

**THE POWER OF LAW FIRM PARTNERSHIP**  
**WHY DOMINANT RAINMAKERS WILL IMPEDE THE IMMEDIATE, WIDESPREAD  
IMPLEMENTATION OF AN AUTOCRATIC MANAGEMENT STRUCTURE**

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**INTRODUCTION**

Consultants and commentators have suggested that law firms would benefit from the implementation of effective business management practices.<sup>1</sup> They assert that firms, by failing to implement management plans similar to the plans employed by their corporate clientele, have effectively left money on the table, and firms that utilize basic business methods are likely to experience tremendous gains.<sup>2</sup> In fact, one commentator went so far as to claim that “no one factor is as important to the success of a law firm as strong leadership at the top.”<sup>3</sup> The majority of law firms, however, have failed to take note of this and respond accordingly. “[I]n firm after firm, either the partners will not give real authority to anyone to lead the firm, or no partner is considered capable of assuming the role of strong leader. This void leads firms to drift at best and fail at worst.”<sup>4</sup>

Yet despite the tremendous potential for gains, this paper asserts that the current arrangement of power in large American firms poses a significant threat to the extensive, dramatic, and immediate shift in the management structure of the legal profession. More specifically, a structural conflict exists between the best interests of the firm and the rainmaking partners, in part, because the dominant rainmakers are both mobile and the most powerful actors within law firms, and for the new model to be successful, these partners must surrender a significant

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<sup>1</sup> See Deborah K. Holmes, *Learning from Corporate America: Addressing Dysfunction in the Large Law Firm*, 31 GONZ. L. REV. 373, 404 (1996); see also Ward Bower, *A Nation Under Lost Lawyers: The Legal Profession at the Close of the Twentieth Century: Article: Law Firm Economics and Professionalism*, 100 DICK. L. REV. 515, 516 (1996) (“Effective management and good business practices are not inconsistent with traditional “professional” lawyering. To the contrary, they are essential in today’s complex economic environment and will be even more essential in the future.”).

<sup>2</sup> See Frederick L. Trilling, *The Strategic Application of Business Methods to the Practice of Law*, 38 WASHBURN L.J. 13, 15 (1998) (“most lawyers presently use few if any business methods in their practices, so that even a small effort can make a big difference.”).

<sup>3</sup> Carl A. Leonard, *The Coming of Age of the Managing Partner as CEO*, MANAGING PARTNER (Mar. 2000), available at [http://www.hildebrandt.com/Documents.aspx?Doc\\_ID=896](http://www.hildebrandt.com/Documents.aspx?Doc_ID=896).

<sup>4</sup> *Id.*

amount of power. Moreover, precisely because the new model requires that power shift from the rainmaking partners to a centralized leader, it is unlikely that the powerful partners will easily relinquish the authority and influence they currently enjoy. Consequently, those attempting to modify the firm's management structure, and therefore alter the distribution of power within the firm, have the arduous task of garnering the approval of the firm's rainmakers since these are the lawyers who are in a position to thwart any proposed transformation.

While this paper argues that there is a structural conflict between the best interests of the law firm and the personal and economic interests of the firm's powerful, rainmaking partners, this theory likely does not apply to every AmLaw 200 firm. In particular, the most elite and prestigious firms, those comprising the top twenty spots on The American Lawyer's annual list, are generally immune from this phenomenon. In fact, the application of this theory is likely limited to firms operating under a two-tier partnership of "equity" and "non-equity" partners. "The conventional explanation for the growth of the two-tier partnership is that the bifurcation of the partnership increases the profits-per-partner of equity partners, which in turn solidifies the prestige of the law firm and improves its ability to attract the best legal talent."<sup>5</sup> But the most prestigious firms do not have to adopt the two-tier model because they have already solidified themselves atop the legal profession. Consequently, the prestigious, elite firms of the world have little trouble attracting top-notch legal talent and the most sophisticated legal

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<sup>5</sup> See William D. Henderson, *An Empirical Study of Single-Tier versus Two-Tier Partnerships in the Am Law 200*, 84 N.C. L. REV. \_\_ (2006).

work. The “have-not” firms, those that are not recognized within the legal profession as the very best of the best, have migrated toward a two-tier structure primarily to gain a competitive edge and retain their most valuable partners. But these firms, by bestowing more power on their rainmakers in an attempt to retain their valuable services, are susceptible to the problem identified in this paper. Specifically, firms that rely too heavily on rainmaking partners will likely experience difficulties if they attempt to migrate toward an autocratic management structure.<sup>6</sup>

Part I of this paper provides a brief overview of Robert L. Nelson’s study of the organizational structure and power in four Chicago law firms. Although Part I concentrates exclusively on Nelson’s study, due to the importance of his work regarding the composition and power within law firms, the rest of this paper also draws extensively from Nelson’s findings. Accordingly, Part II builds upon Nelson’s study and highlights the current structure and allocation of power within law firms. Part III describes the “new model” for law firm management. This model aims to maximize firm efficiency and profitability, and precisely for these reasons, it has gained favor among law firm consultants and legal commentators. Additionally, this section details the prominent flaws that plague the traditional partnership model and the impetus behind the transition to the corporate management model. Finally, Part IV details the difficulty that law firms face in immediately implementing the new model. Specifically, Part IV focuses on the legal profession’s general aversion to change, the various reasons dominant

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<sup>6</sup> Throughout this paper, “new model,” “autocratic,” and “corporate” are used interchangeably. These terms, as used herein, refer to an organizational structure in which the main power is centralized in one individual, similar to the structure of most corporations.

rainmakers are likely to oppose an autocratic structure, and why their opposition is fatal to such a proposal.

## I. OVERVIEW OF NELSON'S STUDY

In his insightful book about power and the social transformation of the large law firm, Robert L. Nelson asserts that the organizational structure of large American law firms has shifted dramatically in recent decades.<sup>7</sup> Since their inception, large law firms operated under traditional conceptions of a professional partnership in which all partners were, in some sense peers, or a “company of equals.”<sup>8</sup> More recently, however, law firms have gravitated toward a bureaucratic organizational structure characterized by “specialization, departmentalization, and increasing stratification in the earnings and authority of partners.”<sup>9</sup> Because of this shift, firms have experienced greater efficiency and undergone a notable transformation in the power structure within the firm.

In his book, Nelson studied and analyzed the organizational structure of four Chicago law firms. Of these four firms, two shifted to a bureaucratic structure and two adhered to the traditional structure. Nelson's study revealed that the two bureaucratically-organized firms benefited from notable gains in efficiency and productivity. According to Nelson, the increase in efficiency is attributable to specialization.<sup>10</sup> Specialization in law firms is largely characterized by lawyers working in specific departments. Nelson claimed that

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<sup>7</sup> ROBERT L. NELSON, PARTNERS WITH POWER: THE SOCIAL TRANSFORMATION OF THE LARGE LAW FIRM (1987).

<sup>8</sup> *Id.* at 4.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at 25 (“[s]pecialization is the primary means for achieving greater efficiency. Given a sufficient volume of demand for a particular service, a large firm will develop standard forms and standardized processing.”).

“departmentally organized work-group structures place lesser demands on lawyers’ time than do ill-defined collections of case teams and office specialties.”<sup>11</sup> In fact, according to Nelson, “[t]o compete with inside counsel and other firms, the large law firm must become a bureaucratic work apparatus that maximizes efficiency by coordinating the activities of diverse groups of technical specialists or by assembling work teams capable of handling large-scale projects.”<sup>12</sup> After analyzing the different organizational structures utilized by the firms in his sample, Nelson concluded that “[t]he relative efficiency of departmental work structures suggests that bureaucratically organized firms may have a competitive advantage in the market for corporate legal services.”<sup>13</sup>

Not only do law firms realize gains in efficiency through the establishment of distinct practice departments, but firms also benefit from the unique division of labor within the firm. Within each department, and indeed, throughout the entire firm, the division of labor is an important element in maximizing efficiency. Nelson noted that “the organization of work in the law firm is fundamentally different from that in the industrial organization.”<sup>14</sup> He continued:

The law firm retains a status-based division of labor in which the senior partners use the skill, commitment, and professionalism of junior partners and associates. Rather than seeking to reduce the level of skill in legal work, the elite firms have actively sought to cultivate the specialized skill base necessary to attract the

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<sup>11</sup> *Id.* at 187.

<sup>12</sup> *Id.* at 159.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at 170.

business of corporate clients in a rapidly changing and uncertain legal environment.<sup>15</sup>

Efficiency is not the only by-product of the internal organizational shift. “The resulting ‘new structure’ of firms is marked by the emergence of a distinctive managerial elite, and increasing disparities in the status and income of partners.”<sup>16</sup> Instead of a “company of equals,” firms are now comprised of partners with varying degrees of power, based, in large part, on the size of a lawyer’s “book of business.” Consequently, Nelson maintains that “a position of managerial authority in the firm, whether it be membership on the governing committee, a position at the head of a department, or managing partner, will always be subordinate to the power of the lawyers controlling the largest bloc of clients.”<sup>17</sup> In addition to the disparities among partners, firms operating under a bureaucratically organized system have a “new managerial ideology, which sanctions efforts to attract clients and notable attorneys, actions that would have been thought “unprofessional” only a few years ago, and which seeks to reorganize the firm internally by improving efficiency and providing additional rewards for those lawyers bringing business to the firm.”<sup>18</sup> This new ideology makes clear the power of the client-controlling lawyers.

Overall, Nelson recognized that the internal structure of law firms has undergone a dramatic organizational shift, and as a result of this shift, firms are more efficient. One factor responsible for the increase in efficiency is the

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<sup>15</sup> *Id.* at 171.

<sup>16</sup> *Id.* at 38.

<sup>17</sup> *Id.* at 224.

<sup>18</sup> *Id.* at 38.

bureaucratic organizational structure, characterized by a hierarchical division of labor that includes three general categories, comprised of attorneys responsible for “finding” clients, attorneys responsible for “minding” to the needs of those clients, and attorneys responsible for “grinding” out the actual work for these clients. According to Nelson, “It is this status-based hierarchy that is the most prominent feature of the organization of work [within the law firm].”<sup>19</sup>

## II. THE STRUCTURE OF LARGE AMERICAN LAW FIRMS

### A. Composition of the Large Law Firm

#### 1. Partners & Associates

To understand the importance and relevance of Nelson’s study, it is necessary to explain more fully the basic relationship between the actors within law firms, and their role in maximizing efficiency. The base of the law firm pyramid is comprised of the “grinders,” which typically consist of young partners and associates.<sup>20</sup> According to Nelson, “Leaders of firms readily admit that they buy associates’ time “wholesale and sell it retail,” making the work of associates an important source of surplus for the partnership.”<sup>21</sup> At the top of the pyramid are the “finders.” These are the rainmakers; the lawyers responsible for attracting new clients.<sup>22</sup> These lawyers are the dominant colleagues in the firm, and

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<sup>19</sup> *Id.* at 188.

<sup>20</sup> *Id.* at 75.

<sup>21</sup> *Id.* at 77.

<sup>22</sup> *See e.g.*, Michael D. Freeborn, *Reining the Rainmaker*, 85 ILL. B.J. 231 (1997)

Everyone in the village has toiled long and hard. The soil has been turned, the seeds have been planted, the sun has shown brightly – perhaps too brightly. Now the ground is parched and cracking. All we need is a little rain. With a rainmaker, the harvest might be plentiful. Without a rainmaker, the village might starve. Everyone else has done their job well. Now, if only someone could make rain.



typically, they can dictate the ideology by which the firm is governed.<sup>23</sup> Hence, for obvious reasons, the quest among associates to become a partner is exceedingly competitive.<sup>24</sup>

**a) Internal Pressures and Rewards**

Unlike previous decades, a young lawyer cannot simply work hard and expect to succeed by rising up the ranks of a large law firm. Associates who employ such a strategy will undoubtedly exit the firm before becoming partner. To make partner, it is imperative that a young associate develop a book of business. Increasingly, law firms are placing more emphasis on client development and control in making partnership decisions.<sup>25</sup> In fact, those who fail to cultivate their own relationships with clients can, no doubt, expect to be a casualty of the “up or out” system.<sup>26</sup>

Even if an associate is fortunate enough to make partner, the pressures and demands are not likely to cease. A prominent example of the continued stress that accompanies one to the partnership ranks is the demotion of almost ten percent of Sidley & Austin’s partners in late 1999.<sup>27</sup> In an effort to improve profits, Sidley’s management team demoted about 35 partners who failed to perform at a level they previously maintained.<sup>28</sup> The unexpected demotion of so many partners sent

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<sup>23</sup> See NELSON, *supra* note 7, at 79-80.

<sup>24</sup> See Marc Galanter & Thomas M. Palay, *Why the Big Get Bigger: The Promotion-to-Partner Tournament and the Growth of Large Law Firms*, 76 VA. L. REV. 747 (1990) (detailing the “tournament” among associates to make partner in a law firm).

<sup>25</sup> MARC GALANTER & THOMAS PALAY, *TOURNAMENT OF LAWYERS: THE TRANSFORMATION OF THE BIG LAW FIRM* 30 (1991) (noting that in the 1960s, “[p]artners were chosen for proficiency, hard work, and ability to relate to clients. But in many cases there was some consideration of the candidate’s ability to attract business....”).

<sup>26</sup> See *id.* at 28 (“One of the basic elements of the big firm is the “up-or-out” rule, which prescribes that after a probationary period the young lawyer will either be admitted to the partnership or will leave the firm.”).

<sup>27</sup> Amada Ripley, *Seniority Complex*, *THE AMERICAN LAWYER*, June, 2000, at 83.

<sup>28</sup> See *id.*

a clear message to the remaining partners and associates: “Pull your weight, or you’ll lose your heft. And that means the demotions achieved at least one goal, by jump-starting all the attorneys.”<sup>29</sup>

To avoid a similar fate, it is crucial for partners and associates, alike, to develop their own book of business. Because, “[i]n the law firm the power of the dominant colleagues derives from their relationships with clients.”<sup>30</sup> Thus, a lawyer lacking a significant book of business is susceptible to the decisions of the most powerful partners.

Aside from job security, client-control is a considerable determinant of compensation within the firm. Nelson discovered that “[t]he distribution of income follows a strikingly common pattern across the four firms: the overwhelmingly powerful predictors of income differences are seniority and client responsibility.”<sup>31</sup> In fact, even more recently, law firms have shifted toward a compensation structure that increasingly rewards a lawyer’s ability to bring in new clients and create business over any other factor.<sup>32</sup> Consequently, due to the incentives to bring in business, lawyers are encouraged to divert a substantial amount of effort toward rainmaking activities. And because managerial power and client responsibility are positively correlated, a lawyer with a substantial book

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<sup>29</sup> *Id.*

<sup>30</sup> NELSON, *supra* note 7, at 227.

<sup>31</sup> *Id.* at 191.

<sup>32</sup> Altman Weil, *Report to Legal Management: Partner Compensation Systems – How Firms Distribute Owner Profits* (James Wilber ed. 2000) (noting that business organization and client responsibility are two of the most important factors considered by firms when making compensation decisions).

of business is best positioned to succeed within the firm, whether as a partner or an associate.<sup>33</sup>

## **B. Client Control: The Source of Financial & Managerial Power**

For better or for worse, virtually all power within a law firm derives from client control.<sup>34</sup> This is a prominent theme throughout Nelson’s book.<sup>35</sup> “At the top of the decision-making pyramid on any case or matter is the colleague with the strongest links to clients....”<sup>36</sup> This decision-making pyramid solidifies the firm’s internal hierarchy by allocating a great amount of power and a major portion of the profits to the lawyers with substantial client responsibility.<sup>37</sup> Consequently, even a cursory examination of the structure of and power within law firms reveals the significance of client control.

Precisely because rainmakers are the most powerful actors in large law firms, commentators are suggesting that young associates treat their careers like a small business, and develop methods to attract clients.<sup>38</sup> This is intensifying the competition among young lawyers, and even older partners, who realize that if they don’t develop the skills necessary to bring in business, they are likely to find

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<sup>33</sup> See NELSON, *supra* note 7, at 227 (noting that client-control trumps any position on the management committee).

<sup>34</sup> See *id.* at 217, 224 (“[a]ttaining client responsibility is viewed as a professional achievement” and “[b]ureaucratization in the law firm will always be subject to the prerogatives of the client-responsible elite.”); see also Robert W. Hillman, *Professional Partnerships, Competition, and the Evolution of Firm Culture: The Case of Law Firms*, 26 J. CORP. L. 1061, 1067 (2001) (recognizing that firms are reallocating income in favor of partners with loyal client bases, which is often combined with a consolidation of management in the hands of these same lawyers).

<sup>35</sup> See generally NELSON, *supra* note 7, at 208, 227 (noting “[t]he firm is a kingdom; the lords are those who control clients.”).

<sup>36</sup> *Id.* at 227.

<sup>37</sup> See *id.* at 275 (“Whether recognized formally by changes in the partnership agreement or not, many firms consist of a dual partnership in which lawyers with substantial client responsibility run the firm and take home a major portion of the profits while other lawyers function as little more than salaried staff.”).

<sup>38</sup> See Holmes, *supra* note 1, at 408-409 (noting that “a principal of one of the largest legal recruiting firms in the country counsels new lawyers to concentrate on becoming rainmakers, because doing so will give them the greatest flexibility – initially within their firms and, later, elsewhere.”).

themselves out of a job. Lawyers who can establish and cultivate relationships with clients realize more power than their non-client-controlling colleagues, in part, due to increased mobility. “Over the last two decades, aggressive application of the principle of client choice, [which allows clients to change lawyers or law firms at any time], has greatly enhanced lawyer mobility and made lateral movement of lawyers among firms an accepted part of the culture of the legal profession.”<sup>39</sup> And the trend toward lateral hiring is no longer confined to associates – it now applies to all levels of partnership.<sup>40</sup> This has had an incredible effect on the profession, in part, because it has greatly amplified competition among law firms.<sup>41</sup> “Increasingly, competition is internalized as firms recognize that their current partners pose a significant competitive threat for the future.”<sup>42</sup> The intensity of the internal competition is so fierce because, as one name partner in a large Chicago law firm said, firms tend to “deify their so-called rainmakers.”<sup>43</sup> According to this lawyer, “A week does not go by without some headhunter calling me to say that he knows of a rainmaker in another firm, interested in moving.”<sup>44</sup> Consequently, an unhappy lawyer who has a “portable practice” can leave with his clients and go in search of greener pastures.<sup>45</sup>

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<sup>39</sup> Hillman, *supra* note 34, at 1062.

<sup>40</sup> See ROBERT W. HILLMAN, HILLMAN ON LAWYER MOBILITY § 1:2 – 1:4 (1997)

<sup>41</sup> *Id.*

<sup>42</sup> *Id.* For an insightful view on internal competition among senior associates, see Bruce MacEwen, *The Law Breeds Immature Business People*, Adam Smith, Esq., available at [http://www.bmacewen.com/blog/archives/2004/08/the\\_law\\_breeds.html](http://www.bmacewen.com/blog/archives/2004/08/the_law_breeds.html) (Aug. 9, 2004) (“The economic logic is simple: Senior associates who develop a loyal book of business are in a vastly superior bargaining position *vis-a-vis* their firm than their client-less peers. They can, without boasting, let it be known they could take their business elsewhere if they aren't anointed partners.”).

<sup>43</sup> See Freeborn, *supra* note 22, at 231.

<sup>44</sup> *Id.*

<sup>45</sup> See HILLMAN, *supra* note 40, at § 1:1 (“[I]ncreased mobility has permitted lawyers with the ability to transport clients and revenues to demand a larger share of firm income. Bolstering the unsatisfied partner’s

For all of the aforementioned reasons, dominant rainmakers have been able to exert a tremendous amount of influence on issues relating to firm management. Specifically, dominant rainmakers have been able to reallocate firm income in their favor,<sup>46</sup> and dictate the governance of the firm.<sup>47</sup> Indeed, the partners who control the most important clients are well-positioned to continue to wield a colossal amount of influence on virtually all aspects of the firm. In particular, because the firm relies so heavily on the clients these partners control and the revenue they generate, it is unlikely that the firm could experience a significant managerial shift without the endorsement and cooperation of these powerful partners.

### III. LAW FIRM MANAGEMENT: THE “NEW MODEL”

Although increased efficiency was a result of the shift to a bureaucratic organizational structure, some critics claim that a more dramatic transformation is necessary if firms wish to maximize efficiency.<sup>48</sup> The general critique is simple: the partnership model is outdated and inefficient.<sup>49</sup> In the words of one observer, “when a partnership comprises hundreds of people, many of whom barely know one another, the partnership model of management has most likely been stretched

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demands is the ever-present threat of the lawyer’s leaving and “grabbing” what many regard as the *firm’s* assets – its clients.”).

<sup>46</sup> See Hillman, *supra* note 34, at 1067.

<sup>47</sup> See NELSON, *supra* note 7, at 79-80 (“The dominant colleagues, the “finders,” typically can dictate the ideology by which the organization is governed.”)

<sup>48</sup> See Holmes, *supra* note 1, at 375 (arguing that, to increase efficiency, “firms should break new ground by replacing partnership with a more rational management structure and changing (and lowering) attorney compensation”).

<sup>49</sup> See JAY W. LORSCH & THOMAS J. TIERNEY, ALIGNING THE STARS: HOW TO SUCCEED WHEN PROFESSIONALS DRIVE RESULTS 52 (2002) (“In a rapidly changing environment, yesterday’s strategy is seldom the answer to tomorrow’s problems. This is obvious, yet time and again firms maintain the status quo (or make half-hearted efforts at strategic change), even in the face of large-scale upheaval in client needs or competitive dynamics.”).

beyond its useful limits.”<sup>50</sup> Thus, to succeed, large law firms must abandon the partnership model, which is based on consensus, not efficiency, and utilize the corporate model of management. This, observers claim, will allow firm leaders to establish the vision and general direction of the firm, thereby increasing overall efficiency and productivity.<sup>51</sup> Moreover, observers maintain that firms that fail to recognize the benefits of the new model will likely discover their strategic misfortune only after it is too late.<sup>52</sup> Although sound in theory, and certainly not impossible, this paper cautions that such a dramatic shift in the management structure of the large law firm will be a difficult and arduous task, in part, because firms rely so heavily on the clients these partners control and service. Accordingly, in an effort to appease and retain their most important lawyers, firms have showered these individuals with a significant degree of power and autonomy. This power and autonomy, however, makes it extremely unlikely that the partners will quickly and easily surrender these hard-earned benefits.

#### **A. Forces Driving the Change**

Initially, it is helpful, and almost certainly necessary, to detail the forces driving the need for law firms to abandon the traditional partnership model and adopt the corporate model. Although not an all-encompassing list, these factors are, arguably, the most prominent.

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<sup>50</sup> Holmes, *supra* note 1, at 405.

<sup>51</sup> *See id.* at 407 (noting that the use of professional managers is likely to “yield a successful quality initiative – vision and overall direction provided at the top of the organization, with responsibility (and authority) for operating decisions delegated to smaller groups”).

<sup>52</sup> LORSCH & TIERNEY, *supra* note 49, at 51 (“The financial impact of strategic obsolescence may not be fully apparent for years.”).

## 1. Increased Competition for Clients

Despite decades of resistance, it is now generally recognized that the practice of law is, undoubtedly, a business.<sup>53</sup> Much of the force behind this realization is the intense competition for clients. Generally, the increased competition is attributable to two principal factors: (a) intense competition for lawyers and (b) new competition from nontraditional providers of legal services.

### a) Competition for Lawyers

Over the past few decades, the number of lawyers has grown dramatically.<sup>54</sup> Consequently, there is greater competition for clients.<sup>55</sup> As the previous section on rainmakers explained, the competition is generally internalized now that firms recognize that their “current partners pose a significant competitive threat for the future.”<sup>56</sup> There are two main factors that contribute to the fierce competition for lawyers. First, in contrast to past decades, clients are no longer married to a firm. As evidenced by the accepted practice of lawyer mobility, client loyalties run to individual lawyers, not the firms for whom the lawyers work.<sup>57</sup> Thus, lawyers with their own substantial book of business are highly sought after by other law firms.<sup>58</sup> The second, and more obvious reason that competition for lawyers is so fierce is that “[t]alent is a [law firm’s] only

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<sup>53</sup> Shawn W. Cutler & David A. Daigle, *Using Business Methods in the Law: The Value of Teamwork among Lawyers*, 25 T. JEFFERSON L. REV. 195, 195 (2002) (“the contemporary practice of law may be best understood structurally as both a competitive business practice and a noble profession.”).

<sup>54</sup> See Susan S. Samuelson, *The Organizational Structure of Law Firms: Lessons from Management Theory*, 51 Ohio St. L.J. 645, 653 (1990); see also Susan S. Samuelson & L.J. Jaffee, *A Statistical Analysis of Law Firm Profitability*, 70 B.U.L. REV. 185, 189 (1990) (“Between 1960 and 1985, the number of lawyers in the United States more than doubled -- from 285,933 to 655,191, increasing at almost twice the rate of the general population.”).

<sup>55</sup> See Samuelson, *supra* note 54, at 653.

<sup>56</sup> Hillman, *supra* note 34, at 1062.

<sup>57</sup> See *id.*

<sup>58</sup> See *id.* at 1065–1066.

sustainable source of competitive advantage.”<sup>59</sup> According to Jay Lorsch and Thomas Tierney, within a law firm, “[t]he people you pay are more important over time than the people who pay you.”<sup>60</sup> Consequently, to achieve and maintain greatness, firms must attract and retain stars lawyers, who, in turn, attract and retain clients and other stars as well.<sup>61</sup> But this is an arduous task, because “[b]uilding [star talent] begins with the competition for stars, which has seldom been fiercer.”<sup>62</sup> Therefore, because their financial wellbeing depends on successfully attracting and retaining star lawyers, the most profitable firms will likely devote considerable time and effort to this all important task.

**b) Emergence of Nontraditional Competition**

In addition to the fierce competition for lawyers, the legal market in general has become more crowded. Not only must firms continue to compete with other law firms for clients, but now they are faced with the added problem of “nontraditional competition” from other professional service providers.<sup>63</sup> This increased competition “has given the consumer the opportunity to shop among the various professions for many of the services that have been traditionally provided

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<sup>59</sup> LORSCH & TIERNEY, *supra* note 49, at 64–65 (“[Star talent] is what can create a firm’s enduring competitive edge.”).

<sup>60</sup> *Id.* at 64.

<sup>61</sup> *See id.* at 65.

<sup>62</sup> *Id.* at 65.

<sup>63</sup> *See* Stephen P. Gallagher, *How Should Law Firms Respond to New Forms of Competition?*, 52 SYRACUSE L. REV. 1049, 1049–50 (2002); *see also* Audrey I. Benison, *The Sophisticated Client: A Proposal for the Reconciliation of Conflicts of Interest Standards for Attorneys and Accountants*, 13 GEO. J. LEGAL ETHICS 699, 699 (2000) (“lawyers are being forced to react to external market pressures by non-lawyers offering quasi-legal services or multidisciplinary practices.”).



by attorneys.”<sup>64</sup> Consequently, the current market for legal services is undeniably a “buyer’s market.”<sup>65</sup>

In the new market, “the client drives the price, delivery and efficiency of legal services.”<sup>66</sup> Accordingly, to survive and succeed in this market, firms must be innovative and have strong, competent leadership.<sup>67</sup>

## 2. Increased Client Sophistication & Demands

As a result of the current “buyer’s market,” clients are well-positioned to demand better, cheaper service, in part, because they are more sophisticated. In fact, “client sophistication has contributed to the growth of in-house law departments, which have considerably changed the relationship between lawyers and clients.”<sup>68</sup> With the advent and proliferation of in-house legal departments and nontraditional legal service providers flooding the market, clients are able to dictate the cost and manner in which legal services are delivered. Indeed, “[c]orporate clients, seeking to control the cost of legal services, regularly challenge the decisions of their law firms as to the requisite volume, quality and

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<sup>64</sup> Gallagher, *supra* note 63, at 1050; *see also* Susan S. Samuelson & L.J. Jaffee, *A Statistical Analysis of Law Firm Profitability*, 70 B.U.L. REV. 185, at 189.

<sup>65</sup> *See* F. Leary Davis, *Back to the Future: The Buyer’s Market and the Need for Law Firm Leadership, Creativity, and Innovation*, 16 CAMPBELL L. REV. 147, 148 (1994) (describing buyer’s market as a market in which “lawyers and most of the services they offer are plentiful, buyers have a wide range of choice, and prices should be low.”).

<sup>66</sup> Gallagher, *supra* note 63, at 1050.

<sup>67</sup> *See* Davis, *supra* note 65, at 148 (suggesting that “law firms that are creative, innovative, and possess good leadership will prosper in comparison with other firms.”); *see also* Gallagher, *supra* note 63, at 1051 (“Confronted with new competitive and market challenges, lawyers across the country face a critical choice: either wait and see what happens to demand for traditional legal services, or anticipate the changes certain to affect their future and act now to shape the direction of these new services.”).

<sup>68</sup> Ward Bower, *Law Firm Economics and Professionalism*, 100 DICK. L. REV. 515, 520 (1996).

cost of legal resources.”<sup>69</sup> Consequently, “partners in U.S. law firms are anxious about their economic prospects.”<sup>70</sup>

The new realm of client sophistication is evidenced by E.I. DuPont de Nemours Co.’s “Dupont Legal Model.”<sup>71</sup> Essentially, DuPont and other corporations following this model use “fewer law firms and other legal-related service providers, develop a close relationship and a detailed playbook with them, then measure results to determine best practices.”<sup>72</sup> Before adopting this model, DuPont worked with more than 350 law firms; now, they use just 41.<sup>73</sup> For DuPont, at least, the benefits are tremendous. The company enjoys increased control over the firms it employs, and this control translates into a better bottom line. By exerting control over price and how legal services are delivered, DuPont saved \$8.8 million in legal bills in 2002 alone.<sup>74</sup>

Collectively, these factors have contributed to the new legal marketplace. A marketplace in which the “[b]argaining power has shifted from law firms to clients....”<sup>75</sup> Hence, the need for competent leadership is greater than ever for firms that want to survive in today’s competitive legal market, because it is quite clear that they cannot “grow and prosper simply by engaging in “business as usual,” nor can they “manage” their way around the current challenges.”<sup>76</sup>

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<sup>69</sup> William Kummel, *A Market Approach to Law Firm Economics: A New Model for Pricing, Billing, Compensation and Ownership in Corporate Legal Services*, 1996 COLUM. BUS. L. REV. 379, 379–80 (1996).

<sup>70</sup> Bower, *supra* note 68, at 519.

<sup>71</sup> *See Do it the DuPont Way*, ABA Journal 27 (Apr. 2004).

<sup>72</sup> *Do it the DuPont Way*, ABA Journal 27 (Apr. 2004).

<sup>73</sup> *Do it the DuPont Way*, ABA Journal 27 (Apr. 2004).

<sup>74</sup> *See* Renee Deger, *Legal-Work Outsourcing Cuts Costs*, N.J. L. J. (Nov. 17, 2003).

<sup>75</sup> Kummel, *supra* note 69, at 379.

<sup>76</sup> James Jones & Carl A. Leonard, *The Price of Leadership*, NEW YORK LAW JOURNAL (Sept. 10, 2002), available at [http://www.hildebrandt.com/Documents.aspx?Doc\\_ID=1140](http://www.hildebrandt.com/Documents.aspx?Doc_ID=1140).

The emergence of the buyer's market for legal services seems to render the partners with significant client contacts even more valuable to their firm than they were in the past. That is, because the competition for clients is so fierce, law firms can ill afford to lose lawyers who control a sizeable book of business. Consequently, unless the market reverts to a seller's market, which, by all accounts, is extremely doubtful, the prospect of adopting the new model will become increasingly difficult.

## **B. The Structure of the New Model**

In their article about law firm management and democracy, David Bradlow and Murray Silverman claim that “the traditional partnership form of organization is incompatible with the successful formulation and implementation of strategy.”<sup>77</sup> According to Bradlow and Silverman, the partnership approach to decision making within law firms is plagued by a number of significant flaws and inefficiencies. First, the partnership model is “cumbersome and plodding.”<sup>78</sup> Bradlow and Silverman discovered that some groups take several months to decide trivial matters.<sup>79</sup> Additionally, “groups tend to be political”<sup>80</sup> and often “strive for consensus more than for organizational efficacy.”<sup>81</sup> Moreover, group decision making is extremely costly,<sup>82</sup> and this organizational structure is likely to stifle entrepreneurship, which requires “decisiveness, risk taking, creativity and

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<sup>77</sup> David A. Bradlow & Murray Silverman, *Managing the Law Firm – Is Democracy Obsolete?*, 15 No. 5 LEGAL ECON. 28, 29 (1989).

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

<sup>82</sup> *Id.* at 30.

intuition, all of which tend to be throttled in a committee environment.”<sup>83</sup>

Overall, Bradlow and Silverman assert that the lack of leadership associated with the traditional partnership model “will result in uncoordinated efforts, factionalism and poor morale, all of which will impede the firms’ progress.”<sup>84</sup>

The solution, they declare, is the centralization of a significant degree of authority in the hands of an individual responsible for making key policy and strategy decisions.<sup>85</sup> This, they assert, will allow the manager to respond quickly and make better decisions.<sup>86</sup> As this section will detail, Bradlow and Silverman are not alone in advocating for this organizational transformation.

Another commentator simply stated, “The partnership structure by which virtually all large law firms still are governed is outmoded.”<sup>87</sup> “Today, partnership often is an empty formalism which serves little purpose beyond helping to maintain the fiction that large law firms are professional associations, and not businesses.”<sup>88</sup> This commentator, Deborah Holmes, suggested a “new model,” which calls for law firms to “replace their partnerships with a rational management structure designed to maximize efficient client service and lawyer satisfaction.”<sup>89</sup> Like Bradlow and Silverman, Holmes recognized that the traditional managerial structure of large firms poses several dangers for firms and attorneys.<sup>90</sup> “First, relegating decisions to partners all but ensures the mediocrity

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<sup>83</sup> *Id.*

<sup>84</sup> *Id.*

<sup>85</sup> *Id.*

<sup>86</sup> *Id.*

<sup>87</sup> Holmes, *supra* note 1, at 402.

<sup>88</sup> *Id.*

<sup>89</sup> *Id.*

<sup>90</sup> *Id.* at 402 – 403 (asserting that “the partnership structure has marked negative effects on the firms’ effectiveness and the satisfaction of the attorneys who work there.”).

of those decisions. Anticipating and solving problems, not strategic thinking, is attorneys' stock-in-trade."<sup>91</sup> Second, firms fail to provide firm managers with training in management skills or time to manage because management takes up time that could be spent attracting clients and practicing law.<sup>92</sup> Therefore, firms that promote their "most experienced lawyers to management positions [which they most often do] means that instead of spending time on what they do best, these lawyers will spend time on something for which they are likely to have no talent."<sup>93</sup>

Accordingly, Holmes claims that law firms should hire a professional executive to make decisions that have a firm-wide impact.<sup>94</sup> This new model "would place responsibility and authority for setting the firm's overall direction in the hands of someone who could be expected to provide leadership and vision."<sup>95</sup> "Moreover, under the suggested approach, authority for day-to-day decision-making would devolve down to the local level, where it belongs."<sup>96</sup>

Holmes claims that "[d]elegating responsibility to professional managers will help to eliminate poor law firm management techniques."<sup>97</sup> Under this approach, the client-controlling partners would no longer dictate management decisions. Instead, a trained executive with significant decision-making authority

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<sup>91</sup> *Id.*

<sup>92</sup> *See id.* at 403 – 404.

<sup>93</sup> *Id.* at 404.

<sup>94</sup> *Id.* at 406.

<sup>95</sup> *Id.*

<sup>96</sup> *Id.*

<sup>97</sup> *Id.* at 407.

would improve firm efficiency and the quality of life for many attorneys, by allowing those attorneys to do what they do best – practice law.<sup>98</sup>

Due to the possibility for increased efficiency and productivity, a number of consultants have acknowledged the inherent benefits of the new, corporate model. One consultant, Carl Leonard, observed that strong leadership at the top of a law firm is the most important factor to that firm’s success.<sup>99</sup> He cautioned, however, that lawyers are often poor choices for that important position.<sup>100</sup> “Unfortunately, the very ingredients that go into making a great lawyer are the antithesis of the qualities found in successful business leaders.”<sup>101</sup>

Similarly, Bruce MacEwen has dedicated a number of posts on his web log to issues of firm management, and in particular, to the benefits of the new, CEO-style model. According to MacEwen, the ever increasing complexity and competitiveness of the legal profession compels law firms to pay considerable attention to issues of management.<sup>102</sup> Firms can no longer afford to be run by “enthusiastic amateurs,” i.e., “lawyers in their non-billable moments.”<sup>103</sup>

In one post, MacEwen posits that clients will be the driving force behind the migration toward an autocratic management structure.<sup>104</sup> He explains that the biggest single complaint clients have is that lawyers don’t really understand their

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<sup>98</sup> *See id.* at 407-408.

<sup>99</sup> *See Leonard, supra* note 3.

<sup>100</sup> *Id.* (noting that law schools train lawyers to be careful, thorough, and risk averse, but successful business leaders, especially the entrepreneurial innovators, have almost the opposite profile).

<sup>101</sup> *Id.*

<sup>102</sup> *See generally*, Bruce MacEwen, Adam Smith, Esq., at <http://www.adamsmithesq.com/blog/> (discussing the changing landscape of the legal profession, and in particular, the increased competition from other firms).

<sup>103</sup> *See id.*, *Great Article, but it Should be Dated 1994*, (Sept. 16, 2004).

<sup>104</sup> *See id.*, “*There is No Place for the Computer in the Home*,” (Aug. 23, 2004).

business.<sup>105</sup> In addition, MacEwen speculates that the reason for client unhappiness is attributable to a structural problem with the legal profession.<sup>106</sup> By structural, MacEwen means that “the qualities that make for the *crème de la crème* of the legal profession – extraordinary thoroughness, a focus on spotting all the issues, exhaustive research, a high degree of risk aversion, an utter inability to risk being wrong – are pretty much a short catalog of all the qualities a successful businessperson will not embody.”<sup>107</sup> But, according to MacEwen, the introduction of a central leader at the head of a law firm will alleviate these problems by forcing the executive to stop thinking like a lawyer and start thinking audaciously. This, in turn, will allow lawyers to be lawyers, and focus on what they do best, serving their clients.<sup>108</sup>

A recent article detailing Bingham McCutchen’s merger strategy exposed some of the benefits that can derive from the implementation of an autocratic management structure.<sup>109</sup> At Bingham, there is no doubt that the power lies with the firm’s Chairman, Jay Zimmerman.<sup>110</sup> “Bingham McCutchen...is run as close to a corporate model as any Am Law 100 firm.”<sup>111</sup> In fact, “[i]ts leader runs the firm like a CEO of a Fortune 500 company, and makes no apologies for it.”<sup>112</sup> This model has worked extremely well for Bingham in recent years, as the firm’s revenues more than tripled from 1999 to 2003, and the firm has rocketed up the

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<sup>105</sup> *Id.*

<sup>106</sup> *Id.*

<sup>107</sup> *Id.*

<sup>108</sup> See MacEwen, *supra* note 70.

<sup>109</sup> Susan Beck, *A Series of Fortunate Events*, THE AMERICAN LAWYER, Feb. 1, 2005, available at <http://www.law.com/jsp/article.jsp?id=1107178521866>.

<sup>110</sup> *Id.*

<sup>111</sup> *Id.*

<sup>112</sup> *Id.*

AmLaw 100 list.<sup>113</sup> The new corporate model has allowed Bingham to operate in a decisive fashion, avoiding the pitfalls that often plague firms operating under the partnership-democracy model. In fact, the corporate model was largely responsible for Bingham's recent merger activity and impressive growth.<sup>114</sup> Yet, Bingham is somewhat of an anomaly because the firm was able to draw its chairman from its own ranks. According to most consultants, lawyers are often ill-equipped to successfully manage a firm in the corporate sense, thus this increases the difficulty of finding and installing a successful CEO.<sup>115</sup>

In sum, consultants and commentators have embraced the "new model" as the management structure of the future. They claim that firms must implement this structure in order to better address client demands and succeed in today's competitive legal market. According to some commentators, firms that adopt this structure are best positioned to realize gains through strategic planning and efficiency,<sup>116</sup> and those that don't risk becoming obsolete. But as the next section will detail, those advocating for this managerial shift are likely to encounter substantial resistance from a number of fronts; the strongest of which will emerge from the faction of lawyers that is absolutely crucial to the new model's success – the firm's rainmaking and star partners.

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<sup>113</sup> *Id.*

<sup>114</sup> *Id.*

<sup>115</sup> See *supra* notes 99, 102, 103, 107 and accompanying text.

<sup>116</sup> See Holmes, *supra* note 1, at 402; see also Cutler & Daigle, *supra* note 53, at 199 ("Legal practitioners would benefit considerably by...applying lessons gained from corporate America.").



#### IV. OBSTACLES TO THE SUCCESSFUL IMPLEMENTATION OF THE CORPORATE MODEL

This “new model” is not without flaws. Even Holmes acknowledges that significant challenges exist that might impede the adoption of such a system.<sup>117</sup> Despite the gains in efficiency and profitability that are likely to result from the adoption of the “new model,” there are significant barriers to the widespread and immediate implementation of this organizational model. Specifically, the legal profession, in general, is highly resistant to change. Consequently, a drastic management transformation is bound to be difficult. Moreover, the new model is in direct conflict with the current power distribution within the law firm, thus the powerful partners have an incentive to oppose its adoption.

##### A. Resistance to Change

“The legal profession has long embraced an ironic contradiction: lawyers help clients respond to or create change, yet at the same time lawyers steep themselves in tradition and pride themselves on professional stability.”<sup>118</sup> Only recently have large firms altered their stance with respect to change.<sup>119</sup> Despite the resultant increase in efficiency that Nelson and others attribute to the organizational transformation of law firms, firms are not dynamic organizations, and they do not respond swiftly to changing market conditions.<sup>120</sup> Although it is

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<sup>117</sup> See Holmes, *supra* note 1, at 408 (recognizing that the “implementation of this suggestion will entail significant challenges and require extensive discussion within firms.”).

<sup>118</sup> Symposium, *The Modern Practice of Law: Assessing Change*, 41 VAND. L. REV. 677 (1988).

<sup>119</sup> See generally NELSON, *supra* note 7.

<sup>120</sup> See Susan S. Samuelson & Liam Fahey, *Strategic Planning for Law Firms: The Application of Management Theory*, 52 U. PITT. L. REV. 435, 439 (1991) (“Despite the momentous changes that have occurred in the environment of law firms over the past twenty years, modern firms are still drawn instinctively to strategies that were appropriate between 1870 and 1970 – the great period of development in this industry.”); see also LORSCH & TIERNEY, *supra* note 49, at 50 (observing that professional service firms, including law firms, consistently maintain

undeniable that large firms have become more efficient and more profitable since adopting a bureaucratic organizational structure,<sup>121</sup> the potential for increased efficiency and profitability still exists.<sup>122</sup> Nonetheless, the legal profession's general aversion to change remains a serious impediment to the adoption of the corporate model.<sup>123</sup>

A prominent example of the legal profession's resistance to change is its long history of refusing to recognize that the practice of law is a business.<sup>124</sup> Even after law firms generally accepted this notion,<sup>125</sup> they have been slow to employ comprehensive, strategic business plans like their corporate clients. Two scholars blamed the legal profession's aversion to change on the inherent characteristics of the profession. "Lawyers spend a substantial portion of their training and working lives worshipping at the altar of precedent. It is hard therefore, for them to appreciate the necessity of doing things differently from the way things have always been done."<sup>126</sup>

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the status quo with respect to overall strategy, "even in the face of large-scale upheaval in client needs or competitive dynamics.").

<sup>121</sup> See NELSON, *supra* note 7, at 187 ("The relative efficiency of departmental work structures suggests that bureaucratically organized firms may have a competitive advantage in the market for corporate legal services.").

<sup>122</sup> See Samuelson & Fahey, *supra* note 120, at 436-47 (observing that "[l]aw firms are big businesses operating in a confused environment"); see also Holmes, *supra* note 1, at 402 ("the partnership structure has marked negative effects on the firms' effectiveness....").

<sup>123</sup> See Bradlow & Silverman, *supra* note 77, at 33 ("the transition to the corporate model of management will be difficult for many law firms to accomplish...[because] [t]he prevailing partnership mode is branded into the professional consciousness").

<sup>124</sup> See Cutler & Daigle, *supra* note 53, at 200 (noting that many in the legal profession have steadfastly resisted the notion that law is a business).

<sup>125</sup> See *id.* at 195 ("Law is a business as well as a profession, although some lawyers will probably continue to argue against that assertion even after they have gone out of business. Denial of the business nature of the legal profession has caused lawyers to use relatively few business methods in their practices."); see also NELSON, *supra* note 7, at 79 ("Unless a firm is run like a business, you would have everyone contributing to a loss at the end of the year.").

<sup>126</sup> See Samuelson & Fahey, *supra* note 12, at 473.

Additionally, the traditional configuration of the partnership model inhibits rapid change within the firm. According to Lorsch and Tierney, members of professional service firms, including lawyers in law firms, “tend to hang on to the comfort of past practices rather than venture into uncharted territory.”<sup>127</sup> Combating this problem in professional service firms is that “a few progressive leaders cannot order the troops forward; instead, the troops themselves...must essentially vote with their feet to pursue a new strategic direction.”<sup>128</sup> Lorsch and Tierney continue:

In most corporations...strategic change can be instigated from the top down. Not so at [professional service firms], where the top may be a partnership with dozens (or hundreds) of independent practitioners. Absent a crisis, the partners tend to stay on track and support only modest adjustments to the strategy. Innovative or aggressive strategies rarely emerge from people who are satisfied with the status quo.<sup>129</sup>

This problem will almost certainly continue to plague large law firms. Until these firms recognize the benefits of the new corporate model, it is likely that their members will eschew any attempt at change in favor of the traditional and familiar partnership model.

## **B. The Legal Culture and Opposition to Non-Lawyer Professionals**

Additionally, the law firm culture poses a significant impediment to the adoption of the “new model.” Although consultants and commentators generally recognize that law firms are in desperate need of professional administrators,<sup>130</sup>

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<sup>127</sup> LORSCH & TIERNEY, *supra* note 49, at 50.

<sup>128</sup> *Id.*

<sup>129</sup> *Id.*

<sup>130</sup> See, e.g., Monica Bay, [http://www.bmacewen.com/blog/archives/2004/12/the\\_first\\_savvy.html](http://www.bmacewen.com/blog/archives/2004/12/the_first_savvy.html) (Dec. 20, 2004) (noting that “firms are realizing that they must bring in true administrators, not just assign whoever best counts beans to be the CFO”).

lawyers, quite simply, “do not respect professional managers.”<sup>131</sup> Accordingly, it is doubtful that lawyers will embrace a non-lawyer executive, even if such a manager can increase efficiency. “In the highly polarized world of the large law firm, lawyers are in charge and everyone else is grouped together as non-legal personnel.”<sup>132</sup> Therefore, if the legal profession widely adopts the new model, the leaders of firms are likely to be lawyers, not non-lawyer professionals. One reason is that the privileged culture of the legal profession is instilled in lawyers while in law school. “In law school, lawyers are led to believe that what they are learning is very important, very difficult and very special.... By contrast, therefore, every other profession...becomes less important, less difficult, and less special. This makes it difficult for lawyers to have respect for, or consult with, professional managers.”<sup>133</sup>

In fact, “[a]ttorneys generally are far more comfortable with other lawyers at the helm of law firms. Non-lawyer managers often are suspected by firm members of being unable to understand the pressures of practicing law and, therefore, their mandates may be accorded little credence.”<sup>134</sup> Indeed, the chairperson of one AmLaw 100 firm went so far as to say that the implementation of a non-lawyer manager at the head of a firm would be an “utter disaster.”<sup>135</sup>

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<sup>131</sup> Holmes, *supra* note 1, at 402.

<sup>132</sup> *Id.* Also, the legal profession is the only profession, in which members categorize non-members in the negative. By that, I mean that lawyers refer to doctors and business people as “non-lawyers.” To my knowledge, no other profession engages in this type of categorization.

<sup>133</sup> *Id.* at 402-403 (quoting Daniel B. Evans, *Why Lawyers Can't Manage: Thoughts From a Frustrated Lawyer*, LAW PRAC. MGMT., Oct. 1993, at 26, 32)

<sup>134</sup> Carl A. Leonard, *Managing Partners May be Led to Leap Laterally*, NATIONAL LAW JOURNAL, Oct. 9, 1995 at D10.

<sup>135</sup> Telephone interview with Chairperson of an AmLaw 100 law firm (Apr. 6, 2005).

Consequently, this general lack of respect for non-lawyer professionals will likely impede the implementation of the non-lawyer CEO in law firms.

### **C. Opposition from Dominant Rainmakers**

Finally, and most importantly, the likely failure of law firms to adopt the “new model” is attributable to the composition of these firms. Since firms are comprised of different factions of powerful partners whose primary focus remains on servicing their own big ticket clients, there is little incentive to adopt a comprehensive, strategic business plan like their corporate clients. As rational actors, these powerful partners have every incentive to maintain the status quo. In fact, a shift from the current power and compensation structure to the “new model” would punish rainmaking partners because, under the “new model,” power is concentrated in one administrative executive, not the partners with the biggest bloc of clients.

In their book, “Aligning the Stars,” Jay Lorsch and Thomas Tierney explore how successful professional service firms (including large law firms) manage and organize their star performers so that both the organization and the stars prosper.<sup>136</sup> They define “stars” as “the individuals who have the highest future value to the organization, the men and women in critical jobs whose performance is central to the company’s success.”<sup>137</sup> “In a law firm, the partners responsible for significant clients, practice areas, and offices are the stars.”<sup>138</sup> But according to Lorsch and Tierney, an organization of stars does not guarantee success. “[E]mploying stars is necessary but insufficient. They must also be

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<sup>136</sup> LORSCH & TIERNEY, *supra* note 49, at 2.

<sup>137</sup> *Id.* at 25.

<sup>138</sup> *Id.*

aligned; that is, they must behave in ways that move the firm toward its goals, even if this is at their own expense.”<sup>139</sup> This, however, is no easy task.

“[T]he balance of power between the firm and its accomplished professionals tilts sharply toward the [accomplished professionals, i.e., the partners]. Unlike most corporations, [law firms] are highly dependent on the retention and productivity of their senior producers.”<sup>140</sup> Not surprisingly, these senior producers, or rainmakers, dominate firm culture. They are capable of dictating management decisions<sup>141</sup> and are the best compensated attorneys in the firm.<sup>142</sup> These factors, combined with the reality that clients “often feel more loyalty to individual lawyers than to firms,”<sup>143</sup> creates a situation in which “lawyers with their own practices are freer to leave a firm than they ever have been before.”<sup>144</sup> Consequently, unsatisfied rainmakers upset with their compensation or the direction of the firm can take their clients to another firm.<sup>145</sup> And because “[t]he people you pay are more important over time than the people who pay you,”<sup>146</sup> there is an incentive for the firm management committee, which

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<sup>139</sup> *Id.* at 26.

<sup>140</sup> *Id.* at 22.

<sup>141</sup> See NELSON, *supra* note 7, at 227 (“the power of the dominant colleagues derives from their relationships with clients).

<sup>142</sup> See *id.* at 202 (“economic rewards are determined on the basis of seniority and client responsibility.”).

<sup>143</sup> Samuelson & Fahey, *supra* note 120, at 457.

<sup>144</sup> *Id.* at 457; see also LORSCH & TIERNEY, *supra* note 49, at 65 (noting the importance of professional service firms to attract and retain stars and recognizing that the competition for these stars has never been more fierce).

<sup>145</sup> See HILLMAN, *supra* note 40, at § 1:1 (“[I]ncreased mobility has permitted lawyers with the ability to transport clients and revenues to demand a larger share of firm income. Bolstering the unsatisfied partner’s demands is the ever-present threat of the lawyer’s leaving and “grabbing” what many regard as the firm’s assets – its clients.”); see also Jonathan Lindsey, et al., *Lateral Partners: Compensation is Key to Attracting and Retaining Rainmakers*, 8 No. 6 LAW FIRM PARTNERSHIP & BENEFITS REP. 1, 1 (2002) (“The movement of lateral partners has grown exponentially in the past 10 years. Partners rarely feel obligated to remain with a firm until death do they part, and any lingering stigma associated with switching firms has long since vanished.”).

<sup>146</sup> LORSCH & TIERNEY, *supra* note 49, at 64.

is typically comprised of the dominant rainmakers, to adhere to the demands of these powerful attorneys.<sup>147</sup>

Therefore, because firms currently reward lawyers for cultivating personal relationships with clients, there is no incentive for lawyers to support a management change that de-emphasizes the relationships that they have spent years developing. In fact, the older, more senior rainmakers will be the group most affected by a management transformation. For these partners, this new model essentially changes the rules in the middle of the game. These powerful partners have spent their entire careers adhering to the theory that those who control the clients can, and usually do, dictate the direction and strategy of the firm. But the implementation of the new model will, in all likelihood, destroy that reality. So, unless firms can convince their dominant partners that a shift to an autocratic structure will provide measurable benefits, these partners are likely to oppose such a transition. In other words, the firm and its stars must align.<sup>148</sup> But because the firm relies on the big ticket clients that these rainmakers attract and control, the firm faces a tremendous challenge in attempting to undertake a complete and sudden shift in the organization of the firm.

To clarify, the reason that these partners are likely to oppose the new system is not solely attributable to compensation issues; if money was the only factor, it is certainly plausible that the new CEO and compensation committee could fashion a compensation structure that would adequately pay the superstar partners who control the big-ticket clients. On the contrary, the powerful partners

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<sup>147</sup> See HILLMAN, *supra* note 40, at §1.1.

<sup>148</sup> See generally LORSCH & TIERNEY, *supra* note 49 (recognizing that great firms are aligned, and the difficulty associated with aligning star professionals with the goals of the firm).

are likely to oppose the new structure because it will strip them of the enormous power they currently enjoy.

One might argue that this is a trivial reason for a group of wealthy, well-educated professionals to oppose a shift that is likely to result in tremendous economic gains for their firm, and consequently, for them personally. Nonetheless, this is the most prominent obstacle to the immediate, widespread implementation of the corporate model. Big firm partners are driven, powerful, and successful men and women. In addition, they are, “on the whole, a remarkably insecure and competitive group of people.”<sup>149</sup> Within the firm, associates compete with each other to reach the coveted status of partner.<sup>150</sup> For the winners of this ultra-competitive tournament, “promotion heightens (but doesn’t change) their fundamental need to seek fresh challenges or their equally strong distaste for being told what to do.”<sup>151</sup> Consequently, the thrill of the game and the desire to compete largely explains why “sixty year old lawyers with millions of dollars in the bank still bill 2200 hours per year.”<sup>152</sup> At this point in their careers, these lawyers are not competing over money. They are competing over status and power. Accordingly, any assault on their power, which took years of sacrifices to attain, is likely to be met with a great deal of resistance.

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<sup>149</sup> Patrick J. Schiltz, *On Being a Happy, Healthy, and Ethical Member of an Unhappy, Unhealthy, and Unethical Profession*, 52 VAND. L. REV. 871, 905 (1999).

<sup>150</sup> See, e.g., Galanter & Palay, *supra* note 24.

<sup>151</sup> LORSCH & TIERNEY, *supra* note 49, at 94 (“Autonomy is a key component of the value proposition for all professionals, and this is particularly true at the partner level, where the desire for independence tends to grow exponentially with career and client successes.”).

<sup>152</sup> Schiltz, *supra* note 148, at 906. For a similar discussion regarding what motivates corporate executives, see Marleen A. O’Connor, *The Enron Board: The Perils of Groupthink*, 71 U. CIN. L. REV. 1233, 1254 (2003) (noting that “successful executives...continue to work hard long after making millions” and their main motivation for doing so is the “excitement of “the game” and the chance to test oneself as a ‘major player.’”).



Bradlow and Silverman, however, suggest that any apprehension that partners have about losing influence over the affairs of the firm is insignificant, because in reality, the majority of the partners are already excluded from the firm's informal power structure.<sup>153</sup> While it is likely true that the majority of the partners have, indeed, been excluded from the informal power configuration of the traditional partnership model, the dominant partners have been at the core of that power structure, exerting their influence on virtually all issues of firm governance. And while the majority of the partners are certainly important for the overall success of the organization, with respect to the implementation of the corporate model, law firms should be primarily concerned with the rainmaking partners who have shaped the direction of the firm, and who are in a position to leave the firm and take their big-ticket clients with them. These are the partners who pose a serious obstacle to the implementation of the corporate model,<sup>154</sup> because in professional service firms, including law firms, "power is attached to individuals as well as to positions."<sup>155</sup> Consequently, "power and influence are more widely distributed among the partners of a [law firm] than they are in a typical, large corporation with a more rigid, hierarchical structure,"<sup>156</sup> thereby making a radical organizational transformation extremely challenging.

Thus, to successfully implement the new CEO model, the firm must effectively appease the powerful rainmaking partners, because collectively, these partners are well-positioned to wield a great deal of influence and, if they so

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<sup>153</sup> Bradlow & Silverman, *supra* note 77, at 34.

<sup>154</sup> See LORSCH & TIERNEY, *supra* note 49, at 45 ("[T]he personalities, emotions, and needs of a firm's stars constrain its ability to design and implement strategy; including the implementation of the corporate model.")

<sup>155</sup> *Id.* at 118.

<sup>156</sup> *Id.*

desire, defeat any plan that calls for a drastic shift in firm power and responsibility.

## V. CONCLUSION

The relatively recent structural transformation of law firms had a significant effect on the efficiency of these organizations. Nelson explained that bureaucratically organized firms are more efficient than their traditionally organized competitors.<sup>157</sup> Yet, this structure is far from the most efficient. Some claim that firms that adhere to the basic partnership model fail to maximize client services and lawyer satisfaction.<sup>158</sup> Thus, to achieve these goals, law firms should study and implement a management structure analogous to the structure applied by corporate America.<sup>159</sup> Although sound in theory, it is unlikely that such a drastic transformation will soon take place. Under their current structure, law firms are constrained by a culture and history that is highly resistant to change. Therefore, it is rather doubtful that a group of professionals who have a tradition of distinguishing their noble profession from the operation of a business, and who have long worshipped at the altar of precedent,<sup>160</sup> will discard their comfortable partnership structure and quickly adopt a management structure analogous to corporate America.

Further complicating this transition is the power large law firms have bestowed upon the dominant rainmakers. These lawyers are the most powerful actors in the firm, and a sudden shift to a truly autocratic, CEO-style system

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<sup>157</sup> See NELSON, *supra* note 7, at 187.

<sup>158</sup> Holmes, *supra* note 1, at 402.

<sup>159</sup> *Id.* at 411.

<sup>160</sup> See Samuelson & Fahey, *supra* note 120, at 473.

threatens to strip them of the power and high salaries they have worked so long to attain. Moreover, observers have long recognized that the prospect of managing hundreds of highly autonomous people, such as law firm partners, is as difficult as “herding cats.”<sup>161</sup> But as Lorsch and Tierney correctly recognize, “the so-called cats that have the power – the firm’s formal leader serves to a large extent at their pleasure.”<sup>162</sup>

Therefore, it is likely that the rainmakers and powerful partners possess sufficient power and influence to prevent the adoption of an autocratic system in the immediate future. This is not to say that such a management shift will not occur. In fact, many commentators feel that firms must adapt or risk losing their competitive edge.<sup>163</sup> However, this paper cautions observers and those in the legal profession that such a drastic shift requires extensive planning and a great amount of effort, because in the legal profession, “[t]he firm is a kingdom; the lords are those who control clients.”<sup>164</sup> Therefore, those who wish to successfully implement the “new model” face the daunting task of conquering and ousting the law firm lords.

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<sup>161</sup> See, e.g., LORSCH & TIERNEY, *supra* note 49, at 95.

<sup>162</sup> *Id.* at 95.

<sup>163</sup> See Holmes, *supra* note 1, at 406-407; see also Samuelson & Fahey, *supra* note 119, at 461-62 (claiming that the competitive intensity of the industry will require firms to develop new strategies); see also Cutler & Daigle, *supra* note 52, at 197 (arguing that legal practitioners would benefit considerably by applying lessons gained from corporate America).

<sup>164</sup> NELSON, *supra* note 7, at 208.