion.<sup>104</sup> At the other extreme, one large national firm has its interviewers file immediate reports on the candidates and then give a number of callback slots to the Chicago office hiring committee on which to make decisions.<sup>105</sup>

### 4. *Step 4: Callback Interviews*

The callback interview process typically consists of five to six half-hour interviews with partners followed by lunch with two associates. Interviewers fill out report forms on the candidates, which are then collected by the recruiting coordinator and distributed to the members of the hiring committee. The committee will then review the forms. Several firms reported an attempt to make sure one member of the hiring committee interviewed each candidate so that there was one person with personal knowledge for committee deliberations. The hiring committee then makes a decision whether to give the candidate a summer offer. In the 2002-2003 Chicago market overall, a NALP survey reports that 55.9% of callback

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102. Interview 25.

103. Interview 8.

104. Interview 20.

105. Interview 27.

interviews lead to an offer, and 31.9% of these are accepted.<sup>106</sup> Because successful students will have multiple callbacks and offers, the success rate for students is higher than these percentages suggest.

#### 5. Step 5: Summer Associate Programs

The summer itself varies from firm to firm, but the primary purpose is to evaluate the skills and maturity of the candidates.<sup>107</sup> Most firms do not seek or expect to cover the costs of the program.<sup>108</sup> Many report being frustrated with the summer programs,<sup>109</sup> and firms have considered dismantling them, but change is incremental at best.<sup>110</sup> Several firms reportedly are moving away from lavish wine-and-dine summer programs toward more intensive work experiences that will approximate the actual work of the firm.<sup>111</sup> Most notable was the Washington, D.C., firm of Howrey Simon Arnold & White that adopted the “Howrey Bootcamp” summer associate program in 2000 that was designed to approximate real working conditions for junior associates in the firm.<sup>112</sup> Nevertheless, the *fun* aspect of the summer remains. This plays a role not just in marketing to law students, but also in building firm morale for existing associates.<sup>113</sup>

#### 6. Step 6: Permanent Associate Offers

Following the summer, firms make offers to the successful candidates. The actual dynamics of the offer and acceptance are regulated by the NALP guidelines.<sup>114</sup> The presumption at most elite

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106. PERSPECTIVES, *supra* note 23, at 13; *cf.* Wilkins & Gulati, *Black Lawyers*, *supra* note 14, at 548-49; Daphne Eviatar, *Bar Talk: Recruiting Roulette*, AM. LAW., Aug. 2001, at 19, 20 (reporting a Silicon Valley law firm’s decision to extend full-time offers to eighty-five to ninety-five percent of its 131 summer associates). Note that there is substantial variation in different regional markets.

107. SIGNIFICANCE, *supra* note 28, at 11.

108. *Id.*

109. *Id.* at 19 (“[summer programs] are labor intense, high in cost, have an extremely high potential for generating bad press, and often yield fewer star recruits than we had hoped.” (quoting an anonymous legal employer)).

110. *Id.* at 13.

111. *See, e.g.*, Thomas Adcock, *Errant Summer Associate Email Is Sign of Changed Job Market*, N.Y. L.J., June 20, 2003, at 16 (“[t]he palatial summer program period has ended” (quoting a hiring partner)). *But see* SIGNIFICANCE, *supra* note 28, at 68-71 (reporting that social activities and training in a majority of firms remained about the same from 2001 to 2002).

112. Press Release, Howrey Simon Arnold & White, LLP, Howrey Bootcamp Reinvents Law Student Recruitment (Aug. 1, 2000), <http://www.howrey.com/bootcamp/pr2000-0801.pdf> (last visited Feb. 4, 2004).

113. Interview 27 (“Most of the benefit of the summer program is for [our] own associates. It helps them feel like they are part of the firm, and they can have fun.”).

114. *See supra* notes 67-74 and accompanying text.

firms is that students will get an offer. Nationally, offices of over 100 lawyers such as those in our study gave offers to 85.5% of their summer associates in 2002, and the figure for Chicago was 90.5%.<sup>115</sup> Offer rates increased with firm size.<sup>116</sup>

### 7. Conclusion

In short, for most entry level candidates joining elite law firms, the actual decision to hire takes place roughly two years before the person will begin full-time work. This decision is preceded by extensive interviewing of multiple candidates on campus and in the firm offices. In addition, many, if not most, of the candidates interviewed will have interviews at competitor firms (which, as noted, is one reason why each individual firm must interview so many candidates in the first place). The hiring decision is followed by a probationary summer and a formal offer and acceptance period. The candidate will then join the firm after completing law school.

## III. EXPLAINING THE MARKET

### A. Explaining the Market's Processes

[Is the market efficient?] Yes and No. If you were to ask, "Would you design this system," the answer is no. It's not efficient for students, the placement people on campus, or lawyers. On the other hand, given a certain structure, it makes sense.<sup>117</sup>

#### 1. The Question of Firm-Level Inefficiencies

When one steps back from the process, the defining characteristic of the market for large law firm associates is the apparent inefficiency under which firms operate: hiring law students based upon little information, refraining from hiring laterals despite their possessing several attractive attributes, and interviewing a number of candidates far in excess of those who will actually be hired.

#### (a) The Puzzle of Hiring Law Students Based on Little Information

Large law firms make major hiring decisions on but two semesters worth of data on law school experience. That is, they conduct most of their hiring that will lead to permanent offers by the fall semester of a student's second year. Why not wait until more information is

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115. PERSPECTIVES, *supra* note 23, at 10.

116. *See id.*

117. Interview 26; *see also* Interview 29 ("This is the market we've been handed. There's little we could do to change it even if we wanted to. Certainly the fact that we get to monitor their work in the summer and still say no works for us. There's a lot of uncertainty though.").

available, either in the third year or after law school? The perception among firms is that the best 3Ls have been taken.<sup>118</sup> This means any individual firm would do better by hiring earlier based on less information. This may explain why firms have tolerated the shift in recruiting to the summer after the first year, despite the substantial difficulties it places on firms in projecting their staffing needs.<sup>119</sup>

It is puzzling that firms opt to decide whom to hire based on relatively little information, or perhaps more accurately, that a market exists which forces firms to decide based on so little information. The amount of information from which to make decisions is quite limited.<sup>120</sup> Avery et al. note the shifting makeup of the top five percent of students at Harvard Law School after the first year (in terms of GPA).<sup>121</sup> A firm may have additional benefits to gain from additional time beyond mere continued strong grades: a student may be able to demonstrate aptitude and interest in particular topical areas, such as tax or real estate (by choosing to focus on a particular area rather than another, and possibly selecting summer experience to support that interest, the student is in effect sending a costly signal about the veracity of his or her interests).<sup>122</sup> Moreover, when decisions are made before the end of the first year there is no way to assess journal membership, and when decisions are made prior to the beginning of the third year there is no way to assess journal editorial board service, moot court performance, or the like. Another author writes in the context of judicial clerkships:

By hiring [clerks in a student's third semester], judges have access to no more than three semesters of grades and to recommendations from professors who likely have observed students exclusively in large first-year classes. Thus, a professor's ability to evaluate student capabilities is limited. Moreover, a better representation of

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118. Interview 12.

119. See *supra* Part II.B.2.

120. In addition to limited information about the candidates, law firms also have limited information about their own hiring needs. See Eviatar, *supra* note 106, at 19. Law firms operate in a cyclical market and have few tools for projecting what workloads will be like in two years time. *Id.*; see also *infra* Part III.A.2.(d)ii. The process is perceived by firms as imperfect at best. Interview 14 reported:

The whole system has timing problems. We are hiring people so far in advance; markets change in the interim. It is guesswork. And unlike investment banks, which will just fire those they've over hired, firms are reluctant to do so. It would hurt our ability to recruit in the future.

Other things being equal, firms would prefer to wait until more information was available on their own needs and on candidate qualifications. But they do not—or cannot—do so.

121. Avery et al., *supra* note 16, at 801-04 (discussing the tendency of grades and class standing to shift between the first and second years of law school).

122. Annette E. Clark, *On Comparing Apples and Oranges: The Judicial Clerk Selection Process and the Medical Matching Model*, 83 GEO. L.J. 1749, 1791-92 (1995).

a student's legal writing ability emerges later in her law school career.<sup>123</sup>

Avery et al. dismiss these concerns for law firms because law firms “have a large range of types of work” and a “large number of associates,”<sup>124</sup> but one suspects firms are less nonchalant about choosing their future stakeholders and revenue generators. Indeed, at the high end of the market, elite law firms are choosing from *exactly the same* pool of people that judges are.<sup>125</sup> Thus, the inefficiencies described by Avery et al. for the market for judicial clerkships would also apply to the market for lawyers. Avery et al. emphasize the use of summer associate positions in minimizing selection error,<sup>126</sup> but this seems like the wrong way to view summer associateships.<sup>127</sup> Summer associate programs' utility as screening mechanisms is diminished, moreover, by the recreational character they typically assume. The more time a summer associate spends on outings to ball games or at wine tastings, the less opportunity a firm has to evaluate his or her substantive legal skills (that is, research and writing). Accordingly, the summer programs' marketing objective—to brand the firm as fun—runs counter to the summer programs' other goal of obtaining information about candidates.<sup>128</sup> In sum: *Why do law firms hire 2Ls rather than graduating 3Ls?*

(b) *The Puzzle of Aversion Toward Laterals*

Law firms have to train novices because “virtually all of the skills and dispositions that associates need to be good lawyers must be learned on the job.”<sup>129</sup> This pattern is unusual because comparative research suggests that labor markets should be subject to two equilibria—one where workers quit infrequently and firms consequently train heavily, and a second where workers quit frequently and firms consequently train little.<sup>130</sup> This is because

123. Edward S. Adams, *A Market-Based Solution to the Judicial Clerkship Selection Process*, 59 MD. L. REV. 129, 135 (2000) (footnotes omitted).

124. Avery et al., *supra* note 16, at 803.

125. One interviewee noted that rising debt is making starting salaries at firms more competitive relative to clerkships. Interview 8. The interviewee believed that the average quality of entry levels to litigation is increasing, as students forgo additional years of clerkships to reduce debt loads. *Id.*

126. Avery et al., *supra* note 16, at 803.

127. One interviewee reported that the ability to reject candidates after monitoring their work was helpful, but acknowledged a lot of uncertainty in the process. Interview 29.

