

# GETTING IN AND OUT OF THE HOUSE: THE WORLDS OF IN-HOUSE COUNSEL, BIG LAW, AND EMERGING CAREER TRAJECTORIES OF IN-HOUSE LAWYERS

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## INTRODUCTION

The traditional story of in-house counsel is of a transformation and triumph over “Big Law” in a zero-sum game for power, prestige, and money.<sup>1</sup> That story, however, is inaccurate descriptively, prescriptively, and normatively. Descriptively, in-house lawyers were part of the legal elite dominating corporate counseling before large law firms first rose to power and prominence. In-house counsel then lost ground and the position of general counsel to Big Law lawyers between the 1940s and 1970s, only to mount an impressive comeback to elite status beginning in the 1970s. Yet the in-house comeback was not a simple power struggle with Big Law. Rather, modern in-house lawyers including the “new” general counsel came from within the ranks of Big Law, an offshoot rather than a competitor of large law firms, sharing Big Law’s background, training, and, more importantly, professional values, ideology, and ethos. Thus, the story of in-house lawyers and their relationship with Big Law is one of a complex symbiotic affiliation, not a competitive zero-sum game.

Discrediting the standard zero-sum game account and accurately describing the in-house counsel–Big Law relationship as a symbiotic codependency is not merely a matter of correcting the historical record. Rather, the standard story is incapable of answering basic questions about corporate law practice. For example, if in-house counsel triumphed over Big Law in a zero-sum game, why have in-house lawyers gained only limited control over outside counsel and core legal functions of the corporation? Why are some large law firms prospering when they should be declining? Moreover, if in-house counsel won, why are some in-house lawyers moving

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1. See generally Larry E. Ribstein, *The Death of Big Law*, 2010 WIS. L. REV. 749.

back to Big Law? In contrast, the symbiotic understanding of the Big Law–in-house relationship reveals answers to all of these questions: rhetoric aside, in-house lawyers never sought to strip outside counsel of their power and control and, given their dependence on Big Law, in-house lawyers were never in a position to accomplish such a goal. Instead, the symbiotic codependency between in-house and Big Law lawyers explains both the continued success of some large law firms and the emergence of a two-way street between in-house departments and Big Law.

In turn, the revised account raises normative questions about the roles and ideologies of in-house and Big Law lawyers and, indeed, of the entire legal profession. Critics have long lamented the inability and unwillingness of corporate lawyers to act as gatekeepers and dissuade their entity clients from wrongdoing. The symbiotic relationship between in-house and outside counsel both questions the self-proclaimed ability of in-house lawyers to act as the conscience of their entity clients and further undercuts the role of outside counsel as lawyer-statespersons. On the other hand, the welcoming of in-house lawyers into the mainstream of corporate law practice may enhance their professional standing and identity and empower them to act as gatekeepers.

This Article is organized in three parts. Part I examines the rise, fall, and comeback of in-house lawyers over the past century. In revising and correcting the standard story of in-house practice, Part I makes two contributions to the existing literature: (1) disproving the zero-sum thesis, it explores the complex symbiotic relationship between in-house and Big Law, shedding new light on corporate law practice; and (2) it offers, for the first time, an account of in-house practice in the twenty-first century. Part II explains how the symbiotic relationship resulted in in-house counsel achieving only partial control over the provision of corporate legal services, allowing some large law firms to continue to thrive, and explores how the codependency led to the emergence of a two-way Big Law–in-house street and the rise of a robust in-house lateral market. These phenomena reflect the increased integration of the elite in-house and Big Law worlds, at the same time as the in-house universe itself expands and increasingly stratifies. Finally, Part III offers preliminary thoughts about the meaning and impact of the practice developments described in Parts I and II for in-house counsel, Big Law lawyers, the legal profession, and the public.

#### I. THE RISE, FALL, AND COMEBACK OF IN-HOUSE LAWYERS

“[One] of the most significant changes in corporate legal practice in the United States,”<sup>2</sup> has been the rise to prominence of in-house lawyers over the last fifty years. Once upon a time “castigated,”<sup>3</sup> belittled as “house

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2. Mary C. Daly, *The Cultural, Ethical, and Legal Challenges in Lawyering for a Global Organization: The Role of the General Counsel*, 46 EMORY L.J. 1057, 1057 (1997).

3. Robert Eli Rosen, *The Inside Counsel Movement, Professional Judgment and Organizational Representation*, 64 IND. L.J. 479, 479 (1989).

counsel,”<sup>4</sup> and perceived to be lawyers “who had not quite made the grade as partner[s],”<sup>5</sup> some general counsel now “sit[] close to the top of the corporate hierarchy as member[s] of senior management,”<sup>6</sup> having gained power, prestige, and respect.<sup>7</sup> Yet, this remarkable transformation was not the first time in-house lawyers were part of the legal profession’s corporate elite. Rather, “[f]or a generation after the Civil War to be general counsel of a railroad was to hold the most widely esteemed sign of professional success.”<sup>8</sup> Indeed, the second and third decades of the twentieth century were “the golden years of corporate counsel—a time when their professional and business service was considered critical and repeatedly sought by management,”<sup>9</sup> before in-house lawyers experienced a long decline from the 1940s through the mid-1970s.<sup>10</sup> Thus, the story of in-house lawyers over the past century is one of a swinging pendulum: up, down, and back on top again.

Telling the story of in-house lawyers accurately, from the evolution of their roles and practice over time to their background, identity of their entity clients, and career trajectories, matters descriptively, prescriptively, and normatively. Descriptively, getting the story right reveals important insights about the practice of law, the evolution of legal elites, their relationships, and the development of career trajectories and roles over time.<sup>11</sup> Prescriptively, an accurate understanding of the rise, fall, and resurgence of in-house counsel explains contemporary practice realities and provides clues about the future. Normatively, the rise, fall, and comeback of in-house lawyers shed light on the desirable, as well as the not so attractive, roles and ideologies of the legal profession.

#### *A. The First-Generation In-House Lawyers of the Gilded Age: Post-Civil War to the 1930s*

As “both business and legal advisers,” first-generation in-house counsel “were held in high repute and their sage counsel was regularly sought” by

4. Geoffrey C. Hazard, Jr., *Ethical Dilemmas of Corporate Counsel*, 46 EMORY L.J. 1011, 1011 (1997).

5. Abram Chayes & Antonia H. Chayes, *Corporate Counsel and the Elite Law Firm*, 37 STAN. L. REV. 277, 277 (1985). Although, as Carl Liggio astutely points out, Big Law was hard at work perpetuating this perception. Carl D. Liggio, *The Changing Role of Corporate Counsel*, 46 EMORY L.J. 1201, 1203 (1997).

6. Chayes & Chayes, *supra* note 5, at 277.

7. Rosen, *supra* note 3, at 479; *see also* Hazard, *supra* note 4, at 1011; Omari Scott Simmons & James D. Dinnage, *Innkeepers: A Unifying Theory of the In-House Counsel Role*, 41 SETON HALL L. REV. 77, 79–80 (2011).

8. JAMES WILLARD HURST, *THE GROWTH OF AMERICAN LAW: THE LAW MAKERS* 297 (1950).

9. Liggio, *supra* note 5, at 1201–02 (documenting the high compensation of corporate counsel and the legal background of many chief executive officers).

10. *Id.* at 1202–03.

11. Deborah A. DeMott, *The Discrete Roles of General Counsel*, 74 FORDHAM L. REV. 955, 958 (2005).

members of senior management.<sup>12</sup> Evidencing their elevated status of power and influence,<sup>13</sup> general counsel were paid approximately 65 percent of the chief executive officer's (CEO) compensation and usually were among a corporation's three most highly compensated individuals.<sup>14</sup>

These general counsel were part and parcel of the Gilded Age's emerging White Anglo-Saxon Protestant (WASP) elite, established lawyers of the era who read law.<sup>15</sup> In terms of their career trajectories, they were drawn from within the ranks of federal and state court judges<sup>16</sup> and were being groomed to become CEOs:

It was common at this time for companies to groom a member of their legal department to become CEO. Indeed, more than 75% of corporate CEOs in America had a legal background during this period, as businesses recognized the added value a legal education (and the analytical tools associated with that education) offered to their business concerns.<sup>17</sup>

Like the robber barons they served, these general counsel were entrepreneurs: “[g]eneral counsel often assumed critical roles in arranging solutions to the financing challenges that confronted businesses in need of investment capital in an era when capital markets were less developed in depth and size.”<sup>18</sup> According to James Willard Hurst, corporate finance and mergers and acquisitions work for railroads were key to “a whole new field of corporate counseling.”<sup>19</sup> In-house lawyers became “familiar figure[s] on boards of directors; first the railroad general counsel, and then the lawyer for the investment banker led the way.”<sup>20</sup>

The new fields of corporate counseling, governance, finance, and mergers and acquisitions, in turn, fueled the birth and gradual growth of the modern large corporate law firms, featuring the “Cravath System.”<sup>21</sup> Importantly, these large law firms,<sup>22</sup> like the general counsel themselves, were also

12. Carl D. Liggio, Sr., *A Look at the Role of Corporate Counsel: Back to the Future—or Is It the Past?*, 44 ARIZ. L. REV. 621, 621 (2002).

13. LAWRENCE M. FRIEDMAN, *A HISTORY OF AMERICAN LAW* 490 (3d ed. 2005).

14. Liggio, *supra* note 5, at 1202.

15. HURST, *supra* note 8, at 297–98.

16. “In the post–Civil War period, judges were lured from federal and state courts by the attractions of serving as general counsel to railroads.” DeMott, *supra* note 11, at 958–59.

17. Constance E. Bagley et al., *Who Let the Lawyers Out?: Reconstructing the Role of the Chief Legal Officer and the Corporate Client in a Globalizing World*, 18 U. PA. J. BUS. L. 419, 432–33 (2016) (footnote omitted).

18. DeMott, *supra* note 11, at 958.

19. HURST, *supra* note 8, at 298.

20. *Id.* at 342.

21. MARC GALANTER & THOMAS PALAY, *TOURNAMENT OF LAWYERS: THE TRANSFORMATION OF THE BIG LAW FIRM* 9–10 (1991); WAYNE K. HOBSON, *THE AMERICAN LEGAL PROFESSION AND THE ORGANIZATIONAL SOCIETY, 1890–1930*, at 196–99 (1986); 1 ROBERT T. SWAINE, *THE CRAVATH FIRM AND ITS PREDECESSORS: 1819–1947*, at 1–3 (1946).

22. “Large” has a dynamic meaning in a historical context. “[N]o firms of large membership appeared, even in the great cities, until the end of the [nineteenth] century. The typical partnership was a two-man affair . . .” HURST, *supra* note 8, at 306. Through the 1920s, a firm of four attorneys was considered a “large” firm. HOBSON, *supra* note 21, at 161. The benchmark for “large” reached fifty attorneys by the 1950s. See Erwin O. Smigel, *The Impact of Recruitment on the Organization of the Large Law Firm*, 25 AM. SOC. REV. 56, 58

innovators, simultaneous newcomers to the legal profession.<sup>23</sup> Rather than competitors, the emerging corporate law firms were initially contemporaries of general counsel, cut from the same WASP cloth<sup>24</sup> and serving the same new legal needs for fast-growing entity clients.<sup>25</sup> The coexistence was aided by the relatively small number of large law firms,<sup>26</sup> which benefitted from stable client relationships,<sup>27</sup> featured lawyers with similar ethnoreligious, class, and cultural identities as compared to those of the dominant in-house elite,<sup>28</sup> as well as their different professional backgrounds and aspirations. Whereas general counsel were established judges being groomed for promotion to CEO, the founders of the new law firms were younger, ambitious lawyers seeking to advance and claim elite status.<sup>29</sup> Yet the seeds of rivalry and competition between in-house counsel and outside counsel were sowed; whereas general counsel were part of the legal profession's old-school elite, founders of the new law firms were out to establish themselves as the new professional elite.<sup>30</sup>

### B. Second-Generation "House Lawyers," 1940s–1970s

Beginning in the mid-twentieth century, the development of new business and management bodies of knowledge and expertise led to the increased professionalization of corporate management.<sup>31</sup> The professionalization of corporate management gradually led to the demise of the earlier generation of in-house counsel who were esteemed counsel to management. The old model of the wise general counsel, steeped in practical wisdom but ignorant of new business-related bodies of knowledge, no longer fit the emerging management style, and they were relegated to secondary advisors on narrow, routine legal questions.<sup>32</sup>

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(1960). By the late 1960s, "large" meant one hundred lawyers. See ERWIN O. SMIGEL, *THE WALL STREET LAWYER: PROFESSIONAL ORGANIZATION MAN?* 358–59 (1964). By the late 1980s, "a firm of 50 members probably would not be considered large" in major cities. See Justin A. Stanley, *Should Lawyers Stick to Their Last?*, 64 *IND. L.J.* 473, 473 (1989). Notably, in 1988, Baker & McKenzie became the first law firm with over one thousand attorneys. See generally Nancy Blodgett, *Law Firm Tops 1,000 Barrier: Chicago's Baker & McKenzie*, A.B.A. J., Feb. 1, 1988, at 30; Marc Galanter & William Henderson, *The Elastic Tournament: A Second Transformation of the Big Law Firm*, 60 *STAN. L. REV.* 1867, 1873 n.23 (2008) (discussing the dynamic meaning of "large" firms).

