

UCLA

UCLA Public Law & Legal Theory Series

Title

Privatizing Public Interest Law

Permalink

<https://escholarship.org/uc/item/0q7515ht>

Author

Cummings, Scott L

Publication Date

2011

Peer reviewed

PRIVATIZING PUBLIC INTEREST LAW

Scott L. Cummings*

Introduction.....	2
I. Theoretical and Empirical Framework.....	7
A. Theory: Principle and Profit in Private Practice	7
1. Arenas of Professionalism.....	8
2. Theories of the Firm.....	10
B. Practice: An Overview of the Private PIL Sector	11
1. Definition	11
2. Development	12
3. Data	14
II. Methodology	16
III. Background	17
A. “On the Shoulders of Giants”: Margolis & McTernan as the PIL Firm Precursor	17
B. A New Left Experiment: The Rise and Fall of Litt & Stormer	19
C. A Pragmatic Partnership: The Creation of Hadsell & Stormer.....	29
D. The Next Generation: Growth and Diversification.....	32
IV. Analysis.....	36
A. Professionalism.....	36
1. <i>Mission</i>	37
2. <i>Community</i>	41
3. <i>Clients</i>	45
4. <i>Profession</i>	49
B. Power	52
1. <i>Financial Structure</i>	53
a. High-Stakes Partners	53
b. Risk-Adjusted Partners	53
c. Lock-Step Associates.....	54
2. <i>Governance Structure</i>	55
a. The Finder.....	55
b. The Minder	57
c. The Mediators.....	57
d. The Grinders	59
C. Profit	60
1. <i>Case Selection: Portfolio Assembly and the Double Bottom Line</i>	61
a. Process	62
b. Substance	64
i. The Righteous Case.....	65
ii. The Bread-and-Butter Case	66
iii. The White Male Case.....	67
iv. The Massive Case.....	69

* Professor of Law, UCLA School of Law. Permission to conduct this study was granted by UCLA Institutional Review Board #G07-05-116-04.

v. Denied Cases	70
2. <i>Case Management: The Fusion of Hierarchy and Flexibility</i>	72
a. Vertical Hierarchy: Leveraging Commitment	72
b. Horizontal Flexibility: The “Accordion” Firm and Collaborative Litigation	76
i. When Does the Firm Co-Counsel?	77
ii. Why Does the Firm Co-Counsel?	78
(a) Risk Allocation	78
(b) Value Enhancement and Reciprocity	79
(c) Expertise and Resources	80
(d) Cash Flow	82
(e) Collegiality and Teamwork	82
(f) Mentoring	83
iii. How Does the Firm Co-Counsel?	84
(a) Team Assembly	84
(b) Team Management	86
(c) Division of Labor	87
(d) Distribution of Risk, Reward, and Credit	88
3. <i>Case Resolution: Balancing Private Fees and Public Impact</i>	89
Conclusion	90

INTRODUCTION

What exactly constitutes “public interest law” (PIL) has generated debate and disagreement since the very beginning of the movement nearly a half-century ago.¹ The discussion has focused on whether it is possible to adequately define lawyering in the “public interest,” and if so, precisely what that definition is. Many attempts at definition have been made, and an equal number have foundered, leaving some scholars to jettison the concept altogether as hopelessly indeterminate.²

Throughout this debate, proponents of PIL have often turned to the private market for legal services as the baseline against which PIL is measured. Thus, a common formulation of PIL is legal representation to “underrepresented groups and interests” in society.³ As the Council for Public Interest Law put it in the introduction to its 1976 study of the field, PIL activities were those “undertaken in recognition that the ordinary marketplace for legal services fails to provide such services to significant sectors of the population and to significant

1. See Ann Southworth, *Conservative Lawyers and the Contest over the Meaning of “Public Interest Law”*, 52 *UCLA L. Rev.* 1223, 1236-37 (2005); Winton D. Woods, Jr. & Clark L. Derrick, *The Practice of Law in the Public Interest*, 13 *Ariz. L. Rev.* 797, 798 (1971).

2. Stuart A. Scheingold & Austin Sarat, *Something to Believe In: Politics, Professionalism, and Cause Lawyering* 5-6 (2004).

3. *The New Public Interest Lawyers*, 79 *Yale L.J.* 1069, 1071 n.3 (1970).

interests.”⁴ This emphasis on *market underrepresentation* had strong practical appeal: It conformed to guidelines set forth by the Internal Revenue Service allowing a nongovernmental organization (NGO) to qualify for charitable tax-exemption.⁵ This was crucial since the early PIL movement was powered by a wave of philanthropic giving designed to establish a new PIL sector located in the NGO sphere.⁶ As PIL evolved, NGOs with full-time staff attorneys devoted to a cause emerged as leaders of the movement, while for-profit firms were often viewed suspiciously as driven more by the pursuit of fees than social justice.⁷

Yet the erection of a public-private distinction within PIL has long obscured a persistent reality on the ground: that PIL is not the exclusive domain of NGO lawyers (though they have indeed played key roles), but rather has operated across formal organizational boundaries by lawyers in distinct practice sites, particularly private firms. Scholars of the profession have recently devoted attention to one dimension of this private sector reality: the rise of institutionalized pro bono within large law firms as a crucial supplement to PIL practice.⁸ This Article turns to the other—underexplored—hemisphere of private sector PIL practice:⁹ the *private public interest law firm*, distinguished by a commitment to fuse *profit and principle*.¹⁰

The private PIL firm is not a recent innovation: Such firms have existed since at least the early part of the Twentieth Century, with some playing important roles in the civil rights struggle.¹¹ Early studies acknowledged their presence,¹²

4. Council for Public Interest Law, *Balancing the Scales of Justice: Financing Public Interest Law in America* 6-7 (1976).

5. See IRS Revenue Procedure 71-39 (1971-2 Cum. Bull. 575).

6. Joel F. Handler, Ellen Jane Hollingsworth & Howard S. Erlanger, *Lawyers and the Pursuit of Legal Rights* (1978).

7. See Louise Trubek & M. Elizabeth Kransbeger, *Critical Lawyers: Social Justice and the Structures of Private Practice*, in *Cause Lawyering: Political Commitments and Professional Responsibilities* 201, 202 (Austin Sarat & Stuart Scheingold eds., 1998); see also Carroll Seron, *The Business of Practicing Law: The Work Lives of Solo and Small-Firm Attorneys* (1996).

8. See generally Scott L. Cummings, *The Politics of Pro Bono*, 52 *UCLA L. Rev.* 1 (2004).

9. Cf. John P. Heinz, Robert L. Nelson, Rebecca L. Sandefur & Edward O. Laumann, *Urban Lawyers: The New Social Structure of the Bar* 6-7 (2005).

10. Scott L. Cummings & Ann Southworth, *Between Profit and Principle: The Private Public Interest Law Firm*, in *Private Lawyers and the Public Interest: The Role of Pro Bono in the Legal Profession* 183, 184-86 (Robert Granfield & Lynn Mather eds., 2009)

11. See Cummings & Southworth, *supra* note 10, at 189; see also Aaron Porter, Norris, Schmidt, Green, Harris, Higginbotham & Associates, *The Sociolegal Import of Philadelphia Cause Lawyers*, in *Cause Lawyering*, *supra* note, at 151.

12. See Council for Public Interest Law, *supra* note 4, at 133; Joel F. Handler, Betsy Ginsburg & Arthur Snow, *The Public Interest Law Industry*, in *Public Interest Law: An Economic and Institutional Analysis* 42, 60 (Burton A. Weisbrod et al. eds., 1978).

but the private PIL sector has subsequently been given little attention in the scholarly literature,¹³ which has focused, with some exceptions,¹⁴ on the work of NGOs—such as the NAACP Legal Defense and Educational Fund and the ACLU—as the vanguard of legal reform. However, the public-private division has come under stress from a number of directions. On the supply-side of PIL, incentives for private PIL practice have combined with constraints on NGOs to promote private sector growth and greater collaboration between NGOs and their private counterparts. The availability of statutory attorney’s fees and the promise of greater autonomy have been “pull” factors drawing lawyers into private PIL firms, while resource and legal constraints on NGOs—such as the practice restrictions on lawyers in federally funded legal aid—have operated to “push” lawyers (and many types of cases) out of the nonprofit domain.¹⁵ On the demand side, domestic deregulation and economic globalization have increased concerns about corporate accountability,¹⁶ which private PIL firms have greater resources and financial incentives to address. In addition, the increase in the “working poor”—who suffer legal problems but whose incomes may not qualify them for free assistance—has generated additional demand for well-priced private legal services.¹⁷ Against this backdrop, the private PIL firm holds out renewed promise as an alternative site for lawyers to possibly “do well” and “do good”¹⁸: able to

13. See Austin Sarat & Stuart Scheingold, *The Dynamics of Cause Lawyering: Constraints and Opportunities*, in *The World Cause Lawyers Make: Structure and Agency in Legal Practice* 1, 12 (Austin Sarat & Stuart Scheingold eds., 2005) (noting the paucity of research on small-firm cause lawyering).

14. See Michael J. Kelly, *Lives of Lawyers Revisited: Transformation and Resilience in the Organizations of Practice* 162 (2007); Brenda Bratton Blom, *Cause Lawyering and Social Movements: Can Solo and Small Firm Practitioners Anchor Social Movements?*, 39 *Stud. L. Pol. & Soc’y* 119 (2006); Debra S. Katz & Lynne Bernabei, *Practicing Public Interest Law in a Private Public Interest Law Firm: The Ideal Setting to Challenge the Power*, 96 *W. Va. L. Rev.* 293 (1994); John Kilwein, *Still Trying: Cause Lawyering for the Poor and Disadvantaged in Pittsburgh, Pennsylvania*, in *Cause Lawyering*, supra note, at 181; Stuart Scheingold & Anne Bloom, *Transgressive Cause Lawyering: Practice Sites and the Politicization of the Professional*, 5 *Int’l J. Legal Prof.* 209 (1998); Ann Southworth, *Professional Identity and Political Commitment Among Lawyers for Conservative Causes*, in *The World Cause Lawyers Make*, supra note, at 83; Trubek & Kransberger, supra note.