128. *See supra* note 113 (describing the process as fun for current associates).

129. Wilkins & Gulati, *Reconceiving*, *supra* note 14, at 1608.

130. Daron Acemoglu & Jorn-Steffen Pischke, *Why Do Firms Train? Theory and Evidence*, 113 Q.J. ECON. 79, 114 (1998) (“[I]n terms of our model, we can think of the United States at a low training and high quit equilibrium and Germany at a low quit, high training equilibrium.”). *But see* Alison L. Booth & Gylfi Zoega, *Do Quits Cause Under-*

firms will be reluctant to make costly investments in the human capital of their employees when the employees can abscond with the investment to the benefit of a competitor firm. Law, by contrast, can be considered high-quit, high-train.<sup>131</sup> As attrition rates increase dramatically, law firms are losing many of their initial investments in training associates.<sup>132</sup>

One can envision, as an alternative model, a *farm-team* system where one got experience at a lower-status firm and *then* interviewed at elite law firms. Firms could employ a probationary period to allow monitoring. Elite firms would enjoy multiple benefits under such a model: the costs of training would be borne elsewhere (by second-tier firms), candidates for associateship would be more self-selected and mature (no leaving law to pursue poetry), and there would be a far better empirical track record on which to make hiring decisions. Finally, firms would dispense with all the costs, noted above, of having to administer summer associate programs, train lawyers who leave the firm, and hire lawyers based on minimal information. An estimate of the monetary cost is as follows:

Overall, the summer program isn't that expensive. It costs [the firm] \$40,000 to \$50,000 per summer. But that's small. Even a single bad hire costs [the firm] \$150,000 by the time you figure it out and give them some notice. . . . [F]ourteen years ago it took 1.5 years to get rid of a bad hire.<sup>133</sup>

The farm-team model is not merely a theoretical construct. Indeed, such a model appears to operate for such high-status legal employers as the U.S. Attorneys' Offices<sup>134</sup> and the ACLU, which hire on an "as-needed" basis.<sup>135</sup> In sum: *Why do law firms take on the expense of hiring law students at all?*<sup>136</sup>

(c) *The Puzzle of Redundancy and Selection Costs*

The current market for law firm associates is highly redundant. First, as noted above, each firm subjects each candidate to multiple

*Training?*, 51 OXFORD ECON. PAPERS 374, 383 (1999) (explaining that high quit, high training is also a possible equilibrium).

131. See Booth & Zoega, *supra* note 130, at 383.

132. See *supra* notes 8-11 and accompanying text.

133. Interview 27.

134. Personal conversations between a senior assistant U.S. attorney and one of the authors, stating his office tends to hire those with prior prosecutorial experience.

135. See Dimitra Kessenides, *Hot Jobs 2001: The Smokin'est, Hippest, Nowest, Chicest Jobs of the Year*, JD JUNGLE, Sept. 2001, at 56, 63, available at [http://www.jdjungle.com/main.cfm?chid=0&schid=0&WT=00&inc=inc\\_article.cfm&artid=50101&pg=8&template=4](http://www.jdjungle.com/main.cfm?chid=0&schid=0&WT=00&inc=inc_article.cfm&artid=50101&pg=8&template=4) (last visited Jan. 29, 2004).

136. Technically, law firms hire summer associates. But typically, summer associateships lead to full-time associate positions upon graduation. In essence, then, law firms conduct their hiring for full-time associate positions by hiring law students.

interviews before extending an offer.<sup>137</sup> Aside from this intrafirm redundancy, there is considerable interfirm redundancy as well. Firms compete intensely for a limited pool of top students, resulting in multiple interviews and offers for these students. For example, at New York University School of Law last fall,

a total of 13,357 interviews [were] conducted by 330 employers—from large multipractice firms to elite specialty boutiques to federal, state, and local government agencies. It all add[ed] up to 13,357 individual chances to make or break a career, spread among 387 2Ls and 88 3Ls.<sup>138</sup>

Many of the firms we interviewed reported difficulty in securing time from partners to conduct callback interviews.<sup>139</sup> In general, larger firms have *lower* acceptance rates after callback interviews, since they are competing with each other over the same group of students who then receive multiple offers.<sup>140</sup>

The process as a whole, distinct merely from on-campus interviewing, also consists of high expense and redundancy:

The process involves a lot of firms chasing the same people.<sup>141</sup>

Giving 100 offers means 600 hours of callback interviews, plus my time and that of the committees and interviews. Altogether 2000 man-hours, which is hundreds of thousands of dollars a year.<sup>142</sup>

245 interviews, 116 office callback offers, 74 actual callbacks, 22 offers, 6 acceptances for the summer program.<sup>143</sup>

Each year we see 250-300 at OCI, have 50-60 callbacks; half of those get offers; half of them accept. In the end we have about 6-9 summer associates.<sup>144</sup>

This year we conducted 448 interviews. We also got 3000 unsolicited entry-level resumes. Sometimes these were from schools we don't go to, like BYU, and sometimes they are from schools we do go to but [are from] students who didn't make our interview list. We call back about one-third of the interviewees, or 152; 121 of those accepted our invitation to callback. Sixty percent of them got offers, and twenty-one percent accepted to come for the 2L summer. Last year we made 68 total offers for a class of 15 2Ls.

137. See *supra* Part II.B.3-4.

138. Jannot, *supra* note 1, at 51; see also Micciche, *supra* note 42, at 51 (reporting that firms call back at least twice the number of summer associate offers); sources cited *supra* note 106. Note that Harvard Law School reported an average of fourteen interviews per student in Fall 2002. Interview 3.

139. See, e.g., Interview 21.

140. See PERSPECTIVES, *supra* note 23, at 14.

141. Interview 21.

142. Interview 14.

143. Interview 17.

144. Interview 25.

We usually offer around seventy percent, and twenty-five percent or so take it.<sup>145</sup>

Each year we make offers to hire 90-100 summer associates. We have to make about three offers for every one of those, but it varies by market. If you think about it, we are seeing fifteen people for every offer we make.<sup>146</sup>

Nationally, the firm conducts 2600 OCI interviews, 800 from the Chicago office alone. They have 220 callbacks and will make 170 offers. In NY, by contrast, there are many more interviews, roughly 1000 with 650 callbacks, but fewer than 170 offers.<sup>147</sup>

The ratios vary from market to market. Yields are lower too. In Chicago it is about thirty-two percent, in New York it is about twenty-five percent.<sup>148</sup> In sum: *Why do firms engage in hiring processes that involve such uncertainty?*

(d) *Interaction Between Inefficiencies*

The sources of uncertainty we have identified interact with each other. Because law firms hire when candidates have so little tangible, relevant information to provide, firms must spend more time in interviews to gather information. Because firms tend not to hire lateral associates, they must internalize the costs of training. Because training is so expensive, law firms have additional incentive to spend much effort trying to gather what information *is* available through the interview process. And because firms can never be sure how many candidates will accept offers, each firm must interview more people than would otherwise be the case.

2. *Firm-Level Inefficiency as Response to Market-Imposed Uncertainty*

(a) *Decentralized Matching Markets and Unraveling*

The short answer to the questions posed—why firms make decisions based on limited information, why they also absorb the costs of training novice associates, and why the market is highly redundant—is that they operate within a *decentralized matching market*.

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145. Interview 19.

146. Interview 26.

147. Interview 8.

148. PERSPECTIVES, *supra* note 23, at 13.

*i. Decentralized Matching Markets*

A decentralized matching market occurs when each agent makes his or her own decisions independently of decisions taken by other agents. It is to be contrasted with a centralized matching market, wherein participants agree to bind themselves to a protocol that assigns matches. The classic example is the National Resident Matching Program (NRMP). Begun in 1949 by the Association of American Medical Colleges and the American Hospital Association,<sup>149</sup>

it was proposed, and ultimately agreed, that a more centralized matching procedure should be tried . . . . Under this procedure, students and hospitals would continue to make contact and exchange information as before. (It is worth noting in this regard that the complete job description offered by a hospital program in a given year was customarily specified in advance . . . . Thus the responsibilities, salary, etc., associated with a given internship . . . were not a subject of negotiation with individual candidates.) Students would then rank in order of preference the hospital programs to which they had applied, hospitals would similarly rank their applicants, and all parties would submit these rankings to a central bureau, which would use this information to arrange a matching of students to hospitals and inform the parties of the result.<sup>150</sup>

The program began in response to a severe shortage of candidates.<sup>151</sup> The NRMP “was instituted at a point in time when there were almost twice as many internship positions as there were graduates of U.S. medical schools to fill them.”<sup>152</sup> One student of centralized matching dubs this “[t]he driving force behind the medical [centralized matching] model.”<sup>153</sup> While the algorithm first used was changed in 1953, its successor and the National Resident Matching Program remain in use today.<sup>154</sup>

This type of coordinated matching mechanism is referred to as *centralized matching*. The feasibility of transporting it to legal matching markets has been explored and advocated before with respect to selection of federal law clerks,<sup>155</sup> the subgroup of clerks who wish to be eligible for United States Supreme Court clerkships,<sup>156</sup> and law review articles.<sup>157</sup> Additionally, entry-level

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149. See Roth, *Evolution*, *supra* note 16, at 995-97.

150. *Id.* at 995-96 (footnote omitted).

151. *Id.* at 1005.

152. Clark, *supra* note 122, at 1754 (footnote omitted).

153. Adams, *supra* note 123, at 167.

154. Roth, *Evolution*, *supra* note 16, at 997.

155. Patricia M. Wald, *Selecting Law Clerks*, 89 MICH. L. REV. 152 (1990).

156. Avery et al., *supra* note 16, at 797.

157. Stephen R. Heifetz, *Efficient Matching: Reforming the Market for Law Review Articles*, 5 GEO. MASON L. REV. 629 (1997).

lawyers seeking articling positions in some Canadian markets are assigned by a central matching system.<sup>158</sup> Some have been more skeptical of the virtues of centralized matching for allocating clerkships than others.<sup>159</sup> Nevertheless, given that the costs detailed above are shown below to be directly linked to its decentralization, it remains an open question why the market has yet to centralize.