23. Eli Wald, *The Rise and Fall of the WASP and Jewish Law Firms*, 60 *STAN. L. REV.* 1803, 1806–10 (2008); see also FRIEDMAN, *supra* note 13, at 484.

24. Wald, *supra* note 23, at 1806–10.

25. FRIEDMAN, *supra* note 13, at 486.

26. Richard Abel, *The Paradoxes of Pro Bono*, 78 *FORDHAM L. REV.* 2443, 2446 (2010).

27. Bryant G. Garth & Carole Silver, *The MDP Challenge and the Context of Globalization*, 52 *CASE W. RES. L. REV.* 903, 922 (2002).

28. FRIEDMAN, *supra* note 13, at 487.

29. *Id.*

30. JEROLD S. AUERBACH, *UNEQUAL JUSTICE: LAWYERS AND SOCIAL CHANGE IN MODERN AMERICA* 24 (1976); Wald, *supra* note 23, at 1810–28.

31. See, e.g., William W. Bratton, *The New Economic Theory of the Firm: Critical Perspectives from History*, 41 *STAN. L. REV.* 1471, 1475–76 (1989).

32. Liggio, *supra* note 5, at 1202.

This new professionalized corporate management found a willing ally in the new elite of the legal profession, the large law firms.<sup>33</sup> During the Gilded Age, while general counsel reigned supreme, Christopher Columbus Langdell and the formalists advocated for and established legal education as a science<sup>34</sup> and built an alliance with the new growing large law firms.<sup>35</sup> Harvard, Yale, Columbia, and later other law schools established themselves as the elite of legal education. At the same time, Paul Cravath and other innovators introduced the Cravath System and, with it, the concept of associates, who were hired directly out of these elite law schools.<sup>36</sup> These two institutions—the large law firm and the law school—helped establish each other’s elite status. Law, recognized as a formal science, taught as a professional applied science at law schools, and practiced as such at the emerging corporate law firms<sup>37</sup> was exactly the kind of service professionalized management needed. Thus, the professionalization of corporate management strengthened the position of outside elite large law firms as one-stop shops specialized in corporate legal advice.<sup>38</sup> The new corporate law firms, aligned with elite law schools, established themselves as the legal elites by the 1930s and replaced first-generation in-house lawyers as general counsel. Over time, as the legal needs of entity clients expanded, large law firms effectively bundled specialized services with general, more routine corporate legal services. This expansion of legal services served the interests of both parties: the large law firms used the influx of work to support their tournament of lawyers’ partner-to-associate ratios, to provide their associates with work, and to grow. The entity clients used their affiliation with the by then recognized elite of the legal profession—Big Law—to legitimize and establish the elite credentials of their newly professionalized management.<sup>39</sup>

The formalists’ establishment of law as a science emphasized independent exercise of professional judgment as a constitutive ingredient of legal practice.<sup>40</sup> Law was independent of other bodies of knowledge, a self-

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33. GALANTER & PALAY, *supra* note 21, at 20–36.

34. ROBIN L. WEST, *TEACHING LAW: JUSTICE, POLITICS, AND THE DEMANDS OF PROFESSIONALISM* 43–92 (2014); Eli Wald, *The Contextual Problem of Law Schools*, 32 NOTRE DAME J.L. ETHICS & PUB. POL’Y 281, 295 (2018).

35. ROBERT STEVENS, *LAW SCHOOL: LEGAL EDUCATION IN AMERICA FROM THE 1850S TO THE 1980S*, at 51 (1983) (From the beginning of the twentieth century, “the elite law schools were seen as increasingly bent on serving corporate law firms . . . . The elite law schools grew alongside the burgeoning corporate law firms.” (footnotes omitted)); *see also* AUERBACH, *supra* note 30, at 28–30 (describing the symbiotic relationship between elite law schools and elite corporate law firms, matching the so-called best law students with the “best” law firms).

36. Wald, *supra* note 23, at 1810–25.

37. WEST, *supra* note 34, at 70–82.

38. SWAINE, *supra* note 21, at 575 (Paul Drennan Cravath’s “first great object was so to organize his firm and its staff as to make it competent to do, as nearly perfectly as it could be done, any acceptable work which might be offered. . . . Prior to the time when Cravath took control as the active head of the firm, there had been little attempt at scientific organization in the office.” (quoting Cravath partner Carl August de Gersdorff)).

39. Wald, *supra* note 23, at 1810–25.

40. Robert W. Gordon, *The Independence of Lawyers*, 68 B.U. L. REV. 1, 16 (1988).

contained professional zone, which “required” self-regulation and monopoly over the provision of legal services.<sup>41</sup> Large law firms aggressively pushed this agenda, promoting their independence and independent exercise of professional judgment by their partners as a cornerstone of legal professionalism.<sup>42</sup> This was the final death blow to the old, first-generation in-house lawyers: not only were they not a product of the new, superior, professionalized education offered by elite law schools but, as in-house lawyers, they lacked the now respected and required independence of judgment.<sup>43</sup>

In-house lawyers lost out. By the 1930s, graduates of leading colleges flocked to elite law schools and the graduates of elite law schools flocked to the Wall Street law firms.<sup>44</sup> These elite outside-counsel law firms became the new general counsel of corporate America. Ironically, the new elite law firms were about to have a taste of their own medicine: just as the first-generation, golden era of in-house practice contained the seeds of its own demise, so too did the golden era of Big Law contain the seeds of its relative loss of power. At the same time that large law firms were growing, forces in both corporate America and legal education were brewing to launch the comeback of in-house counsel.

### *C. The New Breed: Third-Generation In-House Counsel, 1970s–2000s*

As the growth and professionalization of business continued and bureaucratized managerial hierarchies became the norm, the trend began to hurt Big Law. Following legal realism and its offshoots, law was debunked as an independent, closed system of science.<sup>45</sup> Large law firms’ brand of legal corporate advice had become outdated, replaced with “formal procedures with prescribed contributions from a variety of experts—financial, economic, public affairs, and legal—all of whom are located and staffed from inside the corporation.”<sup>46</sup> The growth and bureaucratization of corporate America opened the door for the reemergence of in-house lawyers, embedded in the organizational structures and procedures of entity clients, as powerful actors.

At the same time, large and growing corporations had become the target of an increased, complex body of federal, state, and municipal-level regulation. Responding to and complying with this increasing maze of regulatory activity,<sup>47</sup> the rising salience of law as a feature of the corporate

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41. Richard L. Abel, *Why Does the ABA Promulgate Ethical Rules?*, 59 TEX. L. REV. 639, 639 (1981).

42. Galanter & Henderson, *supra* note 22, at 1873.

43. Gordon, *supra* note 40, at 33.

44. AUERBACH, *supra* note 30, at 14–39.

45. WEST, *supra* note 34, at 28–35.

46. Chayes & Chayes, *supra* note 5, at 294.

47. Liggio, *supra* note 5, at 1203–04.

environment,<sup>48</sup> and the routine use of business litigation as a corporate tactic,<sup>49</sup> created a strong demand for legal services. Initially catered to by rapidly growing large law firms at hefty premiums, over time, entity clients began to pressure law firms to reduce the escalating costs of legal services.<sup>50</sup> This provided fertile grounds for the emergence of in-house legal departments who argued that they could handle routine tasks at lower costs.<sup>51</sup>

Corporate America's growing legal needs increasingly demanded early, proactive attention as a matter of right, rather than as a reactive matter of attorney-client relationships.<sup>52</sup> Just as corporations were trying to cap their outside counsel's mounting costs, they discovered that Big Law inherently could not effectively and efficiently provide the full range of legal services they needed. Even as large law firms were transitioning to offer 24/7, around-the-clock hypercompetitive services,<sup>53</sup> they were, by definition, reactive and could not handle the masses of information one needed to possess and master to effectively address the legal needs of their clients, seas of associates and their billable hours notwithstanding. This had to be done in-house.<sup>54</sup> Moreover, Big Law's traditional tournament structure, utilizing relatively expensive associates' billable hours to address the routine needs of entity clients, proved excessively costly.

Big Law's historically successful campaign to depict in-house lawyers as second-class who "did not make partner with us" began to fail.<sup>55</sup> On the one hand, the growth of large law firms, and their increasingly common hypercompetitive "eat what you kill" culture,<sup>56</sup> made them less attractive to some partners who began to seriously consider offers from their large entity clients to go in-house. Over time, in-house practice became Big Law's greener pastures, capturing the professional aspirations of dissatisfied Big Law lawyers.<sup>57</sup> On the other hand, the increased specialization of the practice of law meant that in-house practice was being perceived and touted by new in-house professional organizations, such as the American Corporate Counsel Association, as another corporate law specialty and no longer

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48. Robert L. Nelson & Laura Beth Nielsen, *Cops, Counsel, and Entrepreneurs: Constructing the Role of Inside Counsel in Large Corporations*, 34 LAW & SOC'Y REV. 457, 459 (2000).

49. Liggio, *supra* note 5, at 1203.

50. David Wilkins dubs this the "economic" claim of the in-house counsel movement. See David B. Wilkins, *The In-House Counsel Movement, Metrics of Change*, LEGAL BUS. WORLD (Jan. 20, 2017), <https://www.legalbusinessworld.com/single-post/2017/01/20/The-In-House-Counsel-Movement-Metrics-of-Change> [<https://perma.cc/ERK5-X5L8>].

51. *Id.*

52. Chayes & Chayes, *supra* note 5, at 281; Rosen, *supra* note 3, at 525.

53. Eli Wald, *Glass Ceilings and Dead Ends: Professional Ideologies, Gender Stereotypes, and the Future of Women Lawyers at Large Law Firms*, 78 FORDHAM L. REV. 2245, 2245 (2010).

54. Chayes & Chayes, *supra* note 5, at 281; Robert W. Gordon, *Corporate Law Practice as a Public Calling*, 49 MD. L. REV. 255, 281–82 (1990).

55. Eli Wald, *In-House Myths*, 2012 WIS. L. REV. 407, 426.

56. See generally MILTON C. REGAN JR., *EAT WHAT YOU KILL: THE FALL OF A WALL STREET LAWYER* (2004).

57. Wald, *supra* note 55, at 408.

frowned upon.<sup>58</sup> Against these background conditions, it is hardly surprising that the in-house political movement, led by the very distinguished general counsel who made the move from Big Law, successfully resulted in the growing self-esteem and perceived status of in-house lawyers.<sup>59</sup>

In a pioneering study, Robert Nelson and Laura Beth Nielsen constructed a set of three categories mapping the range of roles, tasks, and lawyering styles of these third-generation general counsel. First, there were “cops,” whose role was primarily a gatekeeping one, in which they relied on their legal expertise to give rule-based legal advice assessing legal risks.<sup>60</sup> Second, “counsel” who engaged in gatekeeping but relied on both legal and institutional knowledge to give legal and business advice.<sup>61</sup> And third, “entrepreneurs” who understood their role to encompass a lot more than mere law avoidance and compliance and relied on legal, managerial, and economic knowledge to give law and business advice.<sup>62</sup> Importantly, Nelson and Nielsen observed that “inside counsel play different roles in different circumstances,”<sup>63</sup> yet conceded that the categories were more of ideal types than overlapping roles.<sup>64</sup>

These ideal types mapped onto the identity of the new in-house and general counsel. As well-respected graduates of elite law schools and elite large law firms (that is, as former senior partners), the new general counsel were well versed, trained, mentored, and suited to serve as cops at their new corporate homes.<sup>65</sup> The long-standing relationships they and their law firms had with their entity clients in the 1970s through the 1980s and 1990s provided them with deep institutional knowledge that lent itself to the counsel role.<sup>66</sup> Finally, as the elite, self-proclaimed lawyer-statespersons of the era, some felt empowered to act as entrepreneurs.<sup>67</sup>

Thus, in-house lawyers made a gradual comeback to power and elite status beginning in the 1970s and through the late 1990s, reclaiming the general counsel title and role from outside counsel. Notably, however, some of the similarities to the first-generation in-house elite were superficial. While in-house lawyers were once again the elite general counsel, many features of their identity and practice were different than those of their first-generation predecessors: the “new” elite general counsel came from within the ranks of Big Law, sharing the professional values and vision of client-centered

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58. Hazard, *supra* note 4, at 1012.

59. David B. Wilkins, *Is the In-House Counsel Movement Going Global?: A Preliminary Assessment of the Role of Internal Counsel in Emerging Economics*, 2012 WIS. L. REV. 251, 251–52.