15. See Cummings & Southworth, supra note 10, at 186-92. On the constraints on legal aid, see Alan W. Houseman, *The Future of Civil Legal Aid: A National Perspective*, 10 *U.D.C. L. Rev.* 35 (2007).

16. See, e.g., Ronen Shamir, *Between Self-Regulation and the Alien Tort Claims Act: On the Contested Concept of Corporate Social Responsibility*, 38 *Law & Society Rev.* 635, 637 (2004).

17. For an analysis of the growth of the working poor in Los Angeles, see Paul More et al., *The Other Los Angeles: The Working Poor in the city of the 21st Century* (2000).

18. See David B. Wilkins, *Doing Well by Doing Good? The Role of Public Service in the Careers of Black Corporate Lawyers*, 41 *Hous. L. Rev.* 1 (2004); see also Bill Blum & Gina Lobaco, *For Love & Money: The Contradictions of For-Profit Public Interest*

devote substantial resources to large-scale social change litigation, take on PIL cases where other nonprofit groups are constrained, and address other deficits associated with NGO practice, such as low salaries, lack of training, and high turnover.¹⁹

The private PIL sector has grown significantly over the last forty years,²⁰ raising important questions about the role of for-profit firms in the delivery of PIL services to low-income and other marginalized groups.²¹ Shifting the funding source for PIL activities from state and philanthropic sources to the market, has the potential to reshape the goals, activities, and identities of PIL firms and the lawyers who work in them. Specifically, we would predict that private PIL firms would make different choices about case selection and client representation—necessarily influenced by market-based factors—and that such choices would impact how lawyers understood their mission, tactical options, and professional identity. In short, we would expect that lawyers in private PIL firms would face financial incentives to focus their efforts on strictly “legal” work for clients whose cases offered the potential of higher fees. It would follow that, to the degree that more PIL activity occurs in the private sector, we would expect to notice corresponding changes in the overall distribution of PIL: more services for certain types of clients and causes, less for others. Private PIL firms therefore bring opportunities for new patterns of practice—but in doing so carry tradeoffs, both for individual clients and for the broader PIL system.

This Article examines these tradeoffs through a case study of a nationally prominent private PIL firm, Hadsell & Stormer (H&S), which is located in the Los Angeles area. The Article’s central aim is to analyze how H&S’s organizational form²²—the “private” firm with “public” goals²³—influences its lawyers’ pursuit of PIL causes. In previous research, Ann Southworth and I provided an overview of the private PIL sector, charting its development and analyzing some key issues related to case selection and lawyer ideology.²⁴ This Article builds upon that work by probing deeper into the actual operation of one such firm and the tradeoffs involved. In so doing, it makes contributions to two important debates within the literature on professionalism and legal practice. First, it intervenes in the sociological discussion about how legal practice sites

Law, *California Lawyer*, Dec. 1, 1988, at 48; Stephen C. Yeazell, *Re-Financing Civil Litigation*, 51 *DePaul L. Rev.* 183 (2001-2002).

19. Cummings & Southworth, *supra* note 10, at 184.

20. *Id.* at 193.

21. Cf. Jody Freeman, *Collaborative Governance in the Administrative State*, 45 *UCLA L. Rev.* 1 (2000); Orly Lobel, *The Renew Deal*, 89 *Minn. L. Rev.* 342 (2004); William H. Simon, *Solving Problems vs. Claiming Rights: The Pragmatist Challenge to Legal Liberalism*, 46 *William & Mary L. Rev.* 127 (2004).

22. See William H. Simon, *The Community Economic Development Movement: Law, Business, and the New Social Policy* 195 (2001).

23. See Jody Freeman, *Extending Public Law Norms Through Privatization*, 116 *Harv. L. Rev.* 1285 (2003).

24. See *generally* Cummings & Southworth, *supra* note 10.

and broader “communities of practice” shape lawyers’ professional identity.²⁵ Specifically, my case study of H&S reveals important differences in how private PIL lawyers understand their professional role and broader political commitments relative to their counterparts in both NGOs and large corporate firms. Private PIL lawyers have strong conceptions of themselves as highly skilled lawyers operating within the client-centered framework of professional responsibility—who choose to deploy that framework in the pursuit of progressive causes. Second, this Article contributes to economic analyses of law firm behavior. Specifically, it shows that private PIL firms operate neither in the sole pursuit of profit *or* principle, but rather seek to balance the two in advancing a “double bottom-line” of economic return and social impact (operationalized through case selection and inter-firm collaboration).

In the end, private PIL firms present an interesting paradox. They are, quite literally, in the *business* of pursuing *justice*. This Article illuminates how these businesses function, what type of justice they aspire to, and what they are able to achieve. Toward this end, it reports and analyzes the findings of an empirical study conducted in 2007, in which I collected qualitative data on a cluster of private PIL firms in the Los Angeles area through semi-structured interviews with firm members and affiliated lawyers (30 total), ethnographic observations of firm culture, an analysis of firm documents and case materials, and news accounts of firm practice. In this Article, I focus on H&S, which is the largest and most well-known of these firms. Part I situates the study in theoretical and empirical context by, first, placing it at the intersection of sociological and economic accounts of law firm practice and, second, providing an overview of the private PIL sector. Part II then discusses the study’s methodology, and Part III offers historical background on H&S.

Part IV then presents and analyzes the study’s primary findings. It focuses on how the relationship between H&S’s private form and public mission plays out across three key axes: *principle* (how the lawyers understand their obligations to causes, clients, and communities); *power* (how the lawyers make decisions about firm governance); and *profit* (how the lawyers build case portfolios, staff matters, and co-counsel with other firms). Across each dimension, we see that the firm’s hybrid form (part public, part private) is reflected in a set of hybrid ideals and practices (neither entirely public-oriented nor market-driven), which are continuously negotiated by the H&S lawyers. I make three general observations based on the data.

First, H&S’s effort to merge profit and *principle* results in a distinctive notion of professionalism, in which broad obligations to society, such as pro bono service, are generally viewed as inconsistent with firm radicalism, while micro-obligations to clients, such as zealousness, are embraced as part of the firm’s commitment to litigation excellence. Lawyer autonomy in defining organizational culture and selecting cases is highly valued, which (in combination with the firm’s strong client-centered ethos) results in a relatively

25. See Lynn Mather, Craig A. McEwen & Richard J. Maiman, *Lawyers at Work: Varieties of Professionalism in Practice* (2001); Sarat & Scheingold, *supra* note The Dynamics of Cause Lawyering.

weak sense of firm accountability to a well-defined external political constituency. This is reflected in the firm's broad conception of its cause—generally understood as fighting for the powerless—which creates space for lawyer autonomy and flexibility in selecting different types of fee-generating work. Legal skill is highly valued and the lawyers are modest about their ability to use litigation to effect social change. Second, with respect to internal *power* relations, H&S works to balance its commitment to egalitarian values—creating an internal firm culture that matches its vision of the outside world—with the reality of running a financially viable firm built upon litigation success. The result is a firm culture that challenges—though does not ultimately transcend—hierarchy. The lawyers emphasize informality, openness, *esprit de corp*, and collegiality, but the partner-associate structure still creates some divisions. In general, firm governance tends to track the public-private divide, with broad decisions relating to firm politics, such as whether to pursue new categories of cases for political impact, made in accord with democratic ideals, and specific questions relating to firm economics, such as staffing and case management, made in a more hierarchical manner. Finally, although H&S is categorically not driven by *profit*, it must make one in order to survive. To do so, the firm deploys three main strategies. (1) *It spreads risk through case selection* by (a) choosing cases across different categories based on double-bottom line considerations (looking for cases that both advance the firm's mission and generate fees), and (b) cross-subsidizing high-risk “righteous” cases (for example, in the area of human rights) with lower-risk, higher-yield “bread and butter” cases (in the area of employment discrimination) and, less frequently, non-PIL cases that can be quickly resolved for predictable fees. (2) *It increases productivity and spreads risk through case staffing*, by (a) leveraging associate work in a conventional pyramid pattern, and (b) entering into flexible collaborations with other firms that allow it to expand or contract based on the volume of work. (3) *It hedges downside risk through fee arrangements* that allow it to profit from its comparative expertise (trial work) and recover irrespective of the award of statutory fees; the firm also over-selects damages cases relative to injunctive relief cases, which pose greater risks of no fee recovery.

I. THEORETICAL AND EMPIRICAL FRAMEWORK

A. Theory: Principle and Profit in Private Practice

Organizations matter because they structure the relationship between members and the outside world, while also shaping the nature of interaction and authority within the group itself.²⁸ In this section, I locate private PIL firms within the broader organizational literature, focusing on two central questions. First, how do law firms and other “arenas of professionalism” shape the behavior and identity of lawyers? And, second, how does legal structure relate to firms' economic goals?

28. See Robert L. Nelson, *Partners with Power: The Social Transformation of the Large Law Firm* (1988); Scheingold & Sarat, *supra* note 2, at 72.