*ii. Unraveling*

The key characteristic about decentralized matching markets is they tend to *unravel*. The simple way to describe unraveling is that if Firm 2 recruits at  $T_2$ , then Firm 1 has an incentive to recruit at  $T_1$  in order to prevent Firm 2 from forming contracts with the most desirable candidates. Naturally, though, Firm 2 then has exactly the same incentive to recruit at  $T_0$  in order to stymie Firm 1. This dynamic process, with each firm recruiting earlier and earlier than its competitors, is termed *unraveling*.<sup>160</sup>

Unraveling seems to be a natural consequence of decentralized matching markets. Before the institution of a centralized system in the form of the National Resident Matching Program, medical internships were allocated at the beginning of the student's third year, and occasionally at the end of his or her second year.<sup>161</sup> Similarly, until structural reform last year, the market for federal judicial law clerks presented "judges [with] an incentive to 'jump the gun,' hiring slightly earlier than their competitors, to get the pick of the candidates."<sup>162</sup> As a result, federal judges developed a Law Clerk Hiring Plan to regulate the timing of offers.<sup>163</sup> Additional examples of unraveling within decentralized matching markets include "postseason college football bowls . . . fraternity and sorority rush

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158. See *infra* Part III.B.1. For information on Toronto, see Law Society of Upper Canada, at <http://education.lsuc.on.ca/ess/apo/apoRecruitment.jsp> (last visited Jan. 29, 2004).

159. See, e.g., Clark, *supra* note 122; Adams, *supra* note 123.

160. Priest has argued that the use of the term unraveling has a normative bias because it suggests there is an *a priori* point at which decisions should be made, when in fact optimal decisions by definition are made when the marginal cost of obtaining new information is greater than the marginal benefit. George L. Priest, Reexamining the Market for Judicial Clerks and Other Assortative Matching Markets, 32-35, draft of Sept. 8, 2003 (on file with authors). This point is very well-taken, but we retain the use of the term unraveling to capture the progressive movement toward earlier and earlier hiring over time. Priest's account does not really address this phenomenon. We do not observe matching markets unraveling to later points in time as the relative marginal cost-and-benefit calculus changes.

161. See Roth, *Evolution*, *supra* note 16, at 994.

162. Avery et al., *supra* note 16, at 795.

163. See CHIEF JUDGE EDWARD R. BECKER & JUDGE HARRY T. EDWARDS, (Co-Chairs of the Ad Hoc Committee), U.S. COURT OF APPEALS FOR THE D.C. CIRCUIT, THE 2004 LAW CLERK HIRING PLAN: FREQUENTLY ASKED QUESTIONS, at <http://www.cadc.uscourts.gov/Lawclerk/FAQs/faqs.asp> (last visited Jan. 29, 2004).

[from which the term *rush* is derived]" and undergraduate early admissions programs.<sup>164</sup>

The causal logic is clear, and it is supported by empirical data of similar phenomena in similar markets: decentralized markets unravel. The race to get relatively scarce top-level talent forces firms to recruit law students before they graduate. Over time, this dynamic of firms racing against each other has forced firms to seek to hire students earlier and earlier, so that they are now doing so relatively early in a student's law school career. Because unraveling pushes firms to make hiring decisions early, so as not to have the best *ca* didates *stolen* by competitors, firms make these decisions on relatively little information. Firms cope as best they can by running summer programs to function as a screening device, but the efficacy of this device is open to question.<sup>165</sup>

(b) *Decentralized Matching, Unraveling, and the Hiring of Law Students*

Decentralized matching and unraveling help explain why law firms hire law students. The history of the market for entry-level lawyers suggests that the market has indeed unraveled to its present equilibrium. NALP guidelines limiting the timing of offers originated in the early 1970s and were modified after pressure from law firms in 1992, moving deadlines for replying to offers a month earlier.<sup>166</sup> At the time, elite schools resisted the requirements by boycotting the new deadlines, but in the end the schools relented.<sup>167</sup>

At the same time, schools are competing against each other to place their students in top jobs. Some schools, such as Harvard, have resisted *racing* against other schools in their on-campus interview programs,<sup>168</sup> but at the lower end of the market, schools seek to force employers to come to campus earlier so as to fill their summer interview slots with the schools' students. Currently, many firms report that schools are moving the interview process up to the summer after the first year of grades. This exacerbates the information problems in the market. Although presumably grade information is still the same, there may be less information available on a student's 2L courseload, law review membership, and extracurricular activities. Even more significantly for the firms, it means that they must now make offers for 2L summer associateships

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164. Avery et al., *supra* note 16, at 845; *see also* Interview 14 (comparing the interview process to sorority or fraternity rush).

165. *Cf. supra* notes 127 and 133.

166. Ken Myers, *Revised Recruiting Guidelines May Bring Chaos This Autumn*, NAT'L L.J., May 17, 1993, at 4; *see also* Roth & Xing, *Jumping the Gun*, *supra* note 16, at 1007.

167. Myers, *supra* note 166.

168. Interview 3.

before they have made decisions on the current year's class. This increases the risk that a firm can end up with too few offers, or even worse, too many.<sup>169</sup> The uncertainties produced by unraveling are pronounced.

For a variety of reasons, unraveling does not appear likely to be pushed up before the first year of law school for the market as a whole. First-year courses provide a common denominator by which to sort candidates.<sup>170</sup> One might imagine the unraveling proceeding to the spring of the 1L year, which would base job offers on a single semester of grades. But the common metric of law school would lose its sorting function completely were unraveling to move the market up, for instance, to the time when LSAT scores are available.

Firms cope with having to interview young law students early in law school as best they can. They conduct several interviews for each candidate, often involving more than one interviewer. Summer programs offer firms the chance to screen candidates, and these appear to focus on eliminating the occasional undesirable candidate, since most summer associates receive offers of permanent employment. Still, additional interviews carry the downside of diminishing marginal utility, and summer associate programs, as noted, have their own limitations. It is impossible to surmount entirely the informational deficit imposed by unraveling.

(c) *Decentralized Matching, Uncertainty, and Risk-Aversion Toward Laterals*<sup>171</sup>

In many respects, the pool of lateral associates should be a sought-after source of talent for law firms. Laterals do not require the same training as new associates. They are self-selected, both to the firm and to the profession as a whole (they have chosen to remain lawyers rather than become poets). There is a greater track record of real-world accomplishment, thus providing a correspondingly better prediction of performance. Moreover, one would have the entirety of

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169. To illustrate, suppose the firm of Dewey, Cheatham & Howe believes it will be able to hire ten lawyers per year. It hires twelve summer associates in one year based on its projected workload two years ahead. In mid-summer it believes that eleven of these are likely to succeed and it estimates that ten out of the eleven will accept the firm's offer. Based on these estimates, it makes twelve offers for the following year's summer class before the November 1 deadline. On November 1, four of the last year's summer class inform the firm they are going to work in other cities for spousal reasons. Even if all twelve offers for the next summer are accepted and are ultimately hired, the firm will not be able to meet its goal.

170. "The first year is nice because it is standard. [Students] are taking core courses, no courses we can't identify as nonrigorous. You can't pussyfoot con law." Interview 19.

171. Our discussion of laterals is restricted to lateral associates. There appears to be a vigorous market in lateral partners, who are not subject to many of the perceptions we discuss in this Section.

one's law school career—all three years—upon which to judge a candidate. Furthermore, those recruited by informal social ties with a given firm's members might be better suited to that firm's culture. Indeed, our research revealed at least one Chicago firm that embraces a lateral-hiring policy, and another that has seriously considered the possibility. Yet very few firms rely on a lateral-only strategy.<sup>172</sup>

Unraveling plays a big role in understanding why firms prefer entry-levels to lateral associates as the primary source of recruiting. In many ways, the market for lateral associates represents the fabled "Market for 'Lemons.'"<sup>173</sup> George Akerlof famously argued that the market for used cars contained a higher proportion of bad cars because of the difficulty for the buyer to evaluate quality.<sup>174</sup> The quality of the associate is in many ways private (or asymmetric) information that cannot be easily communicated or signaled. For example, according to Ronald J. Gilson and Robert H. Mnookin, "If the associate tries to leave her current firm after not being promoted to partner, any other potential employer receives an obvious signal about the associate's abilities."<sup>175</sup> This belief seems to have a good number of adherents:

The good people stay where they are. So keeping in the entry level market is crucial though we do hire laterals and post-clerkship entry levels.<sup>176</sup>

Laterals, meaning those with 2+ years of experience, have greater attrition. Think about it, they have demonstrated less loyalty already. But we do hire them to fill needs.<sup>177</sup>

Laterals can be naïve regarding the market and their expectations. Also, sometimes there are perfectly good reasons to change jobs, but just as often there are some issues.<sup>178</sup>

There is a kind of stigma attached: "Didn't make it at their own place."<sup>179</sup>

Laterals don't stay.<sup>180</sup>

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172. A NALP survey showed 25 out of 454 respondent employers (almost all were law firms) hired only laterals in 2002. PERSPECTIVES, *supra* note 23, at 10. The report does not break out these firms by size.

173. George A. Akerlof, *The Market for "Lemons": Quality Uncertainty and the Market Mechanism*, 84 Q.J. ECON. 488, 488 (1970).

174. *Id.* at 489-90, 495.

175. Gilson & Mnookin, *supra* note 18, at 577.

176. Interview 5.

177. Interview 8.

178. Interview 21.

179. Interview 16.

180. Interview 28.

A comment ought to be added to Gilson and Mnookin's statement: The perceived signal obtains irrespective of the associate's actual abilities. A more descriptively accurate statement may be that, *ceteris paribus*, a lateral carries greater risk than a new associate, or put differently, the pool of lateral associates contains a greater proportion of lemons than does the pool of fresh law students.

Just as "good cars may be driven out of the market by the lemons,"<sup>181</sup> so too may good lateral associates be driven out of the market by bad laterals.<sup>182</sup> Furthermore, as noted above, firms that are uncertain of a candidate's quality, or lack thereof, may be deterred from hiring him or her, not out of fear that he or she is a lemon, but simply because they do not wish to overpay (the winner's curse).<sup>183</sup> Some aversion toward laterals stems from the lack of transparency of legal work and not from the structure of the market. But the decentralized matching market exacerbates the aversion, because it takes a norm—matching with a firm as a 2L—and increases the strength of the negative signal emitted by failure to follow that norm.

Furthermore, because good lateral associates are so hard to find, it may be all the more important for a firm to find good entry-level associates. The difficulties of evaluating laterals helps explain why firms have an incentive to hire law students at all; in other words, the market has unraveled to that point.<sup>184</sup> Firms deal with the uncertainty of the lateral pool and, more generally, of gaining information about the quality of lawyers by creating their own monitoring system of homegrown associates.<sup>185</sup> As a result, the top firms have to incur training costs that they might not otherwise have to if they could simply agree to hire only candidates with one or two years of experience. This feature might explain why candidates with clerkships are desirable for firms—clerkships not only constitute an independent signal of quality, but also provide a year or two of training from which the firm can benefit by paying only a bonus.

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181. Akerlof, *supra* note 173, at 490.

182. Note that this is not the case for laterals who have a plausible explanation for leaving; for example, when their firm collapses. *See, e.g.*, Chris O'Brien & Margaret Steen, *Area Lawyers in Demand*, SAN JOSE MERCURY NEWS, Feb. 11, 2003, at 1C (focusing on rapid re-employment of partners after firm collapse, but remarking that many of the associates will not remain unemployed for long), <http://www.bayarea.com/mld/siliconvalley/business/columnists/gmsv/5152045.htm> (last visited Jan. 29, 2004).

183. We thank Larry Ribstein for that insight.

184. *See* Roth & Xing, *Jumping the Gun*, *supra* note 16, at 1037 (describing the effects of unraveling and evaluation difficulty in the context of firms hiring senior associates from their competitors).

185. We thank Michael Vogel for this insight, which accords well with traditional tournament theory. *See, e.g.*, GALANTER & PALAY, *supra* note 18.

*(d) Decentralization, Lack of Coordination, and Redundancy*

The third effect of uncertainty is redundancy. Decentralization leads to redundancy in two ways. First (as noted above), because the consequent unraveling pushes hiring decisions back so early, firms must invest greater resources into choosing each individual candidate.<sup>186</sup> Second, because each firm in a decentralized market by definition operates independently, no one firm can be certain how many candidates will accept its offers, and how many candidates will accept competitors' offers. This second form of redundancy (inter—rather than intra—firm) is the subject of Part III.A.2.(d). Firms and candidates undertake many more interviews than ought to be necessary, in part because the market is decentralized. A decentralized market unravels, leading to too little information at the time of hiring and the need to undertake multiple redundant interviews with candidates who have substantially similar records.

*i. Transaction Cost Asymmetry*

In large part, the redundancy reflects asymmetric transaction (search) costs. It is more costly for a firm to interview a candidate than it is for a candidate to interview with a firm. First, assuming an initial interview is on-campus, the firm must pay for travel time, the time spent interviewing the candidate, and some proportion of the time spent interviewing candidates who are not extended callbacks. Second, the firm must pay for the additional callback interviews and, again, some proportion of the callbacks expended on candidates not granted offers. The same applies at the summer associate level—the firm pays not only for each summer associate who becomes permanent, but also for some proportion of summer associates who fail to be up to par. As noted in Parts II.A.2.(a) and III.A.1.(c), there are also considerable logistical infrastructure and personnel costs that must be maintained. Recruiting for an elite law firm is a major endeavor and an expensive one as well.

For candidates, the costs are far less. On-campus interviews, which are *de rigueur* at elite law schools, take place but yards from where a student normally spends his or her days. Unless the student has an outside job, time spent interviewing, while potentially stressful and not always successful in terms of getting an offer, fails to impose significant opportunity costs; the student is not forgoing income to interview with the firm, although firm interviewers have to forgo billable hours to travel to, interview, and assess students. Moreover, while callbacks perhaps present the same drawbacks as on-campus interviews, they also occasionally represent the chance to

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186. See *supra* Parts III.A.1.(c), III.A.2.(a).i.

travel to exciting metropolises on a decent expense account. Finally, the summer associate program is often plush and carries substantial benefits: it pays well, provides first-hand knowledge of a particular firm and what it is like to work at a firm in general, and carries the possibility of a permanent offer.

Additionally, students have the benefits of being able to externalize some of their transaction costs onto career services offices. It is career services offices that do much interacting with firms. In terms of search costs, they schedule on-campus interviewing, search for opportunities, and so forth. In terms of bargaining costs and enforcement, they can lobby for individual students and provide social sanctions in the case of firm defection. Generally speaking, their ability to plug into an information network of both other career services offices and alumni at target firms yields benefits across the board in terms of search, bargaining, and enforcement. Perhaps most important, due in part to such factors as the *U.S. News & World Report* law school rankings (of which the percentage of students employed a certain amount of time after graduation is a component),<sup>187</sup> law schools do not resent having to perform this function. Rather, they eagerly consider it in their interest to assist students in finding employment because it serves to maintain or enhance their rankings.

Because of the asymmetry in transaction costs and the net downside potential disutility of not getting a summer associate position, students over-interview.<sup>188</sup> In other decentralized matching markets, there would be a ready-solution for this: the exploding offer.<sup>189</sup> The exploding offer is a compensatory device for the uncertainty created by decentralized matching markets. It allows actors to know, instantaneously, precisely how many more matches they must make before their individual requirements are met. A judge who has one clerkship open and makes an exploding offer to a candidate, which is then accepted, knows that he can cease his recruiting at that point.<sup>190</sup>

NALP prohibits exploding offers during the on-campus interviewing process,<sup>191</sup> and this rule seems to be followed. Why this

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187. *Law Rankings*, *supra* note 17.

188. Heifetz, *supra* note 157 (making the same argument in the context of law review articles). For authors, there is practically zero marginal cost to sending additional law review articles once the article itself has been written. *See id.* at 634. For law reviews, though, there is substantial cost to read and assess each article. *See id.* at 635. Thus the market tends toward inefficiency. *Id.* at 629.

189. *See, e.g., id.* at 637 (describing exploding offers in the law review article selection context); Roth & Xing, *Jumping the Gun*, *supra* note 16, at 1001-02 (using the example of a judicial clerkship exploding offer).

190. *See* Roth & Xing, *Jumping the Gun*, *supra* note 16, at 1001-02.

191. *See* PRINCIPLES, *supra* note 68, at pt. IV.F.

is so is not entirely clear. This may reflect a relatively strong bargaining position for law students vis-à-vis firms, especially for elite law students. Furthermore, there are far more law firms, even elite firms, than there are elite law schools. In other words, both law schools and law students may have numbers on their side when dealing with law firms. Alvin Roth has speculated that some of the dynamics of decentralized matching may reflect imbalances in supply and demand, although he has failed to articulate this hypothesis fully.<sup>192</sup>

In any event, whatever its causes, the effect of a ban on exploding offers is to create greater uncertainty for firms with respect to staffing. Firms cannot make offers, have them accepted or rejected immediately, and then adapt their strategy until their staffing needs are met. Instead, they must extend offers to a wide range of candidates, not knowing for some time how many (or who) will accept.

Finally, as a sidenote, it is interesting to compare the transaction costs in the market for elite law firm associates versus those in the market for federal law clerks. In the federal law clerk market, in which unraveling is still a problem, the asymmetries are far less severe. In contrast to on-campus interviewing, where firms come to a student's metaphorical doorstep, participation in the federal law clerk market is a major logistical undertaking for the candidate. Students have to assemble individualized packets of information, specifying each to a judge's particular preferences. That information can be difficult and expensive (even merely in terms of long-distance charges) to transmit. Moreover, as noted, students bear the cost of travel. Finally, bargaining and enforcement are far more costly. There is no NALP for federal judges. We certainly would never suggest that Judge Posner would practice some of the strong-arm techniques he and his co-authors describe judges engaging in, but if he or someone of his stature did, it would take a most intrepid law school dean (let alone a dean or director of career services) to challenge him.

*ii. Decentralized Matching, Prediction, and Redundancy*

Even if asymmetric transaction costs may explain much of the redundancy in recruiting, there may be more to the story. A plausible case can be made that redundant recruiting processes are, at least in part, the result of the decentralized nature of the matching market. Because firms are not guaranteed 100% yield in a decentralized matching market, they must instead rely on predictions. The

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192. See Roth & Xing, *Jumping the Gun*, *supra* note 16, at 1037.

problem with predictions, of course, is that they are probabilistic and may turn out to be wrong. Firms cannot know with certainty how many offers will be accepted. Nor do they know how their competitors will hire in the coming year. The past may be a poor guide to the future. The prospect of hiring too few associates is not attractive. Being understaffed represents lost revenue in the short-term and, in the long-term, undermines the viability of the partnership by depriving the firm of homegrown leadership. Alternatives to the on-campus interview track are slim. The firm can hire 3Ls, but they have a higher probability of being lemons. Interviewing as 3Ls perhaps is due to inability to have a permanent offer already, or at least a permanent offer they wish to accept, neither of which represents a particularly good signal. The firm can hire laterals, but they also present potential lemon problems and the winner's curse problems.<sup>193</sup>

The solution, then, is to over-hire. Because firms must rely on predictions that may be wrong, there is a bias toward safety margins and worst-cases. Here *planned attrition* comes into play again. As the firm develops more information over time, it can prune its ranks to optimal size. Moreover, there is an affinity here between unraveling and redundancy: because much recruiting takes place so long before actual permanent employment will begin, there is some flexibility in adapting the workforce to adjust to staffing needs.

It may also be possible to look at the first few years of associateship as a screening period. Because the pre-permanent offer screening process is so deficient in providing information about particular candidates, firms tend to utilize the initial associate years for screening to an extent not generally recognized. This would accord well with the phenomenon of planned attrition that some interviewees mentioned. It also intersects with one of the major themes in the study of the economics of the large law firm, that of "the tournament."<sup>194</sup> Considerable attention has been devoted to the significance of how and why some associates make partner and others leave the firm.<sup>195</sup> The prevailing account is that the firm conducts a "tournament," a competition in which associates are pitted against each other in a Darwinian contest, partnerships being awarded to those who win.<sup>196</sup> A more recent challenge has been that

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193. See *supra* Part III.A.2.(c).

194. See, e.g., GALANTER & PALAY, *supra* note 18 (arguing that the growth of the large law firm is attributable to the "promotion-to-partner tournament"); Wilkins & Gulati, *Reconceiving*, *supra* note 14 (critiquing traditional tournament theory).

195. See, e.g., GALANTER & PALAY, *supra* note 18; Wilkins & Gulati, *Reconceiving*, *supra* note 14.

196. See GALANTER & PALAY, *supra* note 18, at 100-02.

the tournament is more variegated, that the firm quickly sorts out who will make partner from those who will not.<sup>197</sup>

The explanation elaborated in this Article complements and modifies somewhat this more recent account (which is itself an extension and modification of the tournament model). This account, elaborated by Wilkins and Gulati, holds that law firms can (and do) hire new associates despite knowing virtually nothing about them in part because associates are sought largely for their credentials as status symbols, and also because much of the work that many associates perform is not particularly taxing. We would emphasize the role of *necessity*: law firms hire based on little information not necessarily because doing so is optimal or desirable, but rather, because *the market structure and the unraveling it creates leave them no choice*.

### *iii. Additional Perspectives on Redundancy*

Others have argued elsewhere that decentralized matching markets exhibit redundancy, although they have disagreed about whether to adopt centralized matching as a curative.<sup>198</sup> Annette E. Clark takes issue with centralized matching as an answer to redundancy.<sup>199</sup> In large part, she argues that eliminating exploding offers creates problems for judges, who must deal with uncertainty regarding staffing.<sup>200</sup> However, Clark's argument transfers poorly to the domain of the market for law firm associates (as opposed to law clerks). Law firms already are prohibited from giving exploding offers, and this prohibition seems not terribly prone to violation. If exploding offers have already been eliminated, then there seems little to lose by shifting to centralized matching. At a minimum, it seems hard to argue that there will be an *increase* in uncertainty.

Whether or not centralization of the entire market is feasible, our interviews with the largest national firms show that they seek to obtain some of the benefits of centralization within the firm by eliminating redundancy and inter-office competition. As one national firm hiring partner said:

We have a centralized process. The interviewers go to the campus and give us reports on each candidate within twenty-four hours. I sort it and send it to our offices. There's a narrow window. On any day in the fall you may see two to three schools. We have

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197. Wilkins & Gulati, *Reconceiving*, *supra* note 14.

198. See, e.g., Adams, *supra* note 123, at 132-35, 162-67 (describing the judicial clerkship process and potential effects of imposing a centralized system); Heifetz, *supra* note 157, at 635-37, 659-68 (discussing redundancy and centralization in law review article selection process).

199. Clark, *supra* note 122, at 1766-70.

200. *Id.* at 1766.

developed special software to help us manage the process. We have 200 people doing the interviewing. They scan the resumes and transcripts and send them along with the report. We then let the offices know what callbacks are “approved.” This centralization helps make the cut more consistent. The offices then make the final call on whom to callback. The reports on the callbacks and the office recommendations are then compiled by the committee, which makes the offer decisions by vote. Many decisions are easy. We spend most of our time discussing the marginal cases.

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... We think centralization works for our firm. If the process is decentralized, the offices are competing with each other for talent. I’ve seen situations where one office of a firm hosts a reception at a school the same night another office hosts a reception. Our message is that we are recruiting for *the firm*. Also if we left [the offices] to their own devices, different hiring partners would have different standards and different pools . . . and we wouldn’t get the benefit of the cross-pollination [sic] or the consistency.<sup>201</sup>

(e) *Conclusion*

In short, much firm activity in the market is puzzling: firms hire students, who are not yet lawyers, on the basis of little information; firms pass up lateral associates who are ready-trained, self-selected sources of talent; and they spend a great deal of time interviewing far more people than they will hire, many of whom will receive a similar offer from a competing firm. But much of this becomes understandable once one recognizes that the market for elite law firm associates is decentralized and prone to unraveling: firms have to hire earlier lest a competitor snatch up the best candidates; firms have an incentive to pass up those who do not participate in the 2L matching market; and firms face considerable uncertainty in projecting and filling staffing requirements, which in turn may cause them to err on the side of caution and interview broadly.

*B. Explaining the Market’s Structure*

Given the costs inflicted upon firms by the market’s uncertainties, and the risk-averse strategies these uncertainties necessitate, it is reasonable to ask why the elite legal profession has not centralized its matching like the medical profession. Antitrust law does not seem to present an impenetrable barrier and would likely allow it depending on whether it is seen to have an educational rationale.<sup>202</sup>

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201. Interview 26.

202. There was an antitrust challenge to the system of medical matching in 2002 that has not yet been successful in gaining class certification. *Jung v. Ass’n of Am. Med. Colls.*, No. 1:02-cv-00873-PLF-JM, slip op. (D.D.C. filed June 2002). The residents claimed that

In Part III.B.1, first we examine a relevant case of centralized matching, that for Canadian lawyers, which came into being but has devolved of late. Then, in III.B.2, we speculate on some tenable hypotheses as to why the American market for elite law firm associates has remained decentralized.

1. *Explaining Centralized Matching in Practice: Canada*

The Canadian experience with centralized matching suggests that it is at least a theoretical possibility in the market for entry-level lawyers. In Canada, law graduates undertake a one year *articling* period of practical training before formal entry into the profession.<sup>203</sup> At the upper end of the market, these typically lead to permanent offers of employment for the entrants.<sup>204</sup> In three large markets for lawyers, those in Vancouver, Calgary, and Toronto, these articling positions were assigned through the use of a centralized clearinghouse.<sup>205</sup> These were administered by a private company.<sup>206</sup>

This program was designed to eliminate many of the uncertainties identified above.<sup>207</sup> The matching program was seen to alleviate “the time pressures on both students and firms in the scheduling and completion of interviews, in the mutual evaluation process, and in the making and acceptance or rejection of offers.”<sup>208</sup> It also eliminated strategic behavior on the part of both students and firms.<sup>209</sup> For firms, matching has the additional benefit of allowing firms “to specify the maximum number of students required,” eliminating the problem created when a firm extends too many offers and receives too many acceptances.<sup>210</sup>

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the matching program caused them to be paid less than their fair market value because each resident was matched with only one hospital, preventing bidding for wages and violating section one of the Sherman Act that prohibits “every contract, combination or conspiracy in restraint of trade or commerce.” Barry F. Rosen, *Commentary: On Health Care-The Antitrust Attack on the National Resident Matching Program*, DAILY REC. (Balt., Md.), July 11, 2003, available at 2003 WL 10167596. The legality of the matching program will ultimately depend on whether it is considered a restraint of trade or in fact may help to improve market conditions. See *Chi. Bd. of Trade v. United States*, 246 U.S. 231, 238 (1918).

203. Roth & Xing, *Jumping the Gun*, *supra* note 16, at 1024.

204. *Id.*

205. MCKINNEY ET AL., *supra* note 16, at 2.

206. See NAT'L MATCHING SERV., INC., GENERAL INFORMATION ABOUT MATCHING PROGRAMS, at <http://www.natmatch.com> (last visited Feb. 2, 2004).

207. See NAT'L MATCHING SERV., INC., ARTICLING STUDENT MATCHING PROGRAM (ALBERTA) FOR 2004-2005 POSITIONS, at <http://www.natmatch.com/albart/index.htm> (last visited Feb. 2, 2004) (click on *overview* link to see *Description of the Matching Program*).

208. *Id.*

209. *Id.*

210. *Id.*

The scale of Canada's centralized matching experiment may have been facilitated by limitations on mobility among provinces.<sup>211</sup> Although technically a graduate of a Canadian law school can complete the requirements for entry into the profession in any jurisdiction, there have historically been practical limitations on the process.<sup>212</sup>

Interestingly, Canada's system of recruitment has come under increasing pressure during the last few years, and there has been structural change in the market that has made it more like the United States market. One such change was the development of national law firms following the 1989 case of *Black v. Law Society of Alberta*, which eliminated provincial law society rules that required all firm partners to be members of the local bar.<sup>213</sup> The conclusion of a national mobility agreement<sup>214</sup> has led to the completion of a national market in legal services, so that most provinces will now recognize the credentials of lawyers admitted in other jurisdictions. A second change was the boom in the legal services market in the United States, which led many New York firms to begin recruiting in Canada.<sup>215</sup> As a result of these expansions in the market, the interviewing process that had formerly taken place in February of the second year moved up to the fall of the second year. Thus, Canada has seen some unraveling in its market for entry-level lawyers.

As the process has unraveled, professional intermediaries have arisen as in the United States. Around 1997, Canadian law schools began to employ career development officers, and an association of these officers developed, which now has thirteen member schools.<sup>216</sup> As recruitment pressures have intensified, two of the markets that used a centralized matching system have abandoned them: Vancouver eliminated its system in 1996 and Toronto in 2002.<sup>217</sup> This process was encouraged by an increasing number of students and firms concluding agreements outside the centralized process.

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211. Cf. MCKINNEY ET AL., *supra* note 16, at 3 (centralized matches support a national market).

212. Harry W. Arthurs et al., *Canadian Lawyers: A Peculiar Professionalism*, in *LAWYERS IN SOCIETY: THE COMMON LAW WORLD* 123, 139-40 (Richard L. Abel & Philip S.C. Lewis eds., 1988) (listing several "practical restraints").

213. *Black v. Law Soc'y of Alberta*, [1989] 58 D.L.R. 4th 317, 342-53.

214. FED'N OF LAW SOC'YS OF CAN., NATIONAL MOBILITY AGREEMENT (2002), [http://www.flsc.ca/en/pdf/mobility\\_agreement\\_aug02.pdf](http://www.flsc.ca/en/pdf/mobility_agreement_aug02.pdf) (last visited Feb. 18, 2004).

215. Interview 32.

216. *Id.* The association is the Canadian Legal Career Development Network. See, e.g., Patricia E. Spencer, *Career Services-New Stuff: On Articling Positions & Summer Jobs 2001-2002*, CANONS OF CONSTRUCTION (2002), at <http://www.canonsofconstruction.com/vol-2002/articles/career-jobs/career-services-11-2001.html> (last visited Feb. 2, 2004).

217. MCKINNEY ET AL., *supra* note 16, at 2.

The Canadian story suggests that centralization is a theoretical possibility, but that pressures in the marketplace prevent it from being adopted or utilized over the long term. The Canadian legal profession was unable to sustain centralized matching of its new members over time. This would seem to parallel the experience of the American legal profession (or at least its elite segment), which was unable to centralize matching despite many of the same problems that have afflicted other matching markets, including the similar medical profession around a half century ago. The next Section describes the features of the industrial organization of the legal profession that explain these divergent outcomes.

## 2. *Explaining Decentralized Matching in Theory: The United States*

No clear-cut answers present themselves as to why the American market for elite law firm associates has failed to centralize, or why the Canadian market seems to be decentralizing, but some tenable hypotheses include the capital structure of the industry, corporate governance, reputational structure, and the degree of concentration (or lack thereof) in the industry. This Section considers these various hypotheses, beginning with a comparison between law and another professional services industry, that for medical services.

### (a) *A Comparison Between Law Firms and Hospitals: Capital Structure*

Law firms need “a certain core infrastructure: a law library, computerized research networks, a full-time docket clerk, a filing staff, modern copying equipment, and a word processing director.”<sup>218</sup> Other than this relatively limited amount of physical capital, though, many scholars recognize “the central importance of *human capital*” in the structure of the law firm.<sup>219</sup>

When you come down to it, what is a law firm other than selling high ticket services to clients. We have two assets: our people and our clients. . . . I can’t imagine cooperation with our competitors on hiring. We pay attention to them in terms of numbers, attrition rates, acceptance rates, and where we are losing talent to.<sup>220</sup>

Thus, the National Resident Matching Program might tolerate ten to fifteen percent of students being pressured to make “informal

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218. Richard H. Sander & E. Douglass Williams, *A Little Theorizing About the Big Law Firm: Galanter, Palay, and the Economics of Growth*, 17 LAW & SOC. INQUIRY 391, 393 (1992) (reviewing analysis by Ronald J. Gilson and Robert H. Mnookin).

219. *Id.* at 394; see NELSON, *supra* note 9.

220. Interview 10.

commitments”—to defect—prior to match,<sup>221</sup> but this may not be acceptable to law firms.

*i. Hard Assets*

Medicine, unlike law, requires equipment. With perhaps the exception of a few specialties like psychiatry, even the humblest practitioner today requires laboratory service and devices beyond a mere stethoscope. Moving slightly up the continuum of sophistication, what characterizes specialists is often not their minds but their machines. Cardiologists and allergists, not to mention surgeons, could not work out of their own home. In other words, hospitals comprise both physical plants and equipment, neither of which possesses comparable importance in the legal profession.<sup>222</sup> “[T]ypically 20 to 30 percent of a hospital’s total operating expenses” consist of “supply chain dollars.”<sup>223</sup> In a phrase, health care is “capital-intensive.”<sup>224</sup>

*ii. Soft Assets – People*

Hospitals also require a greater number of nondoctors than law firms require nonlawyers. In 2000, there were 84,867 full-time equivalent medical and dental residents in U.S. registered hospitals.<sup>225</sup> This compares to a total of 4,454,107 other personnel in U.S. registered hospitals, including: 97,931 doctors and dentists, 1,039,994 registered nurses, 151,684 licensed practical nurses, and 3,164,498 other salaried personnel.<sup>226</sup>

By contrast, Altman Weil’s *2000 Survey of Law Firm Economics* found that firms with over 150 lawyers had an average of 54 secretarial staff per 100 lawyers, 9 technology staff per 100 lawyers, 9 finance/accounting staff per 100 lawyers, and 36 paralegals per 100 lawyers.<sup>227</sup> The point is that while the number of nurses and other salaried personnel in registered hospitals far exceeds the number of

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221. Avery et al., *supra* note 16, at 870.

222. See PRICEWATERHOUSECOOPERS, HEALTHLEADERS INDUSTRY UPDATE: MODELS FOR SUCCESS: HELPING PROVIDERS CREATE A SUSTAINABLE FUTURE 7 (Dec. 2002) (on file with authors).

223. CAP GEMINI ERNST & YOUNG, HEALTH CARE’S TOP TEN BUSINESS ISSUES FOR 2002, at 2 (2002), [http://www.us.cgey.com/DownloadLibrary/files/health\\_top10issues2002.pdf](http://www.us.cgey.com/DownloadLibrary/files/health_top10issues2002.pdf) (last visited Feb. 2, 2004).

224. PRICEWATERHOUSECOOPERS, HEALTHLEADERS ROUNDTABLE: THE FUTURE OF HOSPITALS: A FORECAST FOR THE 21ST CENTURY 14 (2001), <http://www.pwchealth.com/cgi-local/hcregister.cgi?link=pdf/roundtable.pdf>.

225. HEALTH FORUM, AM. HOSP. ASS’N, 2002 HOSPITAL STATISTICS: THE COMPREHENSIVE REFERENCE SOURCE FOR ANALYSIS AND COMPARISON OF HOSPITAL TRENDS 7 (2002).

226. *Id.*

227. ALTMAN WEIL, INC., THE 2000 SURVEY OF LAW FIRM ECONOMICS 264, 266, 268, 270 (2000).

doctors, the number of nonlawyer staff in firms of over 150 lawyers is about the same as the number of lawyers. This implies that the lawyer is far more important to the survival of the law firm than the resident (or doctor) is to the survival of the hospital. Accordingly, it is relatively easy to understand why a hospital is far more likely to entrust its intake of personnel to a mechanical process, while law firms might be far less sanguine.

*iii. Soft Assets – Methodologies*

Medicine may also be more amenable to being broken down into a set of processes: “hospital performance can be benchmarked.”<sup>228</sup> Residents are expected to know the proper diagnosis and protocols for a patient presenting a given set of symptoms. The contrast with the legal profession, which really cannot be deconstructed into a series of rote procedures and metrics, particularly in a field like litigation where each case is fact-intensive, is striking. These processes may compensate and alleviate for the need to get good people. Rather, medicine seems more like management consulting at a firm like McKinsey and Company, at which “[h]undreds of new MBAs join the firm every year, and almost as many leave. But the company is able to crank out high-quality work year after year because its core capabilities are rooted in its processes and values rather than in its resources.”<sup>229</sup>

*iv. Conclusion: Different Goods, Different Services*

Law firms have different assets and provide different services than hospitals. Law firms often provide deliverables composed of compressed intellectual content (for example, an appellate brief); hospitals often provide the less abstract service of round-the clock care in a suitable environment with an appropriate team (for example, an overnight stay for observation).

*(b) A Comparison Between Law Firms and Hospitals: Corporate Governance Structure*

The corporate governance structure of law firms and hospitals also differs. Law firms often, if not usually, make hiring decisions by partners. Partners, in turn, have both a financial and reputational stake in ensuring the long-term viability of the partnership and its maintenance by new associates who will one day inherit it. Once

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228. PRICEWATERHOUSECOOPERS, *supra* note 222, at 4.

229. CLAYTON M. CHRISTENSEN, *THE INNOVATOR’S DILEMMA: WHEN NEW TECHNOLOGIES CAUSE GREAT FIRMS TO FAIL* 168-69 (1997).

more, hospitals are far less dependent on the residents who are matched.

Every entry-level lawyer is a potential future partner, a stakeholder in the firm itself. Again, the medical profession yields a useful counterpoint: a residency director picks a future co-worker. But a hiring partner picks a potential future co-owner, one who may directly or indirectly influence the appreciation or depreciation of that hiring partner's personal financial and reputational equity over years to come. That hospitals can be not-for-profit, while law firms are not, only enhances the relative disparity between recruiting associates and recruiting residents.

Because most law firms are partnerships, individual lawyers are particularly dependent on the quality of other lawyers in the firm. Each other partner in the firm contributes directly to the income of the lawyer in a way that senior doctors at the same hospital do not. Law firms also have a collective reputation; indeed, some have argued that the structure of the large firm itself is based on the need for a collective reputation.<sup>230</sup> By establishing a multigenerational reputation, large law firms offer quality assurance to clients.<sup>231</sup>

Large law firms are aware that their income depends on multigenerational practices. As one hiring partner told us, "one way to build a firm history and a firm culture that passes on from generation to generation is by having lawyers who grow up in the firm."<sup>232</sup> Good lawyers are "institutional memories for their clients."<sup>233</sup> The need to maintain the firm over time means that senior lawyers have an especially strong incentive to hire talented entry levels.

We know there will be attrition and can't tell who will stay, but we don't take anyone who we don't think *can't* make partner.<sup>234</sup>

We aren't interviewing for potential partners explicitly—it's too far away in time to grasp. But a successful associate will become a successful partner, so in that sense we are looking for the same things. The attributes are good communication, a willingness to

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230. Many scholars have analyzed the large law firm as encompassing a reputational "bond." See Larry E. Ribstein, *Ethical Rules, Agency Costs, and Law Firm Structure*, 84 VA. L. REV. 1707, 1714 n.32 (1998). The reputational bond idea is that individual lawyers have a need for reputation and can rely on their firms to signal to clients the quality of their work. *Id.* at 1715. But senior lawyers by definition have less need for reputation. *Id.* What prevents senior lawyers from defecting on clients? The large law firm's multigenerational structure can be explained as a device to maximize the reputational bond posted by the firm. *Id.* Deferred rewards for the end of a career help keep senior lawyers from defecting on their multigenerational bond. *Id.* at 1715-16.

231. *Id.* at 1715-16.

232. Interview 28.

233. Interview 7.

234. Interview 9.

work. We assume that all those who come in the door have the intellectual ability to do the work.<sup>235</sup>

The need to replicate the firm by hiring future partners raises the stakes in recruiting, thus making cooperation via centralized matching more difficult and more unlikely.

(c) *Professional Services Firms, Law Firms, and Reputation*

As professional services firms, law firms have a strong need to signal quality to their clientele and the in-house corporate counsel, who “consider[s] the quality of law firms closely . . . through published rankings of practice area experience, review articles in the national law journals, the J.D. degrees of the firm’s attorneys, and quality rating handbooks.”<sup>236</sup> Some have argued the corporate counsel then uses the status of the firm she chooses to insulate her own decision-making from reproach should things turn out poorly.<sup>237</sup> On an anecdotal level, one notes that large law firms typically post the biographies of all their attorneys online. A firm fearing that it would garner a lesser crop of associates via centralized matching, either due to cheating or otherwise, might be reticent to participate: the need to use those associates as a way to signal quality is too great.

Furthermore, law firms understand that the recruiting process can play an important role in signaling quality to potential clients, competitors, and future employees.<sup>238</sup> For two managers at one major firm, “the essential theme underlying both the marketing and recruiting functions—how to promote the firm—is the same; only the audience is different.”<sup>239</sup> Being known for recruiting only at selective schools, or for extending only a limited number of offers and receiving a high number of acceptances, or for not having to recruit at all<sup>240</sup> may signal high status.

235. Interview 21.

236. Brian Uzzi & Ryon Lancaster, *Social Embeddedness and Price Formation in the Large Law Firm Market*, at 17, at <http://gsbwww.uchicago.edu/research/workshops/o&m/Uzzi.pdf> (last visited Jan. 31, 2004).

237. *Id.* at 20.

238. See Wilkins & Gulati, *Black Lawyers*, *supra* note 14, at 549 (noting that a primary objective in elite law firm hiring “is to signal the firm’s quality to clients, competitors, and potential recruits”); see also SIGNIFICANCE, *supra* note 28, at 20-21 (finding 37.8% of firms list positive public relations as a desired outcome of summer programs, and this percentage increases with firm size).

239. Dawn M. Gertz & Jeanmarie Campbell, *Bring Marketing, Recruiting Together*, N.Y. L.J., Apr. 9, 2001, at S9.

240. Robert Lennon, *Bar Talk: Gatekeeper to the Litigation Gods*, AM. LAW., May 2001, at 24, 24 (“For the most part, Philip Korologos, a 35-year-old hiring partner at [prestigious Boies, Schiller & Flexner], just sits back and sifts through the mail and the phone calls generated by the firm’s golden-boy treatment by the press.”).

Even if you go interview at a school and get no one, you do project an image and help get future laterals, clients. At least this is what our in-house recruiting professionals tell us.<sup>241</sup>

Admittedly the OCI process takes a lot of time but we get other benefits from it. We get our name out there. The people we talk to and don't bring back will end up working at other firms or [for] potential clients.<sup>242</sup>

It's true the process seems wasteful. We spend a lot of time interviewing those we don't take. But it gives the firm visibility among lawyers—an intangible benefit. How would the marketplace perceive a lack of a summer program?<sup>243</sup>

Finally, it should also be noted that for professional service firms alternative means of marketing, besides conveying quality through recruiting, may be limited. “[M]any people are not accustomed to seeing professional service advertising.”<sup>244</sup> Furthermore, limitations on lawyer advertising remain in place, even though an absolute ban is no longer constitutional.<sup>245</sup> Accordingly, recruiting functions as a relatively cheap substitute for the questionable practice of direct advertising. Professional service firms have few fixed, or *hard*, tangible assets. Thus the comparative value of soft assets like “brand equity”—a hidden asset for the company that generally goes unrecorded on its balance sheet—may be greater.<sup>246</sup> In sum, any activity with recruiting potential or implications—such as decentralized matching—may take on additional importance.

(d) *Fragmentation and Collective Action*

One reason that Canadian markets for lawyers were able to centralize while those in the United States have not may lie simply in the fact that Canada is smaller, which may have facilitated coordination and collective action. Moreover, the Canadian matching system was regionally divided and regulated, in a way the United States legal profession is not. While local practice restrictions

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241. Interview 14.

242. Interview 12.

243. Interview 21. Note that this comment reflects a central theme of the Article as a whole. This is a classic collective action problem in which individually rational actions lead to suboptimal outcomes. It makes sense for any one firm to market itself via recruiting. Given that they all do so now, they proceed to cancel each other out and the only *move* one firm can make would be to hurt itself by withdrawing from the process. See, for example, the discussion of collective action *infra* Part III.B.2.(d).

244. PHILIP KOTLER & PAUL N. BLOOM, *MARKETING PROFESSIONAL SERVICES* 13 (1984).

245. See, e.g., *Fla. Bar v. Went For It, Inc.*, 515 U.S. 618 (1995) (upholding restriction on advertising); *Bates v. State Bar of Ariz.*, 433 U.S. 350 (1977) (advertising falls within First Amendment).

246. CHARLES J. FOMBRUN, *REPUTATION: REALIZING VALUE FROM THE CORPORATE IMAGE* 4 (1996).

prevent lawyers from one jurisdiction from practicing nationally in the United States, these do not pose a barrier to elite law school graduates, who are recruited nationally.

Thus, one reason why the market for elite law firm associates has not centralized may be collective action, of which centralized matching is a form. The United States legal profession is highly fragmented.<sup>247</sup> Accordingly, firms may fear defection and cheating by rivals; or the relatively fragmented nature of the legal services market makes trust more difficult; or lock-in to a new standard turns out to be disadvantageous; or some combination thereof. Additionally, it is possible that the firms most needed for centralized matching to evolve—the ones with the highest status—are the ones with the least incentive to participate. These may well explain some of the puzzle. At the same time, there seems to be no reason why these concerns were not equally present in the (highly fragmented) market for medical residents, or for Canadian associates.

### 3. *Conclusion*

Centralized matching has been tried before, in the market for new lawyers in Canada. It may currently be dissolving there. Still, given the problems decentralized matching has caused firms, detailed in Part III.A, and given that there are not legal barriers to centralized matching, it makes sense to question why centralized matching has not arisen in the United States market for elite law firm associates. While there does not seem to be a simple or readily-accessible answer to the question, it seems tenable to suggest the causes may be: the importance of associates to law firms (in terms of their ability to generate revenue and to perpetuate the organization as a whole), the (perceived) benefits of decentralized recruiting for signaling reputation and quality, the difficulties of collective action in a fragmented industry, or some combination thereof.

## IV. CONCLUSION

This Article concludes by summarizing our findings and speculating how the empirical data relates to literature on the large law firm and on matching markets in other contexts.

### A. *Understanding Market Structure and Process*

This Article has described a market, the market for elite law firm associates, that contains a broad set of actors and a fairly rigid and elaborate set of processes. We argue these processes are consistent with risk-aversion in response to uncertainty imposed by market

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247. See Heinz et al., *supra* note 12, at 354-55.

structure. The actors include not only those who will work with one another—the current students or future associates and hiring partners—but also professional recruiting coordinators and professional career services staff. The latter pair provide institutional memory and information-sharing functions and have legitimate claims to professional knowledge, or “jurisdiction” in Andrew Abbott’s terminology.<sup>248</sup>

The process begins, usually, with on-campus interviewing in the fall of a student’s second-year of law school. At the top end of the market, students bid on interview slots and employers have no option but to interview students who select them; that is, the interviews are not prescreened. Based on the interviews, students are selected for callbacks, usually consisting of multiple interviews, after which a firm will use some procedure to determine whether to extend an offer for summer employment to the student. If the student accepts an offer, he or she will become a summer associate, after which he or she will probably, but not always, be made an offer to become an associate after graduation.

What is striking about the process is, first, its cost and uncertainty. Firms hire their primary source of human capital and future stakeholders after but a year of law school. In other words, there is little basis on which to evaluate candidates. Even if one knows how they did in tough courses such as Constitutional Law, or whether they made law review, firms could benefit by waiting to learn how the students performed in other difficult courses such as Federal Courts, or whether they became editor-in-chief of the law review, or finished first in moot court. Selecting so early in law school deprives firms of considerable information when making an important choice.

Second, selecting new associates from law school *at all* may be unwise for firms. Since “virtually all of the skills and dispositions that associates need to *be good lawyers* must be learned on the job,”<sup>249</sup> *ceteris paribus*, it would make the most sense to hire new associates laterally. This would benefit law firms in two ways. First, they would have a greater empirical track record on which to judge prospective associates: all of law school *and* the more dispositive post-law school career. Second, they would externalize post-law school training costs onto another firm; in other words, firms would be able to engage in free-riding.

Third, there is a considerable degree of redundancy across the market. This is a consequence of what NALP terms the “central dynamic[]” of the legal market: “A large number of employers

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248. ABBOTT, *supra* note 20.

249. Wilkins & Gulati, *Reconceiving*, *supra* note 14, at 1608.

[competing] fiercely for a small portion of the student pool.”<sup>250</sup> Firms expend a great deal of time and energy doing the same tasks, with regard to the same candidate, when that candidate will in the end become a full-time associate at but one firm and a summer associate at but two at most.

Much of this uncertainty is caused by the fact that legal recruiting takes place in a decentralized matching market. Decentralized markets unravel, and that is what has happened: firms hire law students, and they hire law students early in law school. Furthermore, firms may be more inclined to shy away from laterals because the market operates to designate anyone looking for a job, as a 3L or thereafter, as bearing a higher likelihood of being a lemon. This adverse selection problem only increases the pressure to hire law students and to hire them early. Additionally, decentralized matching markets exacerbate the redundancy already present in the law firm associate selection process. Because firms cannot be certain of their competitors’ recruiting strategies, to say nothing of their own preferred candidates’ ultimate decisions, they must engage in a certain degree of risk-averse behavior, one sensible strategy being to interview and hire broadly. And finally, because avoiding lemons takes on such importance, not only must firms interview many candidates, they must interview each of those many candidates many times.

We conjecture that the reason the market for elite law firm associates has remained decentralized is because of industrial organization. The large law firm, as a partnership, consists almost exclusively of the lawyers who work for it and must signal its quality to a variety of audiences, including a sophisticated clientele. Each of these factors—the importance of human capital, the corporate governance structure of the firm, and the need to signal quality—renders associate selection extremely important. Taken together, along with a fragmented industry comprised of many players, these factors may go a long way toward explaining why the elite sector of the legal profession has failed to centralize its recruiting function along the lines of medicine.

If we are correct, scholars prescribing centralized matching as a curative for market failure may be naïve. Market inefficiencies from decentralized matching do not simply imply that cooperation ought to prevent such inefficiencies. Rather, they suggest market structure and industrial organization have impeded cooperation in the first place. Accordingly, one ought not to expect or prescribe centralized matching in markets whose industrial organization precludes it.

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250. See HISTORY, *supra* note 45.

Structure is, if not outcome determinative, highly influential in determining process.

### *B. Theoretical Relevance*

#### *1. The Tournament*

We begin with Marc Galanter and Thomas Palay's "tournament theory."<sup>251</sup> For Galanter and Palay, a lawyer will have human capital obtained prior to and during law school, but they acknowledge that one is still "a 'kid' just out of law school."<sup>252</sup> Because such a lawyer has a great deal of important work to accomplish but it is difficult for the firm to monitor associates to ensure goals are achieved, a tournament is erected by the firm: "By promoting some but not all of the associates [to partner] the firm communicates to them that it will reward productivity but not shirking; therefore, the associate will exert a maximum effort to win the contest."<sup>253</sup>

While still the dominant paradigm, Galanter and Palay's account of the large law firm has been subjected to substantial criticism.<sup>254</sup> We do not refute their account, but suggest an alternative way of thinking about what appears to be a tournament. Much of the appearance of a tournament may stem from the difficulty of predicting a lawyer's fit prior to his or her beginning with the firm. Some of this is inevitable given the difficulty and uncertainty of interviewing and screening, and it is exacerbated by the disjunction between law school and law practice. That said, decentralized matching exacerbates the difficulty of prediction: firms race each other for talent and make decisions on limited information, forcing them to make more matches, and with a higher probability of each match in fact being a mismatch. As more information becomes available in the early years of an associate's career, the mismatches reveal themselves. Firms do not choose to structure a tournament; rather, the attrition model of the current large law firm may in part be forced upon them by the market in which they participate, and this model merely simulates the appearance of a tournament. Moreover, this logic applies bilaterally to associates as well, who often have to make major decisions early in their lives, let alone their law school or professional careers. Finally, optimal strategies can shift as situations, information, and information-processing patterns all change: associates may be perpetually in a Bayesian updating

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251. GALANTER & PALAY, *supra* note 18.

252. *Id.* at 90.

253. *Id.* at 102.

254. See, e.g., Wilkins & Gulati, *Reconceiving*, *supra* note 14; Kordana, *supra* note 18; Heinz et al., *supra* note 12.

mode, assessing all available options in light of all other available options.<sup>255</sup>

## 2. *The Seeded Tournament*

The best rejoinder to Galanter and Palay, and heretofore the best treatment of elite law firm recruiting, is the work of David Wilkins and G. Mitu Gulati. Their work is actually contained in a pair of articles: one a direct rebuttal to Galanter and Palay,<sup>256</sup> the other possessing many of the same themes but seeking to explain the absence of black lawyers in elite law firms.<sup>257</sup> For Wilkins and Gulati, “firms are under pressure . . . to reduce the amount of money that they have to spend on recruiting, training, and monitoring without endangering either quality or competitiveness.”<sup>258</sup> Firms achieve this through “high wages, a steep pyramidal structure in which all lawyers compete in a series of tournaments . . . and an *informal tracking system that separates associates who will be trained from those who will not.*”<sup>259</sup>

Wilkins and Gulati’s argument is multifaceted, as are the ways in which it relates to our own. We must take issue with their conclusion that elite law firms “do not carefully screen entering associates in terms of their goals, motivations, or levels of risk aversion.”<sup>260</sup> On the contrary, law firms have erected institutional structures, in the way of hiring committees and professional recruiting staff, to do just that. They have also instituted hiring procedures, from how committees are to be staffed, to how committee members are to be compensated, to how candidates are to be evaluated and approved. To state that law firms do not carefully screen seems somewhat conclusory.

Also, we did not find much evidence that “firms are under pressure to find ways to reduce the amount of money that they have to spend on recruiting, training, and monitoring without endangering either quality or competitiveness.”<sup>261</sup> Firms seem, if not indifferent to the amount they must spend to recruit effectively, then resigned; it is accepted as part of the cost of doing business that being an elite law firm, and recruiting accordingly, means having a professional recruiting coordinator, having a hiring partner who spends considerable billable time on committee work, administering a summer associate program, and so forth.

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255. This view is more akin to Kordana, who focuses on ways associates use their firm experience, rather than being used by their firm. *See* Kordana, *supra* note 18.

256. Wilkins & Gulati, *Reconceiving*, *supra* note 14.

257. Wilkins & Gulati, *Black Lawyers*, *supra* note 14.

258. *Id.* at 529.

259. *Id.* at 530 (emphasis added).

260. Wilkins & Gulati, *Reconceiving*, *supra* note 14, at 1642.

261. Wilkins & Gulati, *Black Lawyers*, *supra* note 14, at 529.

With respect to race, we do not engage with the conclusion that there may be hidden racism by which seemingly race-neutral standards as “personality and fit” serve to disqualify black candidates.<sup>262</sup> Nor can we comment on the possibility that “grades and law review membership count less for blacks than they do for whites.”<sup>263</sup> All of these phenomena may be present. Our research does suggest that some elite firms strongly desire minority or diversity representation among their entering associate classes.<sup>264</sup> For example, several firms interviewed recruit at Howard University,<sup>265</sup> ranked a Tier 3 law school by *U.S. News & World Report*.<sup>266</sup> This would seem to indicate that Chicago-area firms are making a good-faith effort to recruit black candidates and would seem to conform to Wilkins and Gulati’s acknowledgement that “the institutional racism story . . . is at best incomplete.”<sup>267</sup>

Probably most importantly, Wilkins and Gulati argue that law firms sort almost immediately those associates who will make partner from those who will not.<sup>268</sup> Given the large sums of money it costs to recruit a single new associate, this would seem to make little sense. Several interviewees stated that they recruit for future partners.<sup>269</sup> This is not unavoidably inconsistent with Wilkins and Gulati’s assertion of dual associate tracks. Still, if firms are able to determine almost immediately who can make partner, it is puzzling why firms exert so much time and money recruiting so many they know will be profitable for so little time, and a partner for no time at all.<sup>270</sup> If the stellar associate is “careful, well organized, [attuned] to detail, and [equipped with] a high boredom threshold,”<sup>271</sup> this does not seem to be what elite law firms (claim to) seek. They seek *fit*, which is sometimes equated with passion and would seem to equate poorly with high boredom thresholds.

### 3. Matching

As described above in Part III.A.2.(a), Alvin Roth has put forth a great deal of literature on two-sided matching markets. However, much of his emphasis has been on explaining the longevity rather

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262. *Id.* at 557.

263. *Id.* at 559.

264. Interview 5; Interview 19; Interview 20; Interview 28.

265. Interview 5; Interview 17; Interview 22; Interview 27.

266. *Law Rankings*, *supra* note 17.

267. Wilkins & Gulati, *Black Lawyers*, *supra* note 14, at 510.

268. Wilkins & Gulati, *Reconceiving*, *supra* note 14, at 1644-57.

269. Interview 5; Interview 7; Interview 9.

270. *See* sources cited *supra* note 10.

271. Wilkins & Gulati, *Black Lawyers*, *supra* note 14, at 550.

than the evolution of centralized matching.<sup>272</sup> Similarly, he uses case study methodology, and he fails to compare markets that have centralized with those that have not (in other words, he selects on the dependent variable).<sup>273</sup> This Article makes an implicit comparison between a profession that has centralized—medicine—and one that has not—law. Roth's argument as to the origins of centralized matching markets is that certain decentralized matching markets suffered from various pathologies, then centralized, and from this sequence one can infer causation.<sup>274</sup>

This Article presents a case that poses a critical challenge to such logic and a skeptical challenge to the prescriptions (centralized matching) that flow from such logic. The market for elite law firm associates is a decentralized matching market that suffers from the apparent inefficiencies that afflict such markets. In fact, it suffers from these apparent inefficiencies *in spite* of a relatively powerful market coordinating body (NALP). Nevertheless, despite the existence of centralized matching in the same market across the border (the legal market in Canada), or the existence of centralized matching in a similar market in the same country (the market for medical residents in the United States), the presence of these apparent inefficiencies has not led to centralized matching. There does not seem to be a linear relationship between alleged market pathologies stemming from decentralized matching and the eventual adoption (be it by prescription or organic evolution) of centralized matching.

Rather, Part III.B suggests that the adoption of centralized matching seems contingent upon a conducive industrial organization. Because of this industrial organization, firms must expend resources chasing the same few candidates in a redundant process, based on a fraction of potentially available information, and then take upon themselves the cost of training those candidates.

It is important to recognize that centralized matching represents a form of collective action, or cooperation amongst competitors. Thus, matching is most likely to arise and function where it matters least. That is, matching functions best in medicine because the residents it assigns there are comparatively fungible and unimportant. In the domain of the legal profession, however, new associates take on relatively greater importance and, accordingly, cooperation is far harder to achieve.<sup>275</sup> Matching may never evolve (as in the United States) or evolve but break down (as in Canada). Centralized

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272. See, e.g., Roth, *New Physicians*, *supra* note 16. Roth does address this question more recently with McKinney and Niederle. See MCKINNEY ET AL., *supra* note 16.

273. See, e.g., Roth, *Evolution*, *supra* note 16.

274. *Id.* at 992.

275. See CHRISTENSEN, *supra* note 229.

matching, in turn, emerges as not cause but consequence: some industrial organizations are more conducive toward the collective action required for matching than others.

Our argument parallels a recent paper by George Priest, who argues that the institution of matching where terms of trade are limited only further frustrates free market function, with ill-effects.<sup>276</sup> Both Priest and ourselves are skeptical regarding centralized matching. The foundations of our skepticism differ, though: Priest is skeptical because he considers centralized matching to be another limitation on already constricted terms of trade. By contrast, we are skeptical about the creation and sustenance of cooperation and coordination among a fragmented group of market players, when their focus is on something of great value: the elite law firm associate.<sup>277</sup>

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276. Priest, *supra* note 160, at 44-45.

277. For a similar argument on a different topic, see Charles Lipson, *International Cooperation in Economic and Security Affairs*, 37 *WORLD POL.* 1, 12-18 (1984) (arguing that international cooperation in security affairs is more limited than in economic affairs because the stakes are more in the former than the latter).