60. Nelson & Nielsen, *supra* note 48, at 462–70.

61. *Id.*

62. *Id.*

63. *Id.* at 463.

64. *Id.* at 462–63.

65. David B. Wilkins, *Team of Rivals?: Toward a New Model of the Corporate Attorney-Client Relationship*, 78 FORDHAM L. REV. 2067, 2076–85 (2010).

66. *Id.*

67. ANTHONY T. KRONMAN, *THE LOST LAWYER: FAILING IDEALS OF THE LEGAL PROFESSION* 271 (1993).

service.<sup>68</sup> Unlike the previous clash between first-generation in-house counsel and large law firms, in which the rival lawyers had different credentials, status, and professional aspirations, and in which the success of the latter came at the direct expense of the former, third-generation in-house lawyers grew up in and were socialized into the legal profession in Big Law. While the new in-house lawyers deployed aggressive rhetoric, promising entity clients that they would curtail the high costs of large law firms and deliver superior legal services,<sup>69</sup> the realities on the ground differed greatly.

While some new general counsel tried to build large, more efficient, in-house legal departments modeled after Big Law,<sup>70</sup> for the majority of in-house lawyers, the mission was to effectively manage and supervise the work of their old firms.<sup>71</sup> Notably, most in-house lawyers did not set out to replace Big Law; they wanted and needed to work with large law firms to address their clients' needs. The large entity clients of the mid- and late twentieth century were radically different from their predecessors in the nineteenth century. They were huge, global, professionalized, institutionalized, and bureaucratized compared to their century-old predecessors and required both in-house and outside counsel assistance.<sup>72</sup> Moreover, and as importantly, the new in-house lawyers spent as much time establishing themselves and their contributions internally vis-à-vis skeptical corporate constituents as they did combating outside counsel.<sup>73</sup>

Indeed, it is important not to portray the in-house comeback as an easy undertaking or to mischaracterize the challenges faced by in-house lawyers as primarily concerned with their love-hate symbiotic relationship with outside counsel. For many third-generation in-house lawyers in the 1970s and 1980s, the primary challenge was on the home front, being accepted and trusted internally within the entity client by nonlawyer management and employees.<sup>74</sup> In-house lawyers were often viewed as outsiders who did not understand or care about the business aspects of the client, naysayers who were cost centers standing in the way of business objectives, productivity, and efficiency.<sup>75</sup> In this sense, describing aspects of the role of in-house lawyers as cops assumed a meaning different than helping clients ensure regulatory compliance and lawful conduct. Being thought of as cops

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68. See generally ROBERT L. NELSON, PARTNERS WITH POWER: THE SOCIAL TRANSFORMATION OF THE LARGE LAW FIRM (1988).

69. Wilkins, *supra* note 50 (summarizing the “economic” and “substantive” claims of the in-house counsel movement).

70. Between the mid-1990s and the mid-2000s, *Corporate Legal Times* published an annual survey of the largest legal departments, occasionally including an “industry breakout.” See, e.g., *The 200 Largest Legal Departments*, CORP. LEGAL TIMES, Aug. 2005, at 32. See generally Steven L. Schwarcz, *To Make or to Buy: In-House Lawyering and Value Creation*, 33 J. CORP. L. 497 (2008).

71. Rosen, *supra* note 3, at 487, 500–01.

72. JOSHUA B. FREEMAN, BEHEMOTH: A HISTORY OF THE FACTORY AND THE MAKING OF THE MODERN WORLD 226–313 (2018); ADAM WINKLER, WE THE CORPORATIONS: HOW AMERICAN BUSINESSES WON THEIR CIVIL RIGHTS 231–55, 377–95 (2018).

73. Wald, *supra* note 55, at 424–39.

74. Chayes & Chayes, *supra* note 5, at 277; Liggio, *supra* note 5, at 1203–05.

75. *Id.*

reflected the mistrust and ambivalence of some corporate constituents toward their new in-house counsel.<sup>76</sup> Thus, third-generation in-house lawyers prioritized establishing trust and their place at the corporate decision-making table and being recognized as valuable team players.<sup>77</sup>

Still, in-house lawyers returned to power, leading some commentators to observe that “outside law firms largely have lost the function of general counsel and instead focus increasingly on the provision of specialized services on a case-by-case, transaction-by-transaction basis.”<sup>78</sup> Other commentators even mistakenly predicted the death of Big Law.<sup>79</sup> This mistake was twofold: misunderstanding the new in-house elite and misreading the realities in Big Law. The new in-house elite was all bred at large law firms, sharing Big Law lawyers’ educational background, culture, professional ethos, and ideology.<sup>80</sup> Thus, while the new general counsel certainly were tasked and incentivized to cut the escalating bills of Big Law,<sup>81</sup> the third generation of in-house lawyers had no reason, no interest, and little ability to bring Big Law down. That is, unlike the 1930s, in which Big Law lawyers intentionally targeted second-generation in-house lawyers as outdated, dependent, “did not make partner” failures,<sup>82</sup> the comeback third-generation in-house elite had no inherent animosity toward Big Law.

Relatedly, it is imperative to remember the context of immense growth in size and profits of Big Law through the 1990s, at the same time as in-house lawyers completed their comeback. While the elite of Big Law remained relatively stable,<sup>83</sup> new large law firms emerged, others were growing fast, and all were raising rates annually up to an unsustainable 10 percent,<sup>84</sup> in the context of a changing culture featuring a more explicit emphasis on the financial bottom line. Profits-per-partner were on the constant rise and Big Law mobility peaked.<sup>85</sup> Against this background, the entity-client push to curb costs ought to be understood as cutting not lean and mean legal fees but out of control, escalating legal bills. The stage was set not for the death of Big Law but rather for a market correction and the end of the “good times” of the 1980s and the 1990s.

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76. See, e.g., TA-NEHISI COATES, *BETWEEN THE WORLD AND ME* (2015) (exploring the role of cops in the context of the mistrust and ambivalence of racial communities in which police officers are pursuing their tasks).

77. Liggio, *supra* note 5, at 1219; Wald, *supra* note 55, at 424–39.

78. Nelson & Nielsen, *supra* note 48, at 458.

79. See generally Ribstein, *supra* note 1.

80. NELSON, *supra* note 68, at 231–69.

81. Wilkins, *supra* note 50.

82. Wald, *supra* note 55, at 424–27.

83. Wilkins, *supra* note 65, at 2080–85.

84. Bernard A. Burk & David McGowan, *Big but Brittle: Economic Perspectives on the Future of the Law Firm in the New Economy*, 2011 COLUM. BUS. L. REV. 1, 20–38.

85. *Id.* See generally John Morley, *Why Law Firms Collapse*, 75 BUS. LAW. 1399 (2020).

*D. The Fourth Generation of In-House Counsel's Symbiotic Relationship with Big Law, 2000s–Present*

By the early 2000s, in-house counsel completed their comeback, taking the majority of the general counsel positions at large corporations from Big Law. Along the way, the comeback transformed and, more accurately, restored the status and prestige of in-house counsel as members of the corporate legal elite. Since the 2000s, the world of in-house counsel has experienced two trends: (1) the continued growth, maturation, institutionalization, and professionalization of elite in-house positions and (2) the expansion of in-house positions outside of large entity clients.

First, in the large, elite corporate sphere, in-house departments grew in size, streamlined and expanded the role of the general counsel, created new tracks for other in-house lawyers, institutionalized, and professionalized. The size of in-house legal departments increased significantly since the 1980s, “making internal counsel one of the fastest-growing segments of the U.S. legal profession.”<sup>86</sup> For example, one leading study “revealed that . . . in 2006–2007 . . . the median legal department employed 35 lawyers, the range in size was quite significant, with some companies having almost completely outsourced their legal function and others maintaining legal departments of more than 1,000 lawyers.”<sup>87</sup>

As in-house departments grew, they streamlined the role of the general counsel. Today’s elite general counsel, following the maturation, professionalization, and institutionalization of their roles between the mid-1970s and the mid-2000s, simultaneously occupy the roles of cops, counsel, and entrepreneurs.<sup>88</sup> Elite general counsel are advisors to senior management and, often, the board of directors. Advising about situations or transactions, some general counsel act as cops, others as counsel, and yet others as entrepreneurs. Yet acting as futurists purporting to discern and advise about likely trends of law and business and advising regarding strategic and informal planning inherently cuts across the cop-counsel-entrepreneur divide. One cannot act as a futurist or a strategic planner by only wearing the narrow legal hat of a cop. For example, in advising senior management about “forward-looking systematic programs,” one must rely on and take advantage of nonlegal “traditional management techniques.”<sup>89</sup> The job description transcends being a cop and forces elite general counsel,

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86. Wilkins, *supra* note 50.

87. *Id.*

88. Comparing their findings to earlier studies of in-house lawyers, Nelson and Nielsen found that their subjects were more likely to act as counsel and entrepreneurs and less likely to act as cops. Nelson & Nielsen, *supra* note 48, at 468–70. Notably, Nelson and Nielsen interpreted their findings to suggest a shift in general counsel’s understanding of their role. *Id.* In hindsight, rather than a changing understanding of role, the authors were contemporaneously documenting the evolution of the very role of elite general counsel from one inherently grounded in legal expertise to one requiring equal measures of law, business, and leadership skills and expertise. *Id.*

89. James F. Kelley, *The Role of the General Counsel*, 46 EMORY L.J. 1197, 1198 (1997).

even those more comfortable reverting back to the role of a cop, to wear their counsel and entrepreneur hats.

Next, elite general counsel select and retain outside counsel, supervise the work of outside counsel, oversee routine legal matters handled by the in-house legal department, oversee and sometimes conduct routine and even major litigation, and quarterback special projects.<sup>90</sup> Some of these tasks, like supervision of outside counsel and routine legal matters, are inherently legal and tend to gravitate toward the cop and counsel roles. Yet, others, like the selection and retention of outside counsel, litigation, and special projects, organically move general counsel past legal knowledge and the role of a cop and toward the roles of counsel and entrepreneur.

Elite general counsel also fulfill administrative and managerial roles. As administrators, general counsels preside over both legal and nonlegal processes, which require them to marshal not only legal knowledge but also the business of law and related bodies of knowledge such as information management.<sup>91</sup> As managers, general counsel contain costs and are expected to increase the productivity of the in-house legal department, impose controls on outside counsel such as budgets and risk analysis techniques—explicitly managerial and not legal procedures—stay abreast of and utilize new technologies, and acquire continued nonlegal education. All of these require the institutional knowledge of counsel and the skills and judgment of an entrepreneur. Some general counsel have even assumed responsibility for compliance.<sup>92</sup>

In yet another sign of the maturation, professionalization, and institutionalization of the role of general counsel who are more secure in their elite status within and outside their entity clients, general counsel insist that they continue to wear the hat of a legal professional and assume responsibility for matters such as pro bono, interaction with the judiciary, and active involvement in bar associations, including both the Association of Corporate Counsel and other non-in-house specific organizations.<sup>93</sup> The claim corroborates Nelson and Nielsen's finding that elite general counsel meaningfully adhere to their professional identity as lawyers, even as their role requires them to master nonlegal bodies of knowledge and expertise.<sup>94</sup>

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90. See Liggio, *supra* note 5, at 1210.

91. *Id.* at 1213–16.

92. See Robert C. Bird & Stephen Kim Park, *The Domains of Corporate Counsel in an Era of Compliance*, 53 AM. BUS. L.J. 203, 203 (2016); Deborah A. DeMott, *The Crucial but (Potentially) Precarious Position of the Chief Compliance Officer*, 8 BROOK. J. CORP. FIN. & COM. L. 56, 63–64 (2013); John B. McNeece, *The Ethical Conflicts of the Hybrid General Counsel and Chief Compliance Officer*, 25 GEO. J. LEGAL ETHICS 677, 677 (2012); see also *The Emergence of Compliance: A New Profession?*, PRACTICE (July–Aug. 2016), <https://thepractice.law.harvard.edu/article/the-emergence-of-compliance> [http://perma.cc/GST2-N6GH].

93. See, e.g., PRASHANT DUBEY & EVA KRIPALANI, *THE GENERALIST COUNSEL: HOW LEADING GENERAL COUNSEL ARE SHAPING TOMORROW'S COMPANIES* 163–70 (2013); BEN W. HEINEMAN, *THE INSIDE COUNSEL REVOLUTION: RESOLVING THE PARTNER-GUARDIAN TENSION* 317–57 (2016); E. NORMAN VEASEY & CHRISTINE T. DI GUGLIELMO, *INDISPENSABLE COUNSEL: THE CHIEF LEGAL OFFICER IN THE NEW REALITY* 97–130 (2012).

94. See Nelson & Nielsen, *supra* note 48, at 477–78.

Moreover, even at a rhetorical level, the claim is symbolically significant as it reveals the professional aspirations of elite general counsel, living through the fourth-generation evolution of their roles. No longer concerned with securing their position within the entity, these lawyers now seek to become, or at least portray themselves as, the “integrity” officers of their clients, charged with asking and answering not only “is it legal?” but also “is it right?” when no one else at the entity does.<sup>95</sup> Importantly, elite general counsel aim to ask and answer both questions, not only in their capacity as cops but also in their roles as counselors and entrepreneurs or, as these lawyers prefer to term it, “accountable leaders.”<sup>96</sup>

Thus, fourth-generation elite general counsel are not merely cops, counsel, and entrepreneurs. They are also explicitly business leaders. It is in this latter capacity as entrepreneur-leaders that these lawyers speak of their entities as pursuing a core mission of “the fusion of high performance with high integrity.”<sup>97</sup> They also assert that their own role includes a new fourth component in addition to cop, counsel, and entrepreneur-leader—that of a high integrity officer, one that builds on and derives from their identities as lawyers and charges them with “resolving the partner-guardian tension.”<sup>98</sup> The significance of this development cannot be overstated as it allows elite general counsel to assert that they are the heirs to the dethroned Big Law powerful partners of the twentieth century and the contemporary standard-bearers of the lawyer-statesman ideal.<sup>99</sup>

This remarkable expansion and solidification of the general counsel’s role is reflected in its title change, from general counsel to chief legal officer (CLO). Whereas, in the past, the titles were used interchangeably, recently their heightened public profile has helped to cement the general counsel’s standing as a member of the company’s senior leadership team. Indeed, many top in-house lawyers have traded in the legal-sounding title of general counsel for the more corporate sobriquet of CLO to signal that they are part of the company’s C-suite.<sup>100</sup> Moreover, at some corporate entities, the general counsel now reports to the CLO.<sup>101</sup>

Outside of the role of general counsel, in-house departments have grown larger and more specialized. The growth and institutionalization of in-house legal departments established new specialized tracks for lawyers interested in permanent employment with entity clients without necessarily the possibility of internal advancement, for example, as intellectual property or

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95. HEINEMAN, *supra* note 93, at 23–128.

96. *Id.*

97. *Id.*

98. *Id.*

99. *Id.* But see generally Robert W. Gordon, *The Return of the Lawyer-Statesman?*, 69 STAN. L. REV. 1731 (2017) (critically questioning the plausibility of claims about elite general counsel as lawyer-statespersons).

100. Wilkins, *supra* note 50; see also Omari Scott Simmons, *Chief Legal Officer 5.0*, 88 FORDHAM L. REV. 1741 (2020).

101. Kristen Rasmussen, *Chief Legal Officer v. General Counsel: Why You May Need Both*, LAW.COM (Feb. 7, 2019, 5:21 PM), <https://www.law.com/corpcounsel/2019/02/07/chief-legal-officer-v-general-counsel-why-you-may-need-both> [http://perma.cc/T5ZN-YR7S].

labor and employment law associate general counsel subject-matter experts.<sup>102</sup> It is not uncommon in some industries to observe a hierarchical structure in which several associate and assistant general counsel, in particular specialty areas such as intellectual property and labor and employment law, report to the general counsel, as well as the proliferation of more specialized in-house positions under such associate general counsel.<sup>103</sup>

Growing in-house departments rely heavily on aggressive recruiting from the ranks of Big Law.<sup>104</sup> This applies not only to senior partners but also to junior equity partners, income partners, and even senior and mid-level associates. The successful recruitment of large law firm lawyers has been aided by a complicated mix of realities and myths about greater equality at in-house legal departments compared to Big Law.<sup>105</sup> On the one hand, “women make up a significant percentage of the lawyers working in-house, including twenty-five percent of the GCs of Fortune 500 companies, according to a 2015 report from the Minority Corporate Counsel Association.”<sup>106</sup> This is consistent with, and may be explained in part by, the harsh gender realities in Big Law, where women lawyers continue to be significantly underrepresented in positions of power and influence. Indeed, “[t]his percentage is far higher than the average number of female partners in large U.S. law firms, let alone female managing partners or other senior leaders, who remain a tiny percentage of those who hold these positions.”<sup>107</sup> On the other hand, there is little evidence to support the advancement of women lawyers in corporate America, other than the position of general counsel, to other positions of power and influence within in-house legal departments, in C-suites, or on corporate boards.

Second, outside the large elite corporate sphere, as the stereotype of in-house lawyers as second-class citizens within the legal profession diminished and was gradually replaced with the perception of in-house positions as desirable and prestigious, in-house positions have begun to proliferate, with new entity clients hiring their first in-house lawyers and other entities expanding their in-house legal departments. This growth was not merely driven by lawyers who were now willing, or even eager, to go in-house. Rather, as the benefits conferred upon entity clients by in-house lawyers, from early proactive compliance to reduced cost, became more visible and known, smaller entity clients began to create and staff new in-house positions. To be clear, only entity clients of a certain threshold size and complexity of legal needs require in-house counsel. Yet the in-house trend that arose in the 1970s and 1980s continues outside very large entities to take

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102. Wald, *supra* note 55, at 432–34.

103. VEASEY & DI GUGLIELMO, *supra* note 93, at 159–90.

104. Wald, *supra* note 55, at 409–19.

105. Wilkins, *supra* note 50 (“[A]s in-house departments began to grow in size and status, they also began attracting a significant number of female lawyers.”); *see also* Wald, *supra* note 55, at 408–09.

106. Wilkins, *supra* note 50.

107. *Id.*

hold in the large and mid-large entity client range.<sup>108</sup> Notably, fourth-generation in-house lawyers taking office in the expanding in-house world outside of the elite sphere of large entity clients face and struggle with challenges similar to those of third-generation in-house attorneys, namely establishing trust internally with clients and overcoming the perception of being a negative cost center.<sup>109</sup>

These twin developments—the growth, professionalization, and institutionalization of in-house legal departments of large entity clients, complete with the evolution of the elite general counsel role, and the expansion of the in-house trend outside of large entity clients—have resulted in an increasingly diverse in-house world, as well as in the fragmentation and stratification of the in-house universe.<sup>110</sup>

Whereas many nonelite general counsel and in-house lawyers are living through the third-generation in-house challenges of convincing corporate insiders that they are team players and trustworthy, elite general counsel have moved on to a more secure and mature stage. As such, the latter, no longer engaged in the “establishing professional status project,” which they shared with all in-house lawyers and which benefited the entire in-house universe, are pursuing fourth-generation projects, which are at times at odds with the interests of nonelite in-house counsel. Recall that third-generation general counsel were well suited to play the roles of cops, counsel, and entrepreneurs given their long-standing and secure relationships with their entity clients, which in turn allowed them to grow over time into the role of integrity officers.<sup>111</sup> In contrast, fourth-generation general counsel who assume their position without the benefit of these background conditions may not be expected to act as integrity officers and, when the role expectations do exist, they may find them hard to fulfill.

Thus, rather than featuring a neat universal world in which most in-house lawyers have moved past the third-generation return to power, *vis-à-vis* outside counsel and internal constituents within entity clients, to a fourth generation of professionalization, institutionalization, and consolidation of power, the complex diverse worlds of in-house lawyers consist of at least two increasingly stratified tiers: (1) an elite general counsel fourth-generation sphere and, simultaneously, (2) a nonelite universe of general counsel and other in-house lawyers who are still fighting third-generation battles.

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108. CLARA N. CARSON & JEEYOON PARK, AM. BAR FOUND., *THE LAWYER STATISTICAL REPORT: THE U.S. LEGAL PROFESSION IN 2005* (2012).

109. Wald, *supra* note 55, at 429.

110. On stratification in the legal profession between the individual and corporate hemispheres, see JOHN P. HEINZ & EDWARD O. LAUMANN, *CHICAGO LAWYERS: THE SOCIAL STRUCTURE OF THE BAR* 319–20 (1982) (finding that the legal profession consists of two categories of lawyers whose practice settings, socioeconomic and ethnoreligious backgrounds, education, and clientele differ considerably); JOHN P. HEINZ ET AL., *URBAN LAWYERS: THE NEW SOCIAL STRUCTURE OF THE BAR* 29–47 (2005) (documenting that lawyers work in two fairly distinct hemispheres—individual and corporate—and that mobility between these hemispheres is relatively limited).

111. See *supra* Part I.C.

Accordingly, rhetoric aside, it is important not to overstate in-house lawyers' dominance and elite status in the twenty-first century. The large universe of in-house lawyers, approximately 10 percent of all U.S. lawyers, or more than 100,000 attorneys,<sup>112</sup> is anything but a homogenous monolith, and instead features rich diversity. In-house lawyers span private and public practices, for example, as government lawyers.<sup>113</sup> Some work in large-scale in-house legal departments, whereas many others are the sole entity lawyer.<sup>114</sup> Next, whereas some in-house lawyers are generalists who oversee all legal matters on behalf of their entities, others are specialists with a narrow subject-matter expertise.<sup>115</sup> Moreover, while some in-house lawyers work in centralized in-house departments reporting to a general counsel, others practice in decentralized settings and report to nonlawyer managers.<sup>116</sup> Finally, in-house lawyers vary by "locale, gender, position in organization, seniority in organization, nature of prior experience, and status of law school attended."<sup>117</sup>

Recognizing the great diversity within the in-house realm reveals an important insight: not all in-house lawyers have experienced a growth in power, prestige, and influence. Rather, this transformative change has been primarily the domain of a small, elite subset, the general counsel of large corporations.<sup>118</sup> Early on, these elite general counsel used their power to advocate for elevated professional status for all in-house lawyers, in what Robert Eli Rosen described as the political mobilization of an "inside counsel movement."<sup>119</sup> Such efforts included the formation in the mid-1980s of the American Corporate Counsel Association,<sup>120</sup> as well as notable rhetorical moves. For example, Carl Liggio introduced the "employed" and "retained" lingo in lieu of "in-house" and "outside" to capture and reflect the new power dynamic in which employed in-house lawyers exercise power over and retain outside counsel.<sup>121</sup> Thus, the rise to power of an elite subset of in-house lawyers—general counsel of large corporate entities—initially set off an ongoing campaign for elevated status for all in-house lawyers, only for the lawyers to experience stratification and friction in the fourth generation.

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112. CARSON & PARK, *supra* note 108.

113. *See generally* Miriam H. Baer, *Compliance Elites*, 88 *FORDHAM L. REV.* 1599 (2020).

114. Hazard, *supra* note 4, at 1011.

115. Kelley, *supra* note 89, at 1197.

116. *Id.*

117. Nelson & Nielsen, *supra* note 48, at 461.

118. Some commentators have noted this important distinction in their titles but have not explored in any detail the practice realities of nonelite in-house lawyers. *See, e.g.*, Chayes & Chayes, *supra* note 5; Daly, *supra* note 2; Nelson & Nielsen, *supra* note 48. Others have been more casual, exploring the practice realities of elite general counsel while referring more generally to general counsel. *See, e.g.*, Kelley, *supra* note 89; Liggio, *supra* note 5.

119. Rosen, *supra* note 3, at 497.

120. *Our History*, ASS'N CORP. COUNS., <https://www.acc.com/about/our-history> [<https://perma.cc/G5BA-M3JQ>] (last visited Mar. 17, 2020).

121. Liggio, *supra* note 5, at 1202–03. Liggio's choice of the term "employed" to denote in-house lawyers also contrasted with the lesser term "salaried." *See generally* EVE SPANGLER, *LAWYERS FOR HIRE: SALARIED PROFESSIONALS AT WORK* (1986).

## II. IN-HOUSE AND BIG LAW: CONTEMPORARY PRACTICE REALITIES

The traditional understanding of the relationship between in-house and Big Law as a zero-sum game, in which the former won, should have resulted in at least three related consequences in the market for corporate legal services: (1) in-house counsel taking control of the core legal functions of the corporation from outside counsel; (2) the decline of Big Law; and (3) a large law firm exodus, a one-way street from Big Law to in-house legal departments. None of these phenomena, however, have taken place. Rather, in-house counsel have achieved only partial control over the provision of corporate legal services,<sup>122</sup> and some large law firms have never been better, at least in terms of the profitability of their equity partners.<sup>123</sup> The labor market has experienced the emergence of a two-way Big Law–in-house street and the rise of a robust in-house lateral market, all of which the revised symbiotic account helps explain.

*A. In-House Partial Control of Corporate Practice and the Enigma of the Continued Success of Big Law*

To begin with, if in-house lawyers triumphed over Big Law in a zero-sum game, one would have expected at least two consequences: (1) in-house lawyers gaining increased control over outside counsel and the core legal functions of the corporation and (2) a corresponding demise of Big Law. Neither outcome has transpired.

As to the expected dominance of in-house counsel over Big Law, “[a]rguably the key feature of the in-house counsel movement in the United States has been the effort to wrest control over the core legal functions of the corporation away from outside counsel.”<sup>124</sup> Yet, although in-house counsel have purportedly triumphed, “the success of this effort has been mixed.”<sup>125</sup> Specifically,

[n]otwithstanding a significant investment in building up in-house capacities, many companies discovered that outside spending on law firms continued to escalate throughout the 1990s and into the first decade of the 21st century. Similarly, the extensive monitoring and controlling of law firm [sic] did not result in increased levels of client satisfaction.<sup>126</sup>

David Wilkins concluded that “[t]he result has been that GCs continue to have less control over outside counsel than the movement’s rhetoric might lead one to believe.”<sup>127</sup> The author further explained that

while there had been an important shift in the degree of control that internal counsel exercised over both the amount of work that is given to particular

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122. Wilkins, *supra* note 50.

123. See, e.g., Ben Seal, *The 2019 Am Law 100: Profits per Equity Partner*, AM. LAW. (Apr. 23, 2019, 9:38 AM), <https://www.law.com/americanlawyer/2019/04/23/the-2019-am-law-100-profits-per-equity-partner> [http://perma.cc/6NGG-MVXU].

124. Wilkins, *supra* note 50.

125. *Id.*

126. *Id.*

127. *Id.*

firms, as well as the manner in which that work is assigned, evaluated, and compensated, it was an exaggeration to view GCs as employing a strict “spot contracting” model for the purchase of legal services.<sup>128</sup>

What explains this “mixed” result? Wilkins asserts a type of path dependency: “In the words of one GC, terminating an important law firm relationship is a bit ‘like turning the Titanic’—something that takes an enormous amount of time and energy to accomplish and runs the risk of creating an even bigger disaster in the process.”<sup>129</sup> The colorful metaphor, however, does not quite capture the path dependency argument accurately. Exercising control over Big Law by replacing a large law firm with another does not assume the risk of a disaster because arguably most large law firms can competently handle complex and costly corporate work. Nonetheless, the cost of replacing outside counsel is likely to be high, including the external learning curve of the new law firm, the internal curve of corporate constituents dealing with new lawyers, and the cost of developing and adopting new templates. Importantly, such a costly change is unlikely to result in significant savings as many large law firms follow a similar model for the provision of legal services. Thus, path dependency provides in-house counsel with little incentive to change outside counsel. Add to the mix the relatively short-term tenures of the modern CLOs and their busy schedules and exercising control over Big Law becomes even less of a priority.

The symbiotic account offers additional explanations for the limited amount of control in-house counsel exercise over outside counsel and corporate legal services more generally. First, as entity clients grew and their needs expanded to require inside representation (the “substantive” argument),<sup>130</sup> the internal in-house growth was an incomplete substitute for outside legal needs. That is, the legal needs of large global entity clients mean that there is a need for both inside and outside legal services that are not redundant. In-house lawyers, who serve in preventive and proactive roles, can cover the routine tasks at a lower cost and also monitor outside counsel work. Outside counsel, however, continue to provide specific specialized expertise, “people power” when needed for major transactions or litigation, and “bet the company” representations.

In theory, in-house counsel could have rejected the Big Law model of outside legal services. For example, instead of trying to replicate the Big Law model in-house or rely on it for outside legal services, general counsel could have assembled a team of subject-matter experts inside the legal department and relied on new, temporary, or alternative low-cost, nonelite providers of legal people power as needed. Recall, however, that in-house lawyers were not seeking to replace Big Law as part of a professionalism project or a battle for status and standing. This is not a matter of simplistic loyalty, a wink and a nod to their former Big Law colleagues at the expense of the entity client. Rather, unlike replacing one large law firm with another,

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128. *Id.*

129. *Id.*

130. *Id.*

which entails little risk but also offers little upside, replacing Big Law with a nonelite alternative does entail the risk of lower quality legal services, a risk that general counsel have little incentive to take. Relatedly, bred and brought up in Big Law, in-house lawyers are familiar and comfortable with the large law firm model. In-house counsel, simply put, have little reason to radically rock the boat of corporate legal services and the stable symbiotic relationship they have with Big Law.

Second, the particular growth pattern of in-house legal departments in the late third and fourth generations explains the ongoing symbiotic codependency. As in-house legal departments began to recruit mid-level lawyers from Big Law, including junior partners and senior and mid-level associates, these in-house lawyers often lacked the expertise of more seasoned Big Law partners and thus had to continue to rely on outside counsel for expertise.

Third, as long as the majority of in-house lawyers were trained, mentored, and socialized in Big Law, their values and expectations were informed and framed by Big Law structure, organization, and realities. Understanding themselves to be elite attorneys and Big Law lawyers to be their peers, in-house lawyers were unlikely to retain nonelite legal services and indirectly undermine their own credentials and status.<sup>131</sup>

At the same time, the extent of the symbiotic codependency between in-house legal departments and Big Law ought not be exaggerated. In particular, in-house lawyers have successfully curtailed the legal costs of outside counsel, not for necessary legal services but for the hefty premiums of large law firms, for example, by insisting on fee caps, managing the assignment of outside lawyers to their matters, and refusing demands for annual fee raises at significant bumps. Similarly, in-house lawyers now perform many of the routine and other legal tasks previously undertaken by Big Law, cutting into large law firms' profit margins. In-house lawyers also gained some power by managing if not the content then the budgets, staffing, and resource allocation of Big Law.

Large law firm partners, in turn, have lost power and influence to in-house legal departments and their general counsel. Consequently, Big Law experienced greater instability and increased competition.<sup>132</sup> Yet, the reasons for these practice realities are complex and are not all attributable to the rise of in-house counsel, and Big Law cannot be fairly described to be in a state of distress. To begin with, seemingly paradoxically, some large law firms have never been better, judging by their profits per equity partner.<sup>133</sup> The traditional Big Law tournament of lawyers organizational structure depended on maintaining set ratios of partners to associates to generate

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131. See NELSON, *supra* note 68, at 127–58 (exploring the professional identity of powerful Big Law partners). See generally HEINZ & LAUMANN, *supra* note 110 (documenting lawyers' understanding of professional identity in stratified practice arenas); HEINZ ET AL., *supra* note 110 (same).

132. Wald, *supra* note 53, at 2258–64.

133. See Seal, *supra* note 123.

profits and growth, a model general counsel were able to disrupt, for example, by refusing to pay for the training of junior associates and by insisting on lean staffing of their matters. Some large law firms responded by pursuing internal restructuring and the creation of new tracks within Big Law, which resulted in fewer equity partners sharing the spoils.<sup>134</sup> Other large law firms resorted to the firing of some partners, the “de-equitization” of others, and to installing longer paths to partnership, all leading to increased stratification within Big Law.<sup>135</sup> Importantly, however, this restructuring was not solely the result of in-house pressures on Big Law. Rather, some of these measures were adopted in response to demands by rainmaking partners to abandon lockstep arrangements and to increase their compensation, all in the context of increased mobility and the implied threat that failure to yield may cause them to leave. Yet other large law firms have recently experienced no growth or even reduced profitability.<sup>136</sup> But these are coming after years of unprecedented growth, rising fees, and increased profits per partner, and in some cases are explained by either poor management or explicit choices to forgo growth and sustain less competitive cultural and institutional values.<sup>137</sup>

Next, the number of large law firms grew tremendously over the last few decades such that the greater instability is explained in part not by loss of revenue to in-house legal departments (the size of the pie) but rather by internal competition (slicing the pie among a bigger group).<sup>138</sup> Finally, while it seems like more large law firms have collapsed in recent years, the reasons have to do as much with the organizational and ownership structure of Big Law as they do with the loss of business to in-house legal departments.<sup>139</sup>

In sum, the symbiotic codependency between in-house and outside counsel explains why the former have expanded their roles, prestige, and power at the expense of Big Law lawyers and yet have sought and obtained only partial control over the latter and the provision of corporate legal services. The revised account also explains why the relative decline of large law firms’ profitability has not led, and is not likely to lead, to the demise of Big Law. The days of unchecked and annually rising fees are over, courtesy of in-house counsel. Yet, Big Law can reasonably expect the continued flow of steady expert work from large entity clients. Big Law volatility, instability, and increased competition are likely to continue for the foreseeable future as the “new normal” in the market for corporate legal services not exclusively

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134. See generally William D. Henderson, *An Empirical Study of Single-Tier Versus Two-Tier Partnerships in the Am Law 200*, 84 N.C. L. REV. 1691 (2006).

135. See Eli Wald, *Smart Growth: The Large Law Firm in the Twenty-First Century*, 80 FORDHAM L. REV. 2867, 2868 (2012).

136. See GEORGETOWN LAW CTR. ON ETHICS & THE LEGAL PROFESSION & THOMSON REUTERS, 2019 REPORT ON THE STATE OF THE LEGAL MARKET 4 (2019), [http://ask.legalsolutions.thomsonreuters.info/LEI\\_2019-State\\_of\\_Legal\\_Mkt](http://ask.legalsolutions.thomsonreuters.info/LEI_2019-State_of_Legal_Mkt) [https://perma.cc/26K7-G6GD] (“[S]ince 2014, demand has been slightly up in some years and down in others, creating an essentially stagnant growth pattern over the past five years.”).

137. *Id.*

138. See Wald, *supra* note 23, at 1818–19.

139. See generally Morley, *supra* note 85.

because of in-house lawyers but because of the high number of large law firms competing in the marketplace and the dominance of the “eat what you kill” culture in Big Law, as well as the outdated business models, organization and structure of many large firms, and the vulnerability of some to increased mobility and the lateral departure of their top rainmakers.<sup>140</sup>

*B. In and Out of the House: The Emergence of Two-Way Street Career Tracks*

Had in-house counsel triumphed over Big Law in a zero-sum game, one would have expected to see, over time, a one-way exodus from large law firms to in-house legal departments, akin to third-generation practice realities. The fourth-generation era, however, has featured much more complex labor movements, consistent with the symbiotic account.

Through the first and second generations of in-house practice, and through the first years of the third generation when Deborah DeMott first discussed in-house pathways,<sup>141</sup> there was relatively little to say about the career trajectories of in-house lawyers. As we have seen, during the first generation, general counsel, typically the only in-house lawyers working for the entity client, were state and federal judges. These judges took in-house positions with the fast-growing railroads and investment banks, expected to stay in the positions for a while, and exited into groomed CEO positions or retirement.<sup>142</sup> Second-generation in-house lawyers were employed by growing entity clients, which primarily utilized elite large law firms as their outside general counsel. These lawyers were recruited from among the ranks of those who did not make partner in Big Law firms<sup>143</sup> and planned to stay in-house permanently, in part because the low esteem of their positions was not conducive to a high-power move and in part because mobility per se was still unheard of. Finally, the modern-era general counsel of the third generation had a fairly straightforward career trajectory: having spent the bulk of their legal careers in Big Law and assumed the position of general counsel late, many expected to stay and retire after serving the entity. This simple world of in-house career trajectories is all but gone, replaced with a vibrant maze of exciting new opportunities, career paths, and options.

Early third-generation in-house lawyers in the 1970s and early 1980s were typically lateral hires from Big Law and thus were experienced, older, Caucasian men.<sup>144</sup> As a reflection of the then relatively stable and long-term

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140. *See generally id.*

141. *See generally* DeMott, *supra* note 11.

142. *See supra* note 20 and accompanying text.

143. *See supra* Part I.B.

144. Female lawyers began to enter the profession in growing numbers in the 1970s and were promoted to partnership in the mid- to late 1980s. Cynthia Fuchs Epstein et al., *Glass Ceilings and Open Doors: Women's Advancement in the Legal Profession*, 64 *FORDHAM L. REV.* 291, 311–16 (1995). Thus, as a reflection of the Big Law partner pool, a vast majority of first-generation in-house lawyers and general counsel were men.

relationships between large law firms and their entity clients,<sup>145</sup> an early in-house hire was usually a partner who had long represented the entity client, was familiar with it and its legal needs, and had gained its trust. The lateral move was often welcomed by Big Law as it tended to cement the relationship with the entity client, which was expected to continue to utilize the services of its outside counsel when a former partner was installed as its general counsel.<sup>146</sup>

As DeMott astutely explains, the first Big Law movers into in-house positions were likely motivated by a combination of factors.<sup>147</sup> First, the long-term, stable relationship with the client implied relative stability in the new position, which was increasingly appealing given increased competitive practice realities at large law firms and their emerging “eat what you kill” culture (DeMott’s “law firm contrast” thesis).<sup>148</sup> Second, to attract partners holding prestigious positions in Big Law to resign what were then de facto tenured positions, entity clients offered their new general counsel compelling compensation packages (the “economic” thesis).<sup>149</sup> Third, given the stature and experience of the new hires, as well as their stable relationships with the client, the position was a good fit in terms of the talent, skills, and expectations of the new general counsel (the “fit” thesis).<sup>150</sup> Finally, the new general counsel, by virtue of their seniority and career horizon, did not have an expectation of ever returning to their law firms. Although the positions were new, and thus entailed considerable uncertainty, a move in-house was a one-way street. The move was either a launching pad into other senior positions within the senior management of the client (the “launching pad” thesis) or into retirement.<sup>151</sup>

As elite in-house legal departments gradually grew, associate general counsel and more junior positions were filled from the ranks of Big Law. General counsel, themselves products of Big Law, were familiar with large law firms’ personnel and valued the firms’ training and mentoring, which in-house departments were not in a position to offer due to their relatively small size and orientation.<sup>152</sup> Over time, such lateral hiring was facilitated by the increased competitive realities of Big Law, as some junior partners and senior associates, eager to escape oppressive billable hours, pressure to develop a book of business, and glass ceilings, flocked in-house.<sup>153</sup>

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145. See Wilkins, *supra* note 65, at 2076–104 (describing the traditional stable, as well as the modern unstable, typical Big Law–client relationship).

146. *Id.*

147. See DeMott, *supra* note 11, at 961–65.

148. *Id.*

149. *Id.*

150. *Id.*

151. *Id.*

152. Notably, Big Law’s training and mentoring is in decline. 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, 281–82 (2000); Eli Wald, *BigLaw Identity Capital: Pink and Blue, Black and White*, 83 FORDHAM L. REV. 2509, 2539–41 (2015).

153. Wald, *supra* note 55, at 409–19.

DeMott's mobility framework suggests that late third-generation movers from Big Law to in-house departments were likely driven more by "law firm contrast" and "fit" considerations than by "economic" and "launching pad" reasons. Unlike early movers, who were often senior partners leaving Big Law to become general counsel, later movers were typically younger junior partners and senior associates, escaping the increasingly competitive practice realities of Big Law. The escalating billable expectations, longer and multilayered partnership tracks, and more explicit book-of-business expectations that required nonbillable hours have led to longer total work hours, stress, and a reduced ability to strike a reasonable, let alone desirable, work-life balance.<sup>154</sup> For some Big Law lawyers, these increasingly competitive realities were oppressive and the "law firm contrast" thesis was a significant draw. Even if ample information was not readily available, they hoped that in-house practice would prove more relaxed.<sup>155</sup> Relatedly, some Big Law movers hoped to find a better fit in-house compared with Big Law, both in terms of job expectations and work-life balance.<sup>156</sup>

In contrast, "economic" and "launching pad" reasons were likely less relevant. Some in-house positions offered handsome compensation but information about economic incentives was lacking, often leaving individuals to negotiate based on incomplete information.<sup>157</sup> Similarly, late third-generation in-house lawyers often could not effectively plot career trajectories out of in-house positions because information was scarce.<sup>158</sup> Yet this was not necessarily a significant disadvantage. For those looking to leave Big Law, a move in-house offered if not a clear career pathway then at least a new position and time to figure out their future either as a permanent in-house attorney or at another position down the road.

Notably, while these late third-generation moves in-house were still grounded in an ongoing relationship with the entity client—typically an in-house department will recruit a junior partner or a mid-level to senior associate who had worked on its matters while in Big Law—the hiring was somewhat haphazard. Even as they were beginning to micromanage Big Law staffing in terms of who worked on their matters and how many billable hours they were allowed to charge,<sup>159</sup> in-house legal departments did not select the Big Law lawyers initially assigned to work on their matters by the large law firms. Thus, in-house departments ended up laterally recruiting whomever the large law firms assigned to work on their matters. Similarly, Big Law lawyers moving in-house knew relatively little about in-house practice. These lawyers' knowledge was limited to what they learned about the in-

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154. *Id.*

155. *Id.*

156. *Id.*

157. See generally Eli Wald, *In-House Pay: Are Salaries, Stock Options, and Health Benefits a "Fee" Subject to a Reasonableness Requirement and Why the Answer Constitutes the Opening Shot in a Class War Between Lawyer-Employees and Lawyer-Professionals*, 20 NEV. L.J. 243 (2019).

158. See generally *id.*

159. Liggio, *supra* note 5, at 1217–22.

house departments and their attorneys while representing them as outside counsel in part because law schools offered virtually no relevant coursework.<sup>160</sup> The lawyers had no influence over their assignments in Big Law, which in turn opened the door to and led them in-house.<sup>161</sup> From the perspective of the Big Law attorney, the relationship with a would-be entity client employer was near completely random: one would join a large law firm, would be assigned (or not) to work with a firm partner for a large entity client, and a few years later might develop a relationship with that client and receive a lateral offer.<sup>162</sup>

Moreover, in this sense, a move in-house was not only random but also motivated by negative reasoning and realities in Big Law and incomplete information about in-house practice realities and career trajectories. Large law firms' junior partners and associates moved in-house not because they knew and desired the positions but by default to escape practice realities at large law firms and business development pressures and to seek shorter hours and enhanced equality.<sup>163</sup> The maturation of in-house positions at large entity clients and the expansion of in-house practice outside large entity clients, however, have altered the nature and number of available career tracks for in-house lawyers.

### 1. Two-Way Streets: Big Law and In-House Lateral Moves

The evolving relationship between in-house legal departments and outside counsel has become a two-way street,<sup>164</sup> with in-house lawyers returning to Big Law for several reasons. First, the growth of in-house departments and positions and the expanding ranks and identities of in-house lawyers created, over time, a pool of possible Big Law recruits. Rather than employing a single senior, older general counsel, in-house legal departments increasingly feature a diverse pool of lawyers, some of whom are in their thirties and forties as opposed to near retirement age. These younger in-house lawyers are attractive to large law firms, which are seeking to better understand in-house decision-making and benefit from the connections of former in-house lawyers in corporate America. Yet, why would some in-house lawyers choose to go back to, and others move to, Big Law?

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160. See generally ASS'N OF CORP. COUNSEL, BECOMING IN-HOUSE COUNSEL: A GUIDE FOR LAW STUDENTS AND RECENT GRADUATES (2013), [https://www.acc.com/sites/default/files/resources/v1/membersonly/InfoPAK/19654\\_2.pdf](https://www.acc.com/sites/default/files/resources/v1/membersonly/InfoPAK/19654_2.pdf) [<https://perma.cc/CYG7-FSTV>].

161. *Id.*

162. Wald, *supra* note 55, at 409–19.

163. *Id.*

164. See, e.g., Michele Gorman, *Why In-House Attys Ditch the Corporate World for Law Firms*, LAW360 (Nov. 30, 2018, 7:21 PM), <https://www.law360.com/articles/1100522/why-in-house-attys-ditch-the-corporate-world-for-law-firms> [<http://perma.cc/3V43-5NFE>]; Sue Reisinger, *Two Veteran In-House Counsel Talk About Why They Moved to Law Firms*, LAW.COM (Feb. 12, 2019, 5:38 PM), <https://www.law.com/corpcounsel/2019/02/12/two-veteran-in-house-counsel-talk-about-why-they-moved-to-law-firms/> [<https://perma.cc/ZS8L-78XB>]; see also Wilkins, *supra* note 59, at 253.

Consider the “law firm contrast” rationale. Recall that some third-generation Big Law lawyers left large law firms to escape their “eat what you kill” culture, the billable hour oppression, and the need to develop a book of business, whereas others left seeking more equitable work environments. The in-house and related corporate work realities and culture, however, are more complex and sometimes less of a Big Law contrast than imagined by lawyers. Some of these in-house lawyers were disappointed and even disillusioned by in-house practice realities, which, although free of the billable hour and book-of-business concerns, featured their own demanding challenges such as soft hours, travel, and a foreign business culture often viewing lawyers as outsiders and naysayers.<sup>165</sup>

While elite general counsel had mostly established themselves as respected and trusted C-suite advisors and executives by the 2000s, other in-house lawyers were still fighting third-generation battles to establish trust and overcome the perception of being part of a negative cost center. For some, the business culture, in which lawyers were sometimes held in low esteem, was hard to adjust to<sup>166</sup> compared to that of large law firms, in which Big Law lawyers were considered top dogs—both internally vis-à-vis support staff and nonlawyers and externally vis-à-vis other members of the legal profession.<sup>167</sup> In sum, because information was not readily available about in-house practice, lawyers moved in-house only to discover that the law firm contrast was more complex and less of an obvious reason to leave Big Law.<sup>168</sup>

Similarly, while in-house departments feature some greater equality—for example, 25 percent of all general counsel of Fortune 500 entity clients are women, a higher percentage than for equity partners in Big Law<sup>169</sup>—in-house departments and their corporate hosts feature their own equality concerns and challenges. As it turns out, while corporate America quickly promoted women lawyers to top positions as general counsel, it was less willing and able to change its male-dominated culture in some historically male-dominated industries such as manufacturing.<sup>170</sup>

Next, the “economic” thesis has proved to be more complex as well. While in-house legal departments offer competitive packages to lure Big Law lawyers and spare movers the need to worry about the billable hour and books of business, they include their own challenges. Most notably, in-house legal departments have no expectations of quasi-tenure in the form of promotion to partnership. Quite the contrary, like many corporate actors, in-house lawyers are at-will employees and can, and do, get fired when entity clients

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165. Wald, *supra* note 55, at 424–39.

166. *Id.*

167. NELSON, *supra* note 68, at 127–58.

168. Wald, *supra* note 55, at 424–53.

169. Wilkins, *supra* note 50.

170. *See generally* ROSABETH MOSS KANTER, MEN AND WOMEN OF THE CORPORATION (1993 ed.).

downsize.<sup>171</sup> To be sure, large law firms also let associates, and even partners, go, but the likelihood of being fired is higher and, indeed, part of the norm at corporate entities. Related risk factors include unpredictable business conditions and the volatility of stocks and stock options.

Moreover, the proliferation of career tracks in Big Law has created new ways to mitigate the downside of book-of-business expectations—for example, lawyers can become income partners as opposed to equity partners. This, to be clear, is not to dismiss concerns about who gets on what track at large law firms.<sup>172</sup> But the point remains that if part of the “contrast” and “economic” motivations to move from a large law firm to an in-house legal department had to do with not having a big book of business and the fear of not making “partner,” Big Law now offers career opportunities that do not require rainmaking skills or “up or out” promotion to equity partner.

As the Big Law world became more competitive, and placed an emphasis on books of business, for a transitional period, large law firms were eager to have their former lawyers return as partners, which made the “economic” thesis a compelling reason to go back to Big Law. Big Law assumed and hoped these in-house lawyers would come back with ample business from the in-house legal department they just left behind and relationships they formed in the business world while working in-house. As it turned out, this wishful thinking did not always play out as planned. While some in-house lawyers met these rosy expectations, others did not. The proliferation of in-house positions and ranks meant that returnees often had specialized roles—for example, as associate general counsel for intellectual property or for labor and employment law—and therefore did not influence the flow of work from their former entity clients. Moreover, having spent time away from Big Law, they sometimes found its culture hard to readjust to. Thus, after a quick sobering period, Big Law became more discerning and brought back former lawyers for probationary of-counsel positions, pending a proven track record of a book of business, or as-needed to fill specialty needs created by client demands and lateral moves by partners and experienced associates.

Consequently, fourth-generation in-house practice features a robust two-way street, including not only “Big Law X to in-house to Big Law X” tracks but also “Big Law X to in-house to Big Law Y” moves.<sup>173</sup> The evolution of this career trajectory, from a one-way to a two-way street, continues to legitimize and sustain the elite status of in-house practice at the same time as it enhances the standing of Big Law positions.

## 2. In-House Lateral Moves

An emerging in-house lateral market, including both “elite in-house A to elite in-house B” and “elite in-house A to nonelite general counsel or even

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171. Robert E. Rosen, “*We’re All Consultants Now*”: *How Change in Client Organizational Strategies Influences Change in the Organization of Corporate Legal Services*, 44 ARIZ. L. REV. 637, 642 (2002).

172. Wald, *supra* note 152, at 2529–54.

173. *See supra* note 164.

nonelite in-house” moves, reflects both supply and demand forces. On the supply side, the growth of in-house positions and their elite status, combined with the extended tracks in Big Law and the decreased probability of making equity partner, created a pool of increasingly well-informed lawyers who, after relatively short stints in Big Law, were ready to go in-house and then enter the in-house lateral market. To be sure, some lawyers spend more time in Big Law and others move in-house seeking more permanent positions. Yet Big Law and in-house practice realities have helped create a large and growing pool of lateral in-house lawyers, akin to the lateral market that emerged in Big Law beginning in the 1990s and maturing through the twenty-first century.<sup>174</sup> This pool consists of lawyers who, after spending a few years in Big Law, take an in-house legal position with the expectation that, after several years at the entity client, they will laterally move to another in-house legal department at another employer.

On the demand side, in-house departments have grown more experienced and sophisticated and need not, and do not, settle for haphazard lateral pickups from Big Law. While large law firms continue to offer relatively well-trained and well-mentored lawyers (although that promise has been somewhat tarnished in recent years),<sup>175</sup> some in-house departments seek lawyers with in-house experience for both general counsel and other in-house positions, often from other industries, for two reasons. First, some in-house lawyers have signed noncompete provisions preventing them, as a condition precedent for receiving stock and stock options, from working for business competitors in the same industry.<sup>176</sup> Second, the skill set of specialized in-house lawyers, for example, as intellectual property or labor and employment law experts, is relatively transferable irrespective of the business industry of the entity client.<sup>177</sup> Moreover, some in-house departments have started offering internships for both law students and recent graduates as well as limited entry-level positions.<sup>178</sup>

The emergence of in-house lateral markets, back to Big Law and to other in-house positions, is not the first time the corporate sphere of the legal profession has experienced the development of a robust lateral market. For nearly a century, Big Law operated under an implied but well-accepted gentlemanly agreement, in which large law firms promoted partners from within their own ranks and avoided lateral cherry-picking, making mobility

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174. See generally ROBERT W. HILLMAN & ALLISON MARTIN RHODES, HILLMAN ON LAWYER MOBILITY: THE LAW AND ETHICS OF PARTNER WITHDRAWALS AND LAW FIRM BREAKUPS, at 1:1–1:8 (2d ed. 2016); Robert W. Hillman, *The Hidden Costs of Lawyer Mobility: Of Law Firms, Law Schools, and the Education of Lawyers*, 91 KY. L.J. 299 (2002).

175. See *supra* note 152.

176. MODEL RULES OF PROF'L CONDUCT r. 5.6(a) (AM. BAR ASS'N 2018); Wald, *supra* note 157, at 265–68.

177. Wald, *supra* note 55, at 424–39.

178. SANDY BROWN & HARIS KHAN, MINORITY CORP. COUNSEL ASS'N, THE IN-HOUSE LEGAL INTERNSHIP PROGRAM HANDBOOK: A GUIDE FOR DEVELOPMENT, IMPLEMENTATION, AND ASSESSMENT 1–2 (2010), [https://www.mcca.com/wp-content/uploads/2018/11/Full\\_Legal\\_Internship\\_Program\\_Handbook.pdf](https://www.mcca.com/wp-content/uploads/2018/11/Full_Legal_Internship_Program_Handbook.pdf) [<https://perma.cc/NR79-CQB2>].

among Big Law firms a frowned upon, rare phenomenon.<sup>179</sup> In the mid-1970s, that attitude began to change. In a string of decisions, the U.S. Supreme Court removed restrictions on advertisement, solicitation, competitiveness, and the flow of information in the marketplace for legal services.<sup>180</sup> Trade journals began collecting, regularly publishing, and ranking associate salaries and profits per partner.<sup>181</sup> The number of large law firms increased and the firms continued to grow, loosening old networks and social norms.<sup>182</sup> Mobility became the name of the game, with associates, partners, and sometimes whole units shifting from one law firm to another.<sup>183</sup>

While not necessarily increasing transparency about promotion criteria,<sup>184</sup> the emergence of lateral Big Law markets legitimated increased competitive conditions and a greater flow of information about large law firms' practice realities. It also normalized lateral movement, turning mobility into part and parcel of Big Law practice. The development of a lateral in-house market suggests similar future trends in in-house practice. That is, the emergence of two-way streets in and out of Big Law and of a robust lateral in-house market suggest that over time significantly more information will become available for in-house lawyers as they plot their careers and that accordingly mobility will become more common and more explicitly strategic, in turn making in-house practice more competitive.

### 3. Moves from In-House to Business Positions

Whereas first-generation and early third-generation general counsel were driven in part to leave judicial posts by the possibility of taking on senior management positions with an entity client, the Big Law equity partner to general counsel move has become less likely in the fourth-generation era. Entity clients now recruit experienced general counsel from a robust lateral market and have less of a reason to recruit a Big Law partner for the position. Moreover, Big Law partners in the twenty-first century are more likely to be subject-matter experts than long-standing generalists capable of becoming general counsel. Yet, for Big Law lawyers looking to move in-house,

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179. SMIGEL, *supra* note 22, at 57 (“[Competition] for lawyers among the large firms in New York City is limited in two major ways: the firms will not pirate an employee from another law office, and they maintain a gentlemen’s agreement to pay the same beginning salary . . .”). Until the late 1970s, information about compensation was scarce, and lawyers did not shop around for better offers.

It is interesting to note that few associates know the exact meaning of partnership.

This is especially true of the new associates, but even the senior associate is not always correct in his judgment about what a partnership really means. For example, they do not know how much money they will be making as partners.

*Id.* at 91–92. See generally PAUL HOFFMAN, LIONS IN THE STREET: THE INSIDE STORY OF THE GREAT WALL STREET LAW FIRMS (1973).

180. See, e.g., *Bates v. State Bar of Ariz.*, 433 U.S. 350 (1977); *Goldfarb v. Va. State Bar*, 421 U.S. 773 (1975).

181. Wald, *supra* note 53, at 2259.

182. Wald, *supra* note 23, at 1852–63.

183. See generally Hillman, *supra* note 174.

184. Wald, *supra* note 152, at 2544–47.

additional business tracks have evolved within entity clients outside of the C-suite. Some in-house departments are centralized, with the general counsel or the CLO at the top of the internal chain of command. Other entities feature a decentralized scheme, in which entity lawyers work outside of the in-house department and report directly to nonlawyers.<sup>185</sup> While this structure exacerbates pressures to act as a team player because of the absence of a legal culture traditionally more encouraging of independent exercise of professional judgment,<sup>186</sup> it also opens the door to new business opportunities and advancement within the entity—outside of senior management positions in the C-suite—as decentralized in-house lawyers become more intimately familiar with the working and business culture of the entity.

Similarly, some in-house lawyers take business positions outside of the C-suite, such as department heads and vice presidents, thinking of a move in-house as the first step in transitioning to the business world, taking advantage of their legal training, and benefitting from the demise of the MBA degree and its credential power.<sup>187</sup> As opposed to early third-generation movers, a typical in-house lawyer is younger, having spent only a few years at a large law firm. As such, such a lawyer is less likely to be viewed inside the entity client as a naysayer or an outsider and thus more likely to be perceived as a committed team member,<sup>188</sup> making a move into a business unit more plausible and seamless.

#### 4. Nonelite General Counsel and In-House Positions

Finally, as in-house positions expand outside large entity clients and the perception of in-house practice shifts from negative “did not make partner” to highly prestigious and coveted, large and mid-sized entities create new in-house positions and may staff them with lawyers outside of Big Law and the growing in-house lateral market. The significance of this development should not be understated because, even in the context of stratified in-house worlds, this trend blurs the traditional lines between the corporate and individual hemispheres.<sup>189</sup>

In turn, the lateral in-house market and new career tracks help frame and shape the expectations and career trajectories of Big Law lawyers, in-house attorneys, and law students alike. Those interested in in-house practice

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185. Kelley, *supra* note 89, at 1197.

186. Rosen, *supra* note 171, at 652.

187. John Byrne, *It's Official: The M.B.A. Degree Is in Crisis*, FORBES (Aug. 20, 2019, 6:09 PM), <https://www.forbes.com/sites/poetsandquants/2019/08/20/its-official-the-mba-degree-is-in-crisis/> [<http://perma.cc/DJE6-WWS5>]; Kelsey Gee, *M.B.A. Applications Decline at Harvard, Wharton, Other Elite Schools as Degree Loses Luster*, WALL ST. J. (Oct. 1, 2018, 12:01 AM), <https://www.wsj.com/articles/m-b-a-applications-keep-falling-in-u-s-this-year-hitting-even-elite-schools-1538366461> [<http://perma.cc/B5FL-AP92>].

188. Wald, *supra* note 55, at 424–39.

189. David B. Wilkins, *Some Realism About Legal Realism for Lawyers*, in *LAWYERS IN PRACTICE: ETHICAL DECISION MAKING IN CONTEXT* 25, 33 (Leslie C. Levin & Lynn Mather eds., 2012).

should research a Big Law firm's client base, if not in terms of specific clients then certainly in terms of industries and size of entity clients, before accepting a position, even as an associate. At a firm, associates should pay attention not only to partners' star power and rainmaking capabilities but also to client portfolios and target partners with a mix of clients and desirable portfolios. For example, instead of relying on random work assignments for entity clients, interested associates should network early and often, both within and outside of the firm, with an eye toward being well positioned to learn about in-house opportunities. This development, however, exacerbates concerns about Big Law transparency, the availability of cultural capital insights, and unequal flow of information in terms of who gets access to valuable information necessary for an informed, strategic career design<sup>190</sup>: whereas some unsophisticated associates would spend their time working hard to meet billable expectations, happy to have the job and assuming their careers will evolve naturally, other savvy associates would gather information, network, and pursue strategic in-house opportunities.

At in-house legal departments, some lawyers will continue to seek out positions laterally as an alternative to Big Law, with an eye toward a relatively stable, permanent in-house position. Others, given the emergence of a savvy lateral market, will pay attention not only to soft hours and firm-specific investments but also acquire a skill set transferable outside the entity client, which feeds into and helps make in-house practice increasingly competitive.

At law schools, for those seeking entry into Big Law, the recipe has long remained the same: get into the best law school, earn the best possible GPA and class standing, and excel at extracurricular activities.<sup>191</sup> If the student hopes to practice in-house, notwithstanding the fact that the majority of in-house positions are still not available straight out of law school,<sup>192</sup> there exists immersion in business law coursework (even for those interested in litigation, intellectual property, etc.) and the recent related corporate law programs certification phenomenon,<sup>193</sup> possible interdisciplinary credentials (not necessarily MBAs but degrees in business-related fields),<sup>194</sup> and extracurricular paths (such as in-house internships).<sup>195</sup>

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190. David B. Wilkins & G. Mitu Gulati, *Reconceiving the Tournament of Lawyers: Tracking, Seeding, and Information Control in the Internal Labor Markets of Elite Law Firms*, 84 VA. L. REV. 1581, 1606 (1998); see also Wald, *supra* note 152, at 2536–47.

191. Wilkins & Gulati, *supra* note 190, at 1653.

192. See generally BROWN & KHAN, *supra* note 178.

193. See generally Wald, *supra* note 34.

194. *Id.*

195. See generally BROWN & KHAN, *supra* note 178.

*C. The Future of Corporate Legal Practice*

Prophecy, teaches the Talmud, is for fools,<sup>196</sup> and yet the past and present of the in-house–Big Law relationship offer some clues as to the future of the fifth generation of in-house practice.

First, as the lateral in-house labor market matures over time, a new generation of in-house lawyers will rise, one that has not been socialized in and beholden to Big Law and does not think of Big Law services as a familiar and obvious default. Such in-house lawyers may be more open-minded and less risk averse about experimenting with new modes of outside legal services. Sure enough, these new modes of outside legal services are upon us, including nonelite legal services, legal services provided by nonlawyers, and legal services increasingly utilizing artificial intelligence.<sup>197</sup> Yet, “sea change” rhetoric notwithstanding, the current fourth generation of in-house counsel has proven generally reluctant to wholeheartedly embrace alternatives to the traditional Big Law model for outside legal services.<sup>198</sup> As we have seen, a self-sustaining, symbiotic codependency between in-house and outside counsel, combined with the risk aversion and incentive structure faced by in-house lawyers, strongly suggests that, in the near future, large law firms have little to fear in terms of losing continued, stable demand for their core outside legal services. In-house counsel have little reason to abandon or sever ties with large law firms. Yet, as the paradigmatic fifth-generation in-house counsel spends fewer years in Big Law, she is more likely to at least be open to experimenting with alternative forms of corporate legal services. Thus, in the mid-to-long-term range, large law firms should expect even more competition in the market for corporate legal services.<sup>199</sup>

Second, a generation less indoctrinated by Big Law and socialized in-house may also be open-minded about trying out new models for in-house legal departments’ structure and organization. For example, rather than mimicking the structure of large law firms or the current symbiotic model, some in-house departments may recruit and retain a high-level team of experts, a nimble high-end group that can then use a sea of paralegals and outsourced or temporary “on-demand” lawyers to assist in implementation of projects currently handled by Big Law. Once again, such experimentation is likely to begin on a small scale and entail a lengthy trial-and-error-period.

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196. *Babylonian Talmud: Tractate Baba Bathra: Folio 12a*, COME & HEAR, [www.come-and-hear.com/bababathra/bababathra\\_12.html](http://www.come-and-hear.com/bababathra/bababathra_12.html) [https://perma.cc/WM4H-6VWC] (last visited Mar. 17, 2020).

197. See, e.g., RICHARD SUSSKIND, *THE END OF LAWYERS?: RETHINKING THE END OF LEGAL SERVICES* (2010); John O. McGinnis & Russell G. Pearce, *The Great Disruption: How Machine Intelligence Will Transform the Role of Lawyers in the Delivery of Legal Services*, 82 *FORDHAM L. REV.* 3041 (2014); Milton C. Regan & Palmer T. Heenan, *Supply Chains and Porous Boundaries: The Disaggregation of Legal Services*, 78 *FORDHAM L. REV.* 2137 (2010).

198. See generally Wilkins, *supra* note 50.

199. Hugh A. Simons & Gina Passarella, *The Rise (and Fall?) of In-House Counsel*, *LAW.COM* (Feb. 25, 2018, 6:00 PM), <https://www.law.com/americanlawyer/2018/02/25/the-rise-and-fall-of-in-house-counsel> [https://perma.cc/BG2Y-T4FT] (exploring the outsourcing of routine tasks by in-house legal departments to outside service providers).

But over time, in-house legal departments are likely to grow more diverse in terms of their organization and structure.

Third, for a century now, critics have called on corporate lawyers to be mindful of the opportunity in the law and act as intermediaries between their entity clients' interests and the public interest.<sup>200</sup> In particular, some commentators, academics, and practitioners alike have called for and debated the desirability of corporate lawyers acting as gatekeepers.<sup>201</sup> Irrespective of the normative persuasiveness of such claims, the next generation of in-house counsel is likely to find them less feasible and less appealing. The ongoing integration of the in-house and outside counsels' worlds via two-street tracks and increased mobility is likely to only intensify and empower market-based service ideologies of professionalism and undercut alternatives to them. The "we are all consultants" state of mind and professional ethos<sup>202</sup> is taking place while the integration of the worlds of in-house and outside counsel is weakening the professional, public-minded identity of lawyers, and in-house lawyers are moving closer to the service model of corporate executives.

All of this does not mean the end of Big Law or the decline of in-house legal departments,<sup>203</sup> but it likely means continued fierce competition in the market for corporate legal services and the need to remain as nimble as possible to compete with emerging new alternatives to the traditional model of corporate legal services.

### III. PRELIMINARY THOUGHTS ABOUT THE INCREASINGLY INTEGRATED WORLDS OF IN-HOUSE AND OUTSIDE COUNSEL

The standard story of in-house practice and the relationship between in-house counsel and Big Law lawyers is one of fierce competition, a zero-sum game in which the gains of in-house lawyers and, in particular, elite general counsel have come at the expense of Big Law partners.<sup>204</sup> However, the practice realities and relationship of in-house and Big Law lawyers are far more complex and can more accurately be described as symbiotic—sharing the ethos of service and ideology of client-centered professionalism.<sup>205</sup>

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200. See generally Louis D. Brandeis, *The Opportunity in the Law*, 39 AM. L. REV. 555 (1905); Robert W. Gordon, *A New Role for Lawyers?: The Corporate Counselor After Enron*, 35 CONN. L. REV. 1185 (2003); William H. Simon, *After Confidentiality: Rethinking the Professional Responsibilities of the Business Lawyer*, 75 FORDHAM L. REV. 1453 (2006) [hereinafter Simon, *After Confidentiality*]; William H. Simon, *The Kaye Scholer Affair: The Lawyer's Duty of Candor and the Bar's Temptations of Evasion and Apology*, 23 LAW & SOC. INQUIRY 243 (1998) [hereinafter Simon, *The Kaye Scholer Affair*].

201. Compare JOHN C. COFFEE JR., GATEKEEPERS: THE PROFESSIONS AND CORPORATE GOVERNANCE (2006), Sung Hui Kim, *Inside Lawyers: Friends or Gatekeepers?*, 84 FORDHAM L. REV. 1867 (2016) [hereinafter Kim, *Inside Lawyers*], and Sung Hui Kim, *The Banality of Fraud: Re-Situating the Inside Counsel as Gatekeeper*, 74 FORDHAM L. REV. 983 (2005) [hereinafter Kim, *Banality of Fraud*], with Lawrence A. Hamermesh, *Who Let You into the House?*, 2012 WIS. L. REV. 359.

202. Rosen, *supra* note 171, at 660–79.

203. Ribstein, *supra* note 1, at 797–802.

204. *Id.*

205. See *supra* Part I.

In the past, the worlds of in-house and Big Law were separated. First, during the second generation of in-house lawyers, they were hierarchical, with Big Law on top and in-house practice at the bottom. Then, during the third- and fourth-generation eras, they were parallel, with equity partners and general counsel competing and vying for power. Now, the worlds of outside counsel and in-house lawyers have begun to merge and are increasingly integrated, which is reflected in the shift from a one-way street from Big Law to in-house to a two-way street, the emergence of a robust lateral in-house market, and the recruitment of law students by in-house departments as interns. Elite general counsel claim lawyer-statesperson status, a phenomenon only likely to gather steam as the flow of information about emerging in-house tracks grows. Notably, the gradual convergence and integration of the in-house and Big Law worlds is taking place while the in-house universe itself continues to expand and stratify.

The growing integration of the elite in-house and Big Law worlds is not surprising. Unlike the era in which large law firms deliberately built their elite status at the expense of the old, first-generation in-house lawyers,<sup>206</sup> third- and fourth-generation in-house counsel and Big Law lawyers were generally aligned in educational background, practice orientation, and professional ethos. Both served large corporate entities, practiced in similar areas, adopted a business approach to professionalism, and understood their roles as a client-centered service.<sup>207</sup>

This alignment ought not mask some tensions and friction points. Big Law equity partners, for example, perceive some fourth-generation in-house lawyers as poorly trained because they left Big Law as mid-level associates and are now counsel who do not understand and cannot practice law at the highest level.<sup>208</sup> In-house counsel, in turn, perceive some Big Law lawyers as insufficiently informed about the business world and the actual needs of entity clients and driven by billable hours and book-of-business expectations in the outdated “business” model of Big Law.<sup>209</sup> Yet these quibbles notwithstanding, the core professional values and ethos of elite in-house and Big Law lawyers are increasingly similar, grounded in a client-centered, business-model conception of a service industry.<sup>210</sup>

Notably, the growing integration of the worlds of in-house and Big Law may spread the dominant business ethos and model of professionalism even further. Big Law socialization and practice realities set the stage for in-house

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206. See *supra* Part I.B.

207. See generally Russell G. Pearce, *The Professionalism Paradigm Shift: Why Discarding Professional Ideology Will Improve the Conduct and Reputation of the Bar*, 70 N.Y.U. L. REV. 1229 (1995).

208. *Supra* note 152 and accompanying text.

209. See, e.g., Leigh Jones & Vanessa Blum, *What Bugs In-House Lawyers About Outside Counsel?: Here's What They Said—and More*, LAW.COM (Sept. 27, 2019, 2:24 PM), <https://www.law.com/2019/09/27/what-bugs-in-house-lawyers-about-outside-counsel-heres-what-they-said-and-more> [http://perma.cc/Z3FV-XLCJ].

210. See generally Eli Wald & Russell G. Pearce, *Being Good Lawyers: A Relational Approach to Law Practice*, 29 GEO. J. LEGAL ETHICS 601 (2016).

loyalty and service.<sup>211</sup> But now in-house lawyers are bringing back the more explicit business ethic—“we are all consultants”—to Big Law and nonelite lawyers moving in-house may later bring the in-house ethos back to outside counsel practice. This growing affinity between in-house and Big Law culture and habits is indicated by complaints about in-house lawyers and their understandings of their roles in ways similar to complaints about the roles of outside counsel. Judge Stanley Sporkin’s famous, or perhaps infamous query—where were the lawyers?<sup>212</sup>—was originally directed at outside counsel.<sup>213</sup> Yet recently, it has been invoked about in-house lawyers as well.<sup>214</sup>

What are the normative implications of this integration? On the one hand, the convergence of elite in-house and Big Law practice may be a positive development. In-house lawyers were operating outside the mainstream of the legal profession, for example, not engaging in pro bono and having their own bar associations, continuing legal education events, etc.<sup>215</sup> To the extent that Ben Heineman and others’ vision of elite in-house counsel commitment to engage with the bar is plausible,<sup>216</sup> the growing affinity may be desirable. Furthermore, if in-house lawyers are embraced by the entire legal profession and increasingly think of themselves as lawyers, then they may be more likely to act as gatekeeper professionals in appropriate circumstances.

On the other hand, the growing integration may obscure important differences between in-house lawyers and other lawyers, such as the difference between lawyer-employees and lawyer-professionals.<sup>217</sup> Historically, lawyers were (and are) professionals in at least two senses: commitment to the public good and independence grounded in formal education, esoteric knowledge, and elevated status.<sup>218</sup> Employees, lawyer-employees included, blur these professional features. They are committed to their employers (usually a for-profit employer) and they lack independence, even if nonlawyers do not directly manage the manner in which in-house lawyers practice law.<sup>219</sup> These trends, the erosion of commitment to the public good and decreased independence, are not unique to in-house lawyers, but in-house lawyers experience them more acutely. These differences, in

211. Russell G. Pearce & Eli Wald, *The Relational Infrastructure of Law Firm Regulation: Is the Death of Big Law Greatly Exaggerated?*, 42 HOFSTRA L. REV. 109, 111–20 (2013).

212. See *Lincoln Sav. & Loan Ass’n v. Wall*, 743 F. Supp. 901, 920 (D.D.C. 1990) (noting that there were “literally scores of accountants and lawyers” involved in the savings and loan case, Judge Sporkin asked pointedly: “Where were these professionals . . . ? Why didn’t any of them speak up or disassociate themselves from the transactions? Where also were the outside accountants and attorneys when these transactions were effectuated?”).

213. See generally Simon, *The Kaye Scholer Affair*, *supra* note 200.

214. See Kim, *Inside Lawyers*, *supra* note 201, at 1867–68 (describing the role of General Motors’s in-house lawyers in mishandling its 2014 recall).

215. See, e.g., *Our History*, *supra* note 120.

216. See DUBEY & KRIPALANI, *supra* note 93, at 163–70; HEINEMAN, *supra* note 93, at 317–57; VEASEY & DI GUGLIELMO, *supra* note 93, at 97–130.

217. See Wald, *supra* note 157, at 277–300.

218. See generally Gordon, *supra* note 40; Richard Wasserstrom, *Lawyers as Professionals: Some Moral Issues*, 5 HUM. RTS. 1 (1975).

219. See Wald, *supra* note 157, at 282–89.

turn, raise questions about the bar and its regulation in areas such as confidentiality, fees, and termination because rules of conduct meant to guide the conduct of lawyer professionals may ill-fit the practice of lawyer-employees.<sup>220</sup>

Notably, the issue is not only one of blurred roles and conceptual lines. The growing integration of corporate law practice, bringing in-house and outside corporate counsel closer together under a unified business-professional ideological umbrella, may undercut the ability of all corporate lawyers to practice as gatekeepers and fulfill expectations and roles long advocated for by critics and commentators alike.<sup>221</sup>

Arguably, all lawyers, not just corporate lawyers, have experienced a loss of commitment to the public good and have veered too much in the direction of client-centered service,<sup>222</sup> such that what we need are discussions about new brands of professionalism, in which lawyers, all lawyers, are gatekeepers, or at least more open-minded about conceptions of role other than the one shaped by client-centered service ideology.<sup>223</sup> Similarly, arguably all lawyers have experienced an increased lack of independence, such that what we need is a new conception of independence suited to the twenty-first century practice realities.<sup>224</sup> Or maybe we do not. Perhaps corporate lawyers, and indeed all lawyers, are ready to abandon their role as public citizens with a special commitment to pursuing justice.<sup>225</sup> Either way, perhaps the growing integration of the corporate sphere of legal services will serve as a catalyst for a long-overdue discussion about the role of lawyers as professionals with responsibilities to clients, the legal system, and the public interest.

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220. *Id.* at 289–300.

221. *See supra* notes 200–01 and accompanying text.

222. *See generally* Wald & Pearce, *supra* note 210.

223. *Id.* at 623.

224. Gordon, *supra* note 40, at 68–83.

225. MODEL RULES OF PROF'L CONDUCT pmb1. (AM. BAR ASS'N 2018). Legal scholars have advanced various conceptions of lawyers' public citizenship. *See, e.g.*, Deborah L. Rhode, *Lawyers as Citizens*, 50 WM. & MARY L. REV. 1323 (2009); Eli Wald, *A Primer on Diversity, Discrimination and Equality in the Legal Profession or Who Is Responsible for Pursuing Diversity and Why*, 24 GEO. J. LEGAL ETHICS 1079, 1119–41 (2011); Eli Wald, *Serfdom Without Overlords: Lawyers and the Fight Against Class Inequality*, 54 U. LOUISVILLE L. REV. 269, 290–97 (2016); David B. Wilkins, *Race, Ethics, and the First Amendment: Should a Black Lawyer Represent the Ku Klux Klan?*, 63 GEO. WASH. L. REV. 1030, 1067–69 (1995).