1. Arenas of Professionalism

The quest to balance profit and principle at the core of private PIL firms reflects a deeper paradox at the very heart of legal professionalism.²⁹ Lawyers strive to serve the “public good” as they simultaneously pursue the economic rewards of practice. The scholarship on professional identity shows that a key factor influencing how lawyers understand and deploy professionalism is the “practice site” or “arena” within which they work.³¹ As Nelson and Trubek suggest, “professionalism” is not a unitary concept, but rather a contested set of ideas that vary by context.³² Subsequent research confirms that lawyers’ attitudes about their professional obligations—such as pro bono—are different across practice sites (for example, large firms versus solo practice),³⁴ and that they are also shaped through their interaction with other lawyers in professional networks, or “communities of practice.”³⁵ This is true even with “cause lawyers” who renounce the “ideology of advocacy” in favor of deploying “legal skills to pursue ends and ideals that transcend client service.”³⁶ As the cause lawyering literature amply demonstrates, how lawyers define their relations with causes, clients, and broader communities is deeply influenced by their location in practice.³⁷

Although the private PIL firm sector has emerged as an important “arena of professionalism,” we know relatively little about how the lawyers in it understand and execute their professional role.³⁸ The literature that exists emphasizes *professional autonomy* as a fundamental appeal of private PIL firms. The autonomy identified in these studies is of a particular variety: it is lawyer autonomy at the level of setting agendas, selecting cases, and defining organizational culture.³⁹ It is not generally associated with autonomy *from*

29. See Scott L. Cummings, What Good Are Lawyers?, in *The Paradox of Professionalism: Lawyers and the Possibility of Justice 1* (Scott L. Cummings ed., Cambridge University Press, 2011).

31. Robert L. Nelson & David M. Trubek, Introduction: New Problems and New Paradigms in Studies of the Legal Profession, in *Lawyers’ Ideals/Lawyers’ Practices: Transformations in the American Legal Profession 1*, 18 (Robert L. Nelson, David M. Trubek & Raymond Solomon eds., 1992). For the classic account of the differentiated nature of the profession, see John P. Heinz & Edward O. Lauman, *Chicago Lawyers: The Social Structure of the Bar* (1994).

32. Nelson & Trubek, Introduction, at 18.

34. See Robert Granfield, The Meaning of Pro Bono: Institutional Variations in Professional Obligations Among Lawyers, 41 *Law & Soc’y Rev.* 113, 116 (2007).

35. Mather et al. *supra* note, at 41.

36. Scheingold & Sarat, *supra* note 2, at 3.

37. See Corey Shdaimah, *Negotiating Justice: Progressive Lawyering, Low-Income Clients, and the Quest for Social Change* (2008).

38. Cummings & Southworth, *supra* note 10, at 192.

39. *Id.* at 194-96.

clients, either in the sense of using clients to advance causes or challenging clients to make decisions in the public interest.

In terms of setting agendas, the existing research suggests that one attraction of private PIL firms is that they allow lawyers to pursue a variety of different substantive causes across the political spectrum. For instance, Southworth's research shows that conservative lawyers who entered small firms did so in order to construct practices that advanced their values.⁴⁰ Most firms that have been studied, however, have had a politically progressive orientation, with broad conceptions of firm mission. For example, Porter's profile of Norris, Schmidt, Green, Harris, Higginbotham & Associates, a Philadelphia civil rights firm started a half-century ago, described the firm's cause as "social justice and equality of opportunity."⁴¹ Kelly's study of a private PIL firm quoted one lawyer's view that the firm was built to serve "the little guy battling the giant. That's what we've always done."⁴²

Professional autonomy is also visible in the case selection and organizational practices of private PIL firms.⁴³ For instance, the lawyers at the Washington, D.C.-based Bernabei & Katz started their civil rights firm in order to "maximize discretion to select cases" consistent with their own political goals.⁴⁴ Other studies highlight the attraction of private PIL firms for lawyers seeking to experiment with unconventional client relationships and advocacy tactics. For instance, the lawyers studied by Trubek and Kransberger "stressed the importance of creating a more collaborative and less traditionally hierarchical relationship with the client, and insisted on the importance of client empowerment, personal agency, and autonomy."⁴⁵ Similarly, Kilwein found that small-firm Pittsburgh lawyers pursued a range of radical goals, such as client empowerment and political mobilization.⁴⁶ Bernabei & Katz reported that in addition to litigation, their firm advanced civil rights causes through "counseling, lobbying, research and investigation, the use of the press, mobilizing community demonstrations, and organizing and educating grassroots groups."⁴⁷

The move toward the private firm, therefore, is generally presented as a move toward greater freedom and flexibility. It is a move away from the bureaucratic constraint and funder oversight associated with NGO practice toward greater self-determination and political expression; a move away from political limitation and toward self-regulation. This self-regulation is tied to a particular vision of professionalism—in which the private and public conceptions

40. Southworth, *supra* note 14, at 96.

41. See Porter, *supra* note 11, at 173–174.

42. Kelly, *supra* note 14, at 31.

43. Scheingold & Sarat, *supra* note 2, at 88.

44. Katz & Bernabei, *supra* note 14, at 196–197.

45. Trubek & Kransberger, *supra* note, at 211.

46. Kilwein, *supra* note 14.

47. Katz & Bernabei, *supra* note 14, at 294.

of lawyering come together in the lawyer's ability to make work choices that are consistent with their political values.⁴⁸

2. Theories of the Firm

Despite its valorization, autonomy in private PIL firms is not absolute, but rather limited by financial constraints, which force the lawyers to choose between different economic models—which fundamentally affect the types of clients they represent and causes they pursue. Some firms only take on cases that advance the firm's mission. Civil rights firm Bernabei & Katz, for instance, refused to take on cases purely for financial reasons (though they did receive a small amount of foundation funding) and paid its attorneys on a nonprofit scale.⁵¹ Many firms, however, take on “regular” cases in order to pay the bills, thus subsidizing their cause-oriented work.⁵² As the constraints imposed by bottom-line considerations highlight, private PIL firms are market-driven business enterprises as much as mission-driven legal services providers. As such, one must also ask how their status as for-profit firms structures the economic activity of the lawyers who work in them.

From an economic perspective, firms can be thought of as producing three types of efficiencies. First, they may allow groups of attorneys to *diversify risk* by assembling a portfolio of cases that generates returns to scale from specialization while hedging against the downside risk of individual cases.⁵³ Second, they may reduce what economists call organizational *agency costs* by creating monitoring and incentive systems that allow firms to reap the rewards of aggregated lawyer productivity, while mitigating negative behavior, such as shirking.⁵⁴ Third, firms may reduce the *transaction costs* associated with coordinating case activity across multiple attorneys by centralizing decision making within one entity. When firms are structured to maximize profits, these efficiencies present no explicit conflicts with core organizational values. However, when firms are set up to also pursue non-market goals, there may be tradeoffs between economic and cause imperatives.⁵⁵

48. See Scheingold & Bloom, *supra* note, at 237.

51. *Id.*

52. Scheingold & Bloom, *supra* note 14, at 246.

53. See Herbert M. Kritzer, *Risks, Reputations, and Rewards: Contingency Fee Legal Practice in the United States* (2004); Ronald J. Gilson & Robert H. Mnookin, *Sharing Among the Human Capitalists: An Economic Inquiry into the Corporate Law Firm and How Partners Split Profits*, 37 *Stan. L. Rev.* 313 (1985).

54. See Marc Galanter & Thomas Palay, *Tournament of Lawyers: The Transformation of the Big Law Firm* (1991); see also Kelly, *supra* note 14, at 268.

55. See Center for Public Interest Law at Columbia Law School & Bernard Koteen Office of Public Interest Advising at Harvard Law School, *Private Public Interest and Plaintiff's Firm Guide* 6 (2007).

B. Practice: An Overview of the Private PIL Sector

1. Definition

To understand how private PIL firms negotiate the tradeoffs between profit and principle requires that we first have a working definition of “what counts” as such a firm in the first instance.⁵⁶ Defining the parameters of the private PIL firm category is complicated by the range of motivations and practices that lawyers adopt, and how they relate to the already contested notion of PIL. Some for-profit firms explicitly self-identify as cause-oriented, others do not. Of those that do self-identify with PIL, some have missions that mirror traditional PIL categories (for example, civil rights, employment, housing, prisoner’s rights), while others are more akin to classic plaintiff’s-side work (for example, personal injury, securities litigation). Also, while some private PIL firms devote themselves exclusively to cause-oriented lawyering, others supplement such work with commercial cases in order to help “pay the bills.”

Other commentators have struggled with the definitional problem. In Handler and his colleagues early study on the public interest law “industry,” they identified so-called “mixed firms” as those “in the private, for-profit sector of the economy [that] devote a significant portion of their resources to activities of the PIL type.”⁵⁷ This definition hinged on the degree to which private firms devoted their practice to what the researchers defined as PIL “issue areas,” which included employment, environmental protection, civil liberties, consumer protection, housing, education, health care, voting, media reform, welfare benefits, and occupational health and safety.⁵⁸ Firms that devoted at least 25 percent of their practice to such areas qualified.⁵⁹ More contemporary efforts to define private PIL firms have emphasized firm mission rather than practice areas. Law schools have emerged as an important agent in this definitional project as they have sought to help PIL-oriented students identify and gain employment in firms that associate themselves with the PIL sector. The “Private Public Interest and Plaintiff’s Firm Guide” published by Columbia Law School and Harvard Law School, is an influential resource that lists firms that have “self-identified as working in the public interest at least in part.”⁶¹ The Guide defines these firms as for-profit businesses that bring cases to promote “a particular social, political, or

56. Cummings & Southworth, *supra* note 10, at 183, 184-86.

57. Joel F. Handler, Betsy Ginsberg & Arthur Snow, *The Public Interest Law Industry*, 42, 60.

58. *Id.* at 60-62.

59. *Id.* at 61.

61. *Private Public Interest and Plaintiff’s Firm Guide*, *supra* note XX, at 355. The Guide also includes a disclaimer that “by including the firms in this book, we are not vouching for their commitment to public interest work.” *Id.*

economic vision that includes helping underrepresented groups and/or promoting change.”⁶²

Building on these approaches, I define the category of private PIL firms to include for-profit legal practices whose core mission is to advance a vision of the public interest that enhances legal and political access for underrepresented groups or pursues a social change agenda that challenges corporate or governmental power. This definition is broad enough to include firms on both sides of the political spectrum, though it would exclude cause lawyering on behalf of existing structures of power. Further, it encompasses a spectrum of firms with a variety of combined practice types, rather than referring to a fixed model.

Under this definition, whether or not a given firm qualifies as a PIL one becomes an empirical question answered by evaluating relevant evidence of public interest mission. As a methodological matter, this means screening firms to determine whether, by word or deed, they can be said to organize their practice around a vision of the public interest. A relevant criterion is whether they devote a significant part of their practice to areas that have analogues in the nonprofit PIL sector, such as those identified by Handler or in more recent studies.⁶³ Another factor is the subjective self-conception of firm principals, which may be gleaned from firm promotional material (such as websites) as well as the direct statements of firm members. Often, self-representation will map onto actual practice, as many firms that affiliate with PIL will also engage in PIL practice areas. Yet, although self-identification is suggestive of PIL mission, it is not necessarily determinative. There might, for instance, be firms that deliberately invoke the public interest in crafting their self-image for marketing purposes but make no effort to square that image with the day-to-day reality of practice. Moving from theoretical concept to concrete category therefore involves comparing data about words and deeds to ensure that a firm that “talks the talk” also “walks the walk.” Doing so will ultimately will not eliminate ambiguity and contestation; but will instead produce a range of firms with divergent practice areas and different self-conceptions—some at the core of the private PIL firm category and others toward the periphery, where inevitable boundary questions will both crystallize the concept and permit a more searching exploration of its tensions.

2. Development

As the definitional discussion suggests, private PIL firms have developed as a subset of small-firm practice—one defined by an organizational commitment to the public interest that transcends the occasional provision of no-fee or reduced-fee client services.⁶⁵ Their evolution is therefore part of a broader story about the trajectory of the plaintiffs’ bar. As Yeazell details in his study of civil litigation,

62. *Id.* at 2-3; see also Yale Law School Public Interest Firms 1 (2010), available at http://www.law.yale.edu/documents/pdf/cdo_public/cdo-public_interest_law_firms.pdf.

63. See Albiston & Nielsen (2006); Rhode (2008).

65. See Cummings & Southworth, *supra* note 10, at 189-92.

plaintiff's firms in the postwar era reorganized and became better capitalized because of a number of structural changes, including the spread of liability insurance, the doctrinal expansion of defective products liability, and the increased availability of law firm credit.⁶⁶ In response, plaintiffs' lawyers restructured their practices, using contingent fees to "justify their investment of time,"⁶⁷ and diversifying their portfolio of cases across substantive areas in order to balance low-risk, low-paying cases with high-risk, high-paying ones in profitable combinations.⁶⁸ These changes transformed the plaintiffs' bar, which became "more deeply capitalized, specialized, and expert."⁷⁰

Private PIL firms have benefited from some of the same trends that improved the fortunes of the plaintiffs' bar. Indeed, some of these firms emerged from plaintiff-side tort practices,⁷¹ and some continue to use tort practice to subsidize mission-driven work. Yet private PIL firm lawyers have sought to distinguish themselves from the profit-orientation associated with the plaintiffs' bar by organizing their practices not only to make money but also to promote the public interest. These firms therefore adopted the ethos—and often the legal objectives—of the PIL movement as it emerged in the 1960s and 1970s. Other firms grew out of earlier models associated with African American lawyers who pursued civil rights cases,⁷² while others were informed by feminist principles.⁷³

The evolution of private PIL firms was also shaped by a set of structural opportunities and constraints peculiar to this field. On the opportunity side, the availability of fee-shifting statutes permitted cause-oriented lawyers to build their own practices and firms around issues such as employment discrimination and police abuse.⁷⁴ At the state level, private attorney general statutes expanded opportunities to recover fees under state law.⁷⁵ For example, California passed its private attorney general fee provision in 1977,⁷⁶ allowing fee awards in cases where "a significant benefit . . . has been conferred on the general public or a

66. Stephen C. Yeazell, *Re-Financing Civil Litigation*, 51 *DePaul L. Rev.* 183 (2001).

67. Stephen C. Yeazell, *Socializing Law, Privatizing Law, Monopolizing Law*, *Accessing Law* 691, 704 (2006).

68. See Kritzer, *supra* note 46, at 12; see also Herbert Kritzer, *Seven Dogged Myths Concerning Contingency Fees*, 80 *Washington U. L.Q.* 739, 754.

70. Yeazell, *supra* note *Re-Financing*, at 200.

71. Handler et al., *supra* note *Lawyers and the Pursuit of Legal Rights*, at 113.

72. Susan D. Carle, *Historical Perspectives on Pro Bono Lawyering*, 9 *American U. J. of Gender, Social Policy & L.* 81 (2001).

73. Trubek & Kransberger, *supra* note.

74. Samuel R. Bagenstos, *Mandatory Pro Bono and Private Attorneys General*, 101 *Northwestern L. Rev. Colloquy*, 182 (2007).

75. William B. Rubenstein, *On What a "Private Attorney General" Is—And Why It Matters*, 57 *Vand. L. Rev.* 2129 (2004).

76. John E. McDermott & Richard Rothschild, *Foreword: The Private Attorney General Rule and Public Interest Litigation in California*, 66 *Cal. L. Rev.* 138, 138 (1978).

large class of persons.”⁷⁷ The era of fee-shifting ushered in by these statutes contributed to an explosion of public interest litigation and provoked a countermovement to curtail fee awards.⁷⁸

While the availability of fees has made private PIL firms economically feasible, a variety of constraints associated with NGO practice have encouraged lawyers to move into the private sector. Lawyers’ complaints about the NGO sector focus on its lower pay, the scarcity of jobs, limited training opportunities, and insufficient resources for large-scale litigation. These general limitations have been compounded by specific funding and substantive restrictions imposed on the federal legal services program over the last twenty-five years. Accordingly, the NGO sector has become a less congenial arena for litigators: groups have found it difficult to raise foundation funds to sustain ongoing litigation operations, while restrictions on federal legal services programs have eliminated the ability to pursue class actions, attorney’s fees, and cases involving most undocumented immigrants.⁷⁹ Against this backdrop, private PIL firms have offered lawyers the chance to pursue public goals,⁸⁰ while enjoying some of the advantages associated with private practice, such as greater freedom to shift agendas, more autonomy from funding sources, and better facilities.⁸¹

3. Data

Although inconsistent definitions make strict historical comparisons impossible, the available data suggest that the private PIL sector has grown significantly over the last forty years.⁸⁵ The earliest data on private PIL firms is from the mid-1970s, when the existence of a handful of private PIL firms prompted scholarly inquiry into their form and function. The Council for Public Interest Law identified forty-four firms that devoted over half of their work to PIL practice, and it found that these firms employed 160 lawyers.⁸⁶ Nearly all of the firms were established after 1969, suggesting the influence of the PIL movement and of the advent of attorney’s fee statutes. About two-thirds of these firms employed four or fewer attorneys; low pay was standard, with sixty percent of lawyers in these firms earning no more than \$20,000—then the starting salary for first-year law firm associates.⁸⁷ The firms relied on varying economic

77. Cal. Civ. Proc. Code § 1021.5 (West Supp. 1978).

78. David Luban, *Taking Out the Adversary: The Assault on Progressive Public Interest Lawyers*, 91 Cal. L. Rev. 209, 241–245 (2003).

79. Houseman, *supra* note 15, at XX.

80. Louise G. Trubek, *The Worst of Times...and the Best of Times: Lawyering for Poor Clients Today*, 22 Fordham Urban L.J. 1123, 1137 (2007).

81. Katz & Bernabei, *supra* note 14, at XX.

85. Cummings & Southworth, *supra* note 10, at 192-93.

86. Council for Public Interest Law, *supra* note, at 136.

87. *Id.* at 137. Adjusted for inflation based on the Consumer Price Index, \$20,000 in 1975 (when the survey was conducted) was worth approximately \$79,500 in 2009 dollars.

arrangements to promote stability, including establishing ongoing cooperative relationships with nonprofit PIL groups, taking advantage of federal programs subsidizing the cost of public participation in regulatory agencies, participating in prepaid legal services plans, and relying on non-PIL cases to supplement their income.⁸⁸

This picture looked quite similar to the one painted by Handler and his colleagues in their study of “mixed firms,” which found fewer than one hundred PIL lawyers practicing in approximately twenty private firms during the early 1970s.⁹¹ The Handler study attributed the scarcity of such firms to the inherent limits of the model, which required clients to pay and lawyers to subsidize their mission-driven work with commercial cases.⁹² It also found that most mixed firms were located in the Northeast, were quite small (with an average of five lawyers), and paid relatively low salaries. The most common PIL practice areas were consumer protection, environmental law, employment discrimination, housing, criminal law, and civil rights work.⁹³ The study also concluded that the firms’ “regular work” focused on individuals and small businesses that could not pay large fees. Personal injury law was the most common “regular work” practice area, followed by labor and general commercial law.⁹⁴

Although there are no current systematic data on private PIL firms, there is some evidence that the field has grown since these early studies. Both of the two main databases on the private PIL sector suffer from limitations that substantially restrict their usefulness as sources of systematic information about the field. Harvard and Columbia Law Schools’ “Private Public Interest and Plaintiff’s Firm Guide” provides a list of firms, with contact information, office size and summer job openings, areas of specialization, and types of advocacy. The Guide does not purport to be comprehensive.⁹⁵ PSLawNet, an online database administered by the National Association for Law Placement (NALP), allows subscribers to search for information on PIL job opportunities and employer profiles.⁹⁶ The site is essentially a bulletin board: Firms appear in the database if they either create their own employer profiles or post job opportunities on one of the many public interest list serves that PSLawNet staff members monitor.⁹⁷ NALP does not

88. *Id.* at 138–140.

91. Handler et al., *supra* note Lawyers and the Pursuit of Legal Rights, at 113.

92. *Id.* at 112–113.

93. *Id.* at 113.

94. *Id.* at 114.

95. The Guide’s list is generated by compiling firms that submit job postings to Columbia and Harvard Law Schools, firms at which Columbia and Harvard students work, postings on list serves and other reports, and recommendations from colleagues at other institutions. *See* Harvard and Columbia Law Schools, “Private Public Interest and Plaintiff’s Firm Guide,” *supra* note 48.

96. PSLawNet, About Us, <http://pslawnet.org/aboutpslawnet>.

97. *See* About PSLawNet, at <http://pslawnet.org/aboutpslawnet>.

claim that the site is comprehensive, and law firms can unilaterally choose to be listed as a PIL firm. Therefore, the list is likely to be both under- and over-inclusive.

Despite the limitations of these databases, they may indicate trends regarding firm location, size, and practice areas. Both databases suggest that the field has grown in size and geographic diversity since its early days. The Columbia and Harvard Guide, for instance, lists 329 firms, a large portion of which are located outside the Northeast (69 of the listed firms (21%), for example, are based in California). Searching the “Law Firm—Public Interest Focus/Practice” database on the PSLawNet site generates a list of 464 firms nationwide, with 187 in California, and 117 in New York, Massachusetts, and Washington, D.C., collectively. Looking just at firms based in California, the mean size was eight lawyers (with a median of three). Employment law and civil rights were the most commonly cited practice areas of these California firms.

II. METHODOLOGY

As my overview of the private PIL sector suggests, our lack of comprehensive quantitative data about these firms presents an opportunity for further systematic study. However, before we can fully appreciate the type of bird’s eye view of the sector that quantitative analysis provides, it is useful to develop a more grounded understanding of the day-to-day operation and tradeoffs of such practice, and its meaning for the lawyers involved.⁹⁹

Toward this end, I conducted a case study analysis of a cluster of four private PIL law firms in the Los Angeles area: Hadsell & Stormer, Litt & Associates, Traber & Voorhees, and Renick & Associates. My primary research focus was on Hadsell & Stormer (H&S), the largest and most well-known of the firms, since it offered the best opportunity to observe key issues confronting private PIL firms more generally.¹⁰⁰ I selected H&S based on a number of criteria: its size and longevity made it well-suited as a site for investigating key research questions related to professional development, governance, and economic management; its substantive focus—civil rights and employment litigation—meant that it shared common practice areas with the broader set of California private PIL firms; H&S is considered a leader in the field and a model that other firms follow; its lawyers are similarly well-regarded leaders in the private PIL bar sector, actively involved, for instance, in the Los Angeles chapter of the National Lawyers Guild (NLG); and I had institutional relations with firm members (two H&S lawyers are UCLA School of Law alumnae) that provided me with unique contact with the firm’s leadership, who provided broad access to firm lawyers, documents, and meetings. I chose to study the other firms (Litt & Associates, Traber & Voorhees, and Renick & Associates) because of their important relationships with H&S. As I describe, these firms form a “cluster” in that they have interconnected histories, in some cases share physical space, and routinely collaborate.

99. Cf. Richard L. Abel, *Practicing Immigration Law in Filene’s Basement*, 84 N.C. L. Rev. 1449, 1452 (2006).

100. Alan Bryman, *Social Research Methods* 55 (2008);

In any case study, the issues of representativeness and generalizability arise.¹⁰² Case study research does not simply purport to identify typical cases that represent a broad class of objects, but rather engages in intensive examination of a single case as a means to illuminate its complexity and particular nature with an eye toward identifying broader themes that can then be tested.¹⁰³ H&S fits the core definition of a private PIL firm and provides a particularly well-suited context for working through my research questions on the tradeoffs between principle and profit.

In conducting my study, I used a mixed-methods approach, attempting to triangulate data in order to increase its reliability. In the summer of 2007, I conducted twenty-nine semi-structured interviews with attorneys and law students associated with the four subject firms and other legal organizations connected with H&S. I spent two weeks at H&S's office, where in addition to interviewing lawyers, I was able to observe office interactions and attend meetings. I was also given access to H&S's records, including a periodical file of its significant cases. I used all of these materials in constructing the case study that follows.

III. BACKGROUND

H&S was formed as a California for-profit corporation in 1991, with Barbara Hadsell and Dan Stormer designated fifty-fifty shareholders. It developed into a classic civil rights firm, distinct from the more nontraditional private PIL experiments, by charting a particular course through the political currents of the time. The founding of the firm is in large part a story about its two principals; but this story itself is embedded in a historical and institutional context that informed the lawyers' individual opportunities and choices, while significantly influencing the firm's initial shape and subsequent trajectory. The conception of a private PIL firm that Hadsell and Stormer sought to place into practice had roots in both the post-war radical lawyering of the NLG movement and 1970s' experiments in alternative practice.¹⁰⁴ Its political orientation can be traced to the civil liberties tradition of the Cold War period and the civil rights movement of the 1960s, which not only brought questions of discrimination to the fore, but also afforded new legal tools to fight it.¹⁰⁵

A. "On the Shoulders of Giants": Margolis & McTernan as the PIL Firm Precursor

H&S assumed the mantle of legal progressivism forged by lawyers who pursued a civil liberties and anti-discrimination agenda beginning in the 1940s. The lawyers who loom largest in Los Angeles history are Ben Margolis and John

102. Robert E. Stake, *The Art of Case Study Research* (1995).

103. BRYMAN, *supra* note 84, at 52-55.

104. See JOEL F. HANDLER, ELLEN JANE HOLLINGSWORTH & HOWARD S. ERLANGER, *LAWYERS AND THE PURSUIT OF RIGHTS* 116-23 (1978).

105. See Stephen C. Yeazell, *Brown, the Civil Rights Movement, and the Silent Litigation Revolution*, 57 *Vand. L. Rev.* 1975 (2004).

McTernan, charter members of the Los Angeles chapter of the NLG and two giants of the radical left. Margolis was an ardent Communist best known for his representation of the “Hollywood Ten” in front of the House Un-American Activities Committee in 1947.¹⁰⁶ He represented other blacklisted Hollywood figures during the McCarthy era and defended Communist leaders prosecuted for advocating the overthrow of the United States under the Smith Act,¹⁰⁷ most notably in *Yates v. United States*, in which the Supreme Court reversed the convictions of party members who had taken no active steps to foment revolution.¹⁰⁸ Margolis had a nearly fifty-year law partnership with John McTernan, who also had a distinguished career, winning cases striking down racially restrictive housing covenants and segregated unions, and establishing the right of defendants to examine evidence gained from informers.¹⁰⁹ When they started out in 1943, the firm specialized in civil rights and civil liberties cases, while also representing Southern California chapters of the CIO.¹¹⁰ However, after they were blacklisted for their representation of Communists, most of the union clients left.¹¹¹ Going forward, the firm was able to subsidize its political cases through fee-generating work on personal injury and products liability matters.¹¹² In addition, it maintained the International Longshore & Warehouse Union as a client, which allowed the firm to build a maritime practice.¹¹³

The Margolis & McTernan firm became well-known as a model of private lawyers working in the service of radical causes and left a major impression on the generation of lawyers that succeeded them. Barbara Hadsell was one of those lawyers. She entered the UCLA School of Law in 1975, where she joined the NLG student chapter and became active in progressive politics—in one instance, occupying the admissions office to protest what she viewed as the law school’s inadequate affirmative action policies.¹¹⁵ At an event in support of affirmative action, Hadsell heard Margolis give an “incredibly fiery speech” to “rally the

106. Erica Bose, *Three Brave Men: An Examination of Three Attorneys Who Represented the Hollywood Nineteen in the House Un-American Activities Committee Hearings in 1947 and the Consequences They Faced*, 6 UCLA Ent. L. Rev. 321, 321-22 (1999).

107. Barry Tarlow, *In Memoriam—Ben Margolis*, 23 MAY Champion 38 (1999).

108. *Yates v. United States*, 354 U.S. 298 (1957). Margolis also won reversal in the Sleepy Lagoon murder trial of 22 Mexican American defendants that led to Zoot Suit riots in Los Angeles. *People v. Zamora*, 66 Cal.App.3d 166 (1944).

109. Dennis McLellan, *Obituaries; John T. McTernan, 94; Lawyer Fought to Protect Civil Rights*, Los Angeles Times, April 4, 2005, B7.

110. See Bose, *supra* note 90.

111. Interview with Barbara Hadsell, Partner, Hadsell & Stormer, Inc., in Pasadena, Cal. (July 17, 2007).

112. See Bose, *supra* note 90, at 350; Douglas Martin, *John T. McTernan: He Fought for Freedom*, N.Y. Times, April 16, 2005.

113. Interview with Hadsell, *supra*.

115. *Id.*

troops” and “fell in love with that man.”¹¹⁶ She set her sights on working for the Margolis & McTernan firm and, a year after she graduated in 1978, took the chance to join the firm in a nonlawyer clerk position.¹¹⁷ Hadsell impressed Margolis on her first assignment and when he realized she was only working as a clerk, he immediately went to the other partners and convinced them to hire her as a full-time lawyer.¹¹⁸ Hadsell represented injured seamen in personal injury matters and later began working on cases challenging slum housing landlords with Margolis.¹¹⁹ In 1980, Margolis and McTernan—both nearly 70—stepped down from active management of the firm.¹²⁰ Without Margolis and McTernan at the helm, the firm experienced financial difficulties and abruptly dissolved in 1987.¹²¹

B. A New Left Experiment: The Rise and Fall of Litt & Stormer

While the dissolution of Margolis & McTernan marked the end of an era, it also represented a bridge to a new generation of progressive lawyers who had come of age during the civil rights and anti-war period. When their firm disbanded, Margolis, McTernan, and Hadsell moved to the recently established firm of Litt & Stormer, which had started in 1984 as a vehicle to pursue civil rights cases.¹²²

The integration of Margolis and McTernan into the Litt & Stormer firm fused the old and the new. Whereas Margolis and McTernan had come of age as lawyers at a time when opportunities for progressive practice were limited, Litt & Stormer faced a significantly different terrain—informed by the civil rights and other New Left movements—and had followed distinct career trajectories. On one side, there had emerged within the private bar alternative practice styles that responded to the New Left’s insistence on inclusive governance and nonhierarchical relationships. Law communes were one example, characterized by their representation of radical clients with whom the lawyers identified and a commitment to give everyone an equal voice in firm management.¹²³ Communes therefore embraced the radical substantive goals of the old-line political firms, but they did so in a practice environment that sought to break with the conventional hierarchy of law practice.

116. *Id.*

117. *Id.*

118. *Id.*

119. *Id.*

120. *Id.*

121. *Id.*; Interview with Dan Stormer, Partner, Hadsell & Stormer, Inc., in Pasadena, Cal. (July 14-15, 2007).

122. Interview with Barrett S. Litt, Partner, Litt Estuar Harrison & Kitson LLP, in Los Angeles, Cal. (August 10, 2007).

123. See Handler, Hollingsworth & Erlanger, *supra* note 6, at 116; see also A.P. Sager, *Radical Law, in Co-ops, Communes & Collectives* (J. Case & R.C.R. Taylor eds., 1979).

This model attracted Barry Litt, a 1969 graduate of the UCLA School of Law,¹²⁴ whose first job was in a Los Angeles law commune called the Bar Sinister (Latin for “Left Bar”), which was made up primarily of Litt’s UCLA classmates.¹²⁵ Like other communes, the group was defined by its radical agenda—with clients including Black Panthers and insurgent labor unions—and alternative culture—with everyone in the firm participating in collective decisions.¹²⁶ Early in his career, Litt was able to work on some of the landmark political trials of the decade, including the Chicago 8 Conspiracy and the Pentagon Papers case.¹²⁷ Though his work on these trials was low-level, it provided him a window on the intricacies of high-stakes legal practice and exposed him to radical lawyers Leonard Weinglass and William Kuntsler.¹²⁸ Litt built a substantial criminal law practice at the Bar Sinister, but left after seven years to become a community organizer.¹²⁹ After three years of organizing, Litt returned to criminal practice for financial reasons. As he returned to lawyering, Litt sought to formulate a new conception of radical law practice in the newly conservative national political environment:

I was working within the framework of using my legal skills and given that there weren’t movements that existed, the question was could you . . . create space [for progressive activism] . . . independently of what was going on at a grassroots level? And the conclusion I reached was at that period in time, the best way to do that was a civil rights practice.¹³⁰

The decision to start his own private firm in 1981 was, in part, motivated by a desire to have political autonomy, which Litt believed would be compromised in a cause-oriented NGO or the federal legal services program, which had recently had its budget cut and advocacy restrictions imposed.¹³¹ Litt “felt that ultimately you had more political freedom if you...were not dependent on anyone else’s money.”¹³² He therefore set up shop in a building where he shared space with a labor law spin-off from the Bar Sinister—Taylor Robbes & Bush.¹³³ The

124. See Barrett S. Litt, Litt Estuar Harrison & Kitson LLP, at <http://www.littlaw.com/Bio/BarrettLitt.asp>.

125. Interview with Litt, *supra* note 106.

126. *Id.*

127. *Id.*

128. *Id.*

129. *Id.*

130. *Id.*

131. Alan W. Houseman, Civil Legal Assistance for Low-Income Persons: Looking Back and Looking Forward, 29 *Fordham Urb. L.J.* 1213, 1222 (2002).

132. Interview with Litt, *supra* note 106.

133. This firm has gone through many iterations and is currently Bush Gottlieb Singer Lopez Kohanski Adelstein & Dickinson.

financial model he adopted was consistent with the approach used by Margolis & McTernan, as well as the Bar Sinister, to the degree that he blended “political” with “straight” cases (those without political impact taken to pay the bills). In Litt’s case, in addition to maintaining his criminal practice, he represented the Church of Scientology in civil suits claiming that the church had harassed members to prevent them from leaving. While the suits raised some First Amendments issues, Litt took on the representation to “make money” in order to “transition to the civil rights practice.”¹³⁴

Stormer’s trajectory was quite different, built upon the new set of opportunities created by the PIL movement in the 1970s. From the outset, Stormer was less an ideologue than a pragmatist who wanted to do good work for the underdog, but was disinclined to view himself as part of an elite social change vanguard. To the contrary, Stormer’s personal story was one of overcoming odds and rejecting conventional paths. Born into poverty in rural Pennsylvania, he was inspired to go to law school by the benevolence of a legal aid lawyer who defended his family in a car accident lawsuit when he was in eighth grade. A self-described mediocre student but excellent standardized test-taker, he went to Wagner College in New York on an academic scholarship and then won a scholarship to attend the New York University Law School, which he deferred to enter the army in 1968. At this point, Stormer was “completely non-political” and joined the army because “it’s what you do when you’re poor.” It was in the army, however, that he became politicized as he witnessed the race and class disparities in basic training. “There were the white, college-educated who were almost exclusively in the National Guard, draftees who were mainly high school graduates, and a third group of guys from Puerto Rico who spoke no English but were forced to serve. That keyed me into what was going on.”¹³⁶

Though newly radicalized, Stormer did not follow a PIL trajectory when he entered law school in 1970.¹³⁷ His first summer, he worked as a framing carpenter on Cape Cod, and then withdrew from law school in his second year to become a ski instructor in Colorado while living in a hippy commune. He reenrolled at NYU after a semester off, but continued to live in Colorado, where worked as a logger, returning to law school to take final exams. After graduating in 1974, Stormer took a job with Colorado Rural Legal Services in Hunton, representing farm workers for two years, and then went to the Institutional Services Project in Washington State, where he took on post-conviction and prison conditions cases for prisoners in the Walla Walla State Penitentiary. He next spent two years at Spokane Legal Services and then became the director of the Migrant Farmworker Project at Evergreen Legal Services in Washington. The loss of his older brother to cancer in 1980 provoked a personal crisis that

134. Id.

136. Profile of Dan Stormer, L.A. Daily J., Dec. 9, 1985, at 1, 17.

137. Interview with Stormer, *supra*.

culminated in a move to Los Angeles to pursue a relationship with the woman who would later become his wife.¹³⁸

During his transition to Los Angeles, Stormer worked with the renowned Leonard Weinglass on a 1981 criminal trial defending an activist lawyer accused of terrorism for sending letter bombs to public officials.¹³⁹ That experience was a formative one in terms of what it taught Stormer about effective lawyering:

Lenny was cross examining an FBI fingerprint expert and this is in front of a Pueblo, Colorado jury, very conservative, on the issue of terrorism. And he tore that guy apart—never raising his voice, never saying anything mean, never getting sarcastic. He just basically used logic and sort of the forks of his own analysis and comfort in the courtroom to tear this expert apart. [That helped me to] understand sort of the bigger picture that is: you let people hang themselves.¹⁴⁰

In 1981, Stormer joined the Western Center on Law and Poverty, which was formed a decade earlier as the legal aid impact litigation back-up center. Stormer stayed at the Center for three years, during which time he worked on a large-scale suit challenging the state's noncompliance with federal rules on disability benefits and another seeking to enjoin the cessation of welfare payments because of the state budget impasse.¹⁴¹ During this time, he also commuted to San Francisco to teach in the clinical program at the Hastings College of Law.

Litt and Stormer met through the progressive network in Los Angeles, and became colleagues in the NLG, where Stormer had been president,¹⁴² and the New American movement, formed by ex-communists as a mainstream progressive organization.¹⁴³ Stormer had never been an organizational man and chafed at the mounting restrictions on federal legal services programs imposed by the Reagan administration. For him, the union with Litt offered a way of putting his political principles to work in a private sector venue that afforded flexibility and the chance to make a better living.¹⁴⁴ As Stormer put it at the time: "I'm a pragmatist, not an idealist. I have principles I think are good, workable ones I think a society would accept. The question is how do you carry out those principles and still make a living?"¹⁴⁵

138. See Rebecca Morrow, Three Who Make a Difference, *Los Angeles Lawyer*, Dec. 1, 1984, at 10, 17.

139. Interview with Stormer.

140. *Id.*

141. Interview with Stormer.

142. Interview with Hadsell, *supra* note 95.

143. Interview with Stormer.

144. See Morrow, *supra* note 120.

145. Profile of Dan Stormer, *supra* note 119, at 17.

While Stormer was drawn to Litt as someone with experience managing a private firm, Litt was interested in the skills Stormer would bring as a litigator. As the primary architect of the firm, Litt saw in Stormer a formidable lawyer who could help attract and win cases, as well as someone who contributed the civil litigation expertise and familiarity with fee-shifting statutes that Litt lacked from his years focusing on criminal cases.¹⁴⁶ From an economic perspective, Stormer was a good bet, having just helped win \$425,000 in damages in a class action lawsuit filed against the City of Tulare for racial discrimination against black and Latino city employees.¹⁴⁷ Litt thus approached Stormer about the partnership and the two agreed to launch Litt & Stormer in 1984 after fairly short discussions.¹⁴⁸ The firm began with Litt and Stormer as the founding partners. In addition, Stormer brought with him first-year associate Teresa Traber, a 1984 Northeastern graduate who had been a Western Center intern and had worked with Stormer on the Tulare case.¹⁴⁹ Litt brought four associates from his existing firm.¹⁵⁰

The goal of Litt & Stormer was to develop a “civil rights-public interest practice that would, one, be financially viable, and, two, would make an impact in terms of the work it did.”¹⁵¹ There was no effort to set a specific political agenda; instead, the firm took on cases “through connections and relationships,” setting “a very broad definition of public interest or civil rights litigation” and then asking: “Did it look like a good issue? Did it look like we could win? Did we want to do it?”¹⁵² The ability to recover fees was also an important consideration in case selection and the firm’s docket reflected the availability of statutory fee awards. The firm concentrated on cases of police abuse, and employment and housing discrimination, largely against government defendants.¹⁵⁴ It therefore represented a different financial model than its predecessor private firms that subsidized political cases with nonpolitical ones. Instead, Litt & Stormer was a self-sustaining political firm that survived entirely on fees generated through civil rights cases.¹⁵⁵

146. Interview with Litt, *supra* note 106; Interview with Stormer, *supra* note 105.

147. *Ponce v. City of Tulare*, No. 74581, Tulare County Superior Court. Stormer was brought in on behalf of the Western Center to help try the damages phase in a case that had been litigated to trial by local legal services programs. Gail Diane Cox, *Court Calculates Debt for Tulare's Hiring Practices*, L.A. Daily J., Aug. 19, 1983, at 1.

148. Interview with Litt, *supra* note 106; Interview with Stormer, *supra* note 105.

149. Interview with Teresa Traber, Partner, Traber & Voorhees, in Pasadena, Cal. (July 20, 2007).

150. Interview with Stormer, *supra* note 105.

151. Interview with Litt, *supra* note 106.

152. *Id.*

154. Interview with Litt, *supra* note 106.

155. Cf. Council for Public Interest Law, *supra* note, at 140.

In terms of governance, however, the firm was quite traditional—far removed from Litt’s experience with the Bar Sinister. It was structured as a 50-50 partnership, with Litt contributing start-up capital and Stormer sweat equity;¹⁵⁶ the five other attorneys were all associates. In 1987, the firm made two decisions that transformed relations both at the top of the firm’s hierarchy and at its base. First, at the top, the firm agreed to hire Margolis, McTernan, and Hadsell, after their firm broke up. For their part, Margolis and McTernan came in as consultants—not partners—bringing the legitimacy of the progressive legal establishment to the still relatively new venture.¹⁵⁷ Hadsell was hired on the condition that she work for one year as an associate and then be considered for partnership—and in fact became partner in 1988.¹⁵⁸

Second, at Stormer’s initiative, the firm instituted a program that offered two-year fellowships to one law school graduate per year.¹⁵⁹ The goal was to bring in talented young lawyers to assist with the growing firm’s litigation demands without making any commitment of ongoing employment.¹⁶⁰ The positive externality it was designed to produce was the training of dynamic PIL lawyers who would go on to advance social justice in the broader legal community.¹⁶¹ And, indeed, the young lawyers who came through that early fellowship program played significant roles in the Los Angeles PIL field.¹⁶² In 1989, Bert Voorhees and Virginia Keeney were hired as fellows. Voorhees, a former high school teacher and UCLA School of Law graduate, was working on the board of his son’s child care center after taking the bar when he was hired as a fellow and assigned to a large class action that the firm was initiating.¹⁶³ In line with the firm’s up-and-out policy, Voorhees was told by Stormer: “Now you understand there’s no future in us.”¹⁶⁴ However, the litigation demands of the firm were such that when his fellowship expired, Voorhees was retained by Litt & Stormer on a contract basis in 1991.¹⁶⁵ Keeney arrived with sterling academic

156. Interview with Stormer, *supra* note 105.

157. Interview with Litt, *supra* note 106 (“It was both because of their political background and experience and the respect but also because Ben, in particular, just brought a wealth of experience and he could be very helpful in just thinking through a case.”).

158. Interview with Hadsell, *supra* note 95.

159. Interview with Litt, *supra* note 106.

160. Interview with Stormer, *supra* note 105.

161. Interview with Litt, *supra* note 106.

162. For example, Pegine Grayson, the firm’s first fellow, went on to become the director of the Western Center on Law and Poverty. Interview with Stormer, *supra* note 105.

163. Interview with Bert Voorhees, Founding Partner, Traber & Voorhees, in Pasadena, Cal. (July 18, 2007).

164. *Id.*

165. *Id.*

credentials and deep experience in poverty and civil rights work. As an undergraduate at Harvard, she spent a summer at the Public Defender Service (PDS) in Washington, D.C., where she “became absolutely excited with the idea of becoming a criminal defense attorney and working on larger issues with respect to poverty and race.”¹⁶⁶ She enrolled in Stanford Law School—encouraged by Professor Barbara Babcock who had been head of PDS—where she worked at the East Palo Alto Community Law Project and began developing her interest in ultimately doing “civil rights and impact litigation...focusing on issues of racial discrimination and economic empowerment.”¹⁶⁷ After graduation, she accepted a prestigious Ninth Circuit clerkship with Judge William Norris, where she received an unsolicited letter from the firm announcing the fellowship and applied, drawn by the firm’s work on slum housing and employment discrimination.¹⁶⁸ In 1990, Anne Richardson, another Stanford alumna (who knew Keeney in law school), was hired as a fellow. Richardson was active on women’s issues as an undergraduate at Swarthmore and spent two years at a domestic violence organization in Philadelphia after graduating.¹⁶⁹ Simultaneously pulled toward activism and academics, she eventually “hit upon law school as the best way to sort of both be able to do interesting work and really help people.”¹⁷⁰ After enrolling at Stanford she quickly “found that the people that were really interested in theory were not people that I was very drawn to [because they] were very...cold and not very tied to the real world.” She changed her interests from theory to practice, and spent her first summer at the ACLU of Southern California, where she met Stormer, who was co-counseling a case on behalf of eight Palestinians set for deportation for advocating world communism.¹⁷¹ After law school, she landed “by fate” back in Los Angeles, where she clerked for Mariana Pfaelzer on the district court in Los Angeles and from there was awarded the Litt & Stormer fellowship.¹⁷²

This infusion of legal talent helped the Litt & Stormer firm litigate major cases that gained it notoriety,¹⁷³ such as its trial court victory in the Palestinian 8

166. Interview with Virginia Keeney, Partner, H&S, in Pasadena, Cal. (Aug. 3, 2007).

167. *Id.*

168. Interview with Virginia Keeney, Partner, H&S, in Pasadena, Cal. (Aug. 3, 2007).

169. Interview with Anne Richardson, Partner, Hadsell & Stormer, in Pasadena, Cal. (Aug. 3, 2007).

170. *Id.*

171. See Judith Cummings, Foes in Subversion Case Clash Over Whether U.S. Has Proof, *N.Y. Times*, April 25, 1987; Ronald L. Soble, Judge Hits U.S. Use of Old Law in Attempt to Deport 8 Immigrants, *L.A. Times*, April 28, 1987.

172. *Id.*

173. Trish Beall, Profile: Litt & Stormer, *Legal Exchange*, May 1, 1990, at 34-35 (noting that the frequent media limelight and the firm’s reputation in the legal community are magnets for potential new business, and Stormer estimates that the firm turns away 95% of those seeking help”).

case,¹⁷⁴ as well as a landmark employment discrimination suit on behalf of a gay police sergeant against the Los Angeles Police Department.¹⁷⁵

Yet the new mix also proved to be combustible. By 1991, the firm had grown to 15 lawyers: in addition to Litt and Stormer, Hadsell and Traber had become partners, as had Mercedes Marquez.¹⁷⁶ In addition, Voorhees, Keeney, Richardson, Sylvia Argeta, Penny Annapolis, and others were there as either fellows or associates.¹⁷⁷ Fractures emerged along two lines. At the top, there were disagreements centered on approaches to work and governance. Litt and Stormer have “fairly different styles of work”¹⁷⁸: Litt, for his part, is a stickler for order, while Stormer is more at ease with disorganization, known for regularly pulling all-nighters to prepare for cases. In addition, Litt was invested in managing the firm, while Stormer simply wanted to “spend [his] time litigating” and rejected the role of “administrator.”¹⁷⁹ As a result, though both lawyers had a political vision for the firm, Stormer was not inclined to spend time on organizational matters to implement that vision, which left Litt primarily responsible for designing and executing firm policy.

These stylistic differences translated into governance divisions that were exacerbated by the presence of the fellows and other young attorneys. Litt was top-down in his managerial style,¹⁸⁰ and though Stormer was less so, his penchant for working on his own terms meant that associate staffing and resource allocation decisions were sometimes made to suit him, without wide input from others in the firm. The hierarchical nature of the firm was, in part, a reflection of financial control. The firm’s financial guarantees were made by Litt, while Stormer was a major rainmaker; as a result, they wielded ultimate authority on most decisions.¹⁸¹ They were also the two senior white male lawyers in a firm otherwise dominated by women, and had strong personalities that helped them to control decision making. The centralization of control created divisions between some of the partners, like Traber, who viewed the decision making structure as “this consensus kind of thing ... so long as there was nothing that was a real problem for one of the main partners.”¹⁸² In particular, she became frustrated

174. *Arab-Am. Anti-Discrimination Comm. v. Meese*, 714 F.Supp. 1060. See Robert Reinhold, Judge Rules It Is Illegal to Deport Aliens for Their Political Stands, N.Y. Times, Dec. 23, 1988, at 1.

175. See Robert W. Stewart, Forced to Quit, Gay Ex-Officer Charges in Suit, L.A. Times, Sept. 29, 1988, at 1; see also Interview with Keeney, *supra* note 146.

176. Interview with Litt, *supra* note 106. Marquez later became director of the Los Angeles Housing Authority.

177. Interview with Keeney, *supra* note 146.

178. Interview with Litt, *supra* note 106.

179. Interview with Stormer, *supra* note 105.

180. Interview with Keeney, *supra* note 146.

181. Interview with Traber, *supra* note 129.

182. *Id.*

when her efforts to manage staffing issues, including personnel disputes, were undercut by the named partners.¹⁸³ In addition, there were internal reassignments, as when Marquez came in and took over the habitability cases, displacing Traber and Hadsell in that area.¹⁸⁴

There were also tensions between the partners and the fellows, who as recent graduates with no promise of ongoing employment had a “young Turk mentality,” which meant that “there was less of a requirement that you adapt to the power structure, because you’re going to be gone, so you might as well say what you think.”¹⁸⁵ Some of the fellows felt frustrated at what they viewed as disenfranchisement within the firm, where they were denied employment security and looked down upon.¹⁸⁶ There was a great deal of dissent among the fellows about what they experienced as the firm’s hierarchy and lack of transparency in decision making.¹⁸⁷ Voorhees, in particular, was an outspoken critic of firm governance, which was challenged from two perspectives. One was that the firm’s internal decision making structure was nonparticipatory, with a “clear chain of command” and centralized decision making that excluded meaningful input from fellows.¹⁸⁸ His critique was: “how can you be part of creating a world externally that you aren’t willing to create internally?”¹⁸⁹ In addition, there was dissent about the nature of the firm’s relationship to external social movement organizations; although there was little disagreement that the firm should engage with grassroots organizations as stakeholders in developing the firm’s political agenda, there were different views about how actively the firm should cultivate outside relationships.¹⁹⁰ From Keeney’s vantage point, “the problem was...that the firm had hired all of these progressive people who had a goal of working by consensus and participation, but the decision making structure didn’t really allow that. Financially the firm was strapped at the time, and had to make all of these real world decisions.”¹⁹¹

While much of the dissent was focused on issues related to the process of decision making, there were also substantive disagreements. For example, there were debates about whether the firm should continue to take on sex harassment suits because some questioned the political impact of those cases.¹⁹² The question

183. *Id.*

184. *Id.*

185. Interview with Keeney, *supra* note 146.

186. Interview with Anne Richardson, Partner, H&S, Inc., in California, Cal. (July 17, 2007).

187. Interview with Keeney, *supra* note 146.

188. Interview with Voorhees, *supra* note 143.

189. *Id.*

190. *Id.*

191. Keeney.

192. Interview with Keeney, *supra* note 146.

was “whether the firm really wanted to represent white women who had been discriminated against or were they already a privileged group and [should the firm] instead devote [its] resources to representing only very poor and oppressed people of color?”¹⁹³ In addition, there were “pretty strong political disagreements” about the racial politics of resource allocation in the discrimination area, with questions over how to prioritize cases involving African Americans, Latinos, or Asians.¹⁹⁴

Finally, there were simple personality conflicts, which played out against the backdrop of financial strain.¹⁹⁵ Litt was close with Marquez, who did not get along with Stormer. There were attempts to mediate the conflicts and firm members spent time having “endless meetings, including bringing in psychologists that talked to groups of staff and everything to try to work out all of our problems.”¹⁹⁶ When Marquez announced that she was going to quit the firm, Hadsell recalls saying to Litt: “It makes no sense whatsoever, Barry, for you to have Dan and me and the other associates continue to be part of this firm when the person you really want to be a member of the firm is the one who just said she’s leaving, so why don’t we leave instead?” And so that was the end of the firm.”¹⁹⁷

The dissolution, which was not “particularly acrimonious,”¹⁹⁸ split the firm into three as of September 1, 1991: Litt and Marquez formed a new partnership with Richard Fajardo; Traber and Voorhees combined; and Hadsell and Stormer formed their own firm.¹⁹⁹ As part of the dissolution, each firm was assigned “dissolution booty,” which included desks, chairs, and other physical property, as well as a stake in ongoing cases.²⁰⁰ H&S continued to focus on the same types of cases they had worked on at the previous firm, particularly police abuse, sex harassment, and slumlord issues.²⁰¹ Immediately after the break-up, the firms continued to occupy the same building, with Traber & Voorhees subletting from H&S,²⁰² which leased a small space upstairs from Litt, Marquez & Fajardo.²⁰³ One year later, Hadsell, Traber, and Voorhees proposed moving their offices to Pasadena, to be closer to their homes, and both firms transferred to their current

193. *Id.*

194. *Id.*

195. *Id.*

196. Interview with Hadsell, *supra* note 95.

197. *Id.*

198. Interview with Stormer, *supra* note 105.

199. Lauren Blau, Litt & Stormer Plans Split to Three Offices, L.A. Daily J., July 8, 1991, at 1.

200. Interview with Voorhees, *supra* note 143.

201. Blau, *supra* note.

202. Interview with Voorhees, *supra* note 143.

203. Interview with Hadsell, *supra* note 95.

offices near Old Town Pasadena.²⁰⁴ Among the fellows, there was a feeling that they were “like the children of a divorce” in that they did not know “which parent was going to get custody.”²⁰⁵ Hadsell and Stormer invited Richardson and Keeney to join them immediately after the breakup, but they initially declined.²⁰⁶ Richardson served out the term of her fellowship with Litt, Marquez & Fajardo and then went to H&S in January of 1993. After the dissolution, Keeney joined the Los Angeles branch of the Equal Employment Opportunity Commission, where she served as a trial attorney for two years before joining H&S in 1993.²⁰⁷

C. A Pragmatic Partnership: The Creation of Hadsell & Stormer

Hadsell had known Stormer from their involvement in the NLG, but neither had discussed the possibility of starting a firm together before the demise of Litt & Stormer.²⁰⁸ After the decision was made to dissolve the firm, H&S agreed to enter a partnership over lunch.

[E]ach of us had two requirements for the other: Mine was everybody gets a month vacation and we had to find a place in Pasadena because I was so tired of schlepping to the Westside and to Mid-Wilshire.... His was that he could work any hours that he wanted and if that meant—and it did in fact mean for a very long time and to some extent still continues to mean—if that meant leaving work at one in the afternoon or two in the afternoon and coming back at three or four in the morning, that’s what it meant, because he wanted to be with his kids and be with them in their upbringing and doing all that kind of stuff. And that we wouldn’t only take cases that had to do with Pasadena.²⁰⁹

The two opted to continue in the private firm model because they “wanted to be as unfettered as possible and...knew that the closer you get to a grant-funded organization the more restrictions there are going to be.”²¹⁰ As Hadsell put it: “We really, literally, wanted to be able to take any case we wanted.”²¹¹ Starting their own firm thus spoke to their pursuit of autonomy and their ability to tolerate risk. Stormer was able to assert that “this is what I want to do. And I don’t care how much money I make. And I don’t care if for the first ten years of my practice, every judge who I walk in front of things I’m just the

204. Interview with Stormer, *supra*.

205. Interview with Richardson, *supra* note 161.

206. Interview with Hadsell, *supra* note 95.

207. H&S, Inc., Southern California Super Lawyers, Feb. 2005, at 59.

208. Interview with Hadsell, *supra* note 95.

209. Hadsell.

210. *Id.*

211. *Id.*

worst thing that's been in this court room in the last twenty years. I'm going to do this because I like it."²¹²

The decision to form their own corporation—which they did because “someone told us to”²¹³—was, at the moment they made it, fraught with financial insecurity. They “had no money *at all* because Barry [Litt] had financed that firm Not a dime.” Until 1991, Stormer never made more than \$40,000 per year.²¹⁴ However, the picture quickly changed. In fact, as the Litt & Stormer firm was imploding, Hadsell and Stormer were preparing for trials, both of which returned major jury verdicts right around the time that H&S formed.²¹⁵ In *Martin v. Texaco Refining and Marketing, Inc.*,²¹⁶ Stormer won a \$15 million jury verdict on behalf of a woman who was passed over for promotions and retaliated against when she sued;²¹⁷ the award was the largest ever in a sex discrimination case at the time, though it was later reversed on appeal and settled.²¹⁸ For her part, Hadsell won a \$3 million jury verdict in a landmark sexual harassment case, *Allison v. City of Long Beach*,²¹⁹ in which two female police officers were forced to resign after persistent harassment.²²⁰ As a result, the firm gained immediate prominence as a boutique civil rights firm specializing in sexual harassment and employment discrimination. This coincided with the passage of the Civil Rights Act of 1991, which created the right to a jury trial in employment discrimination cases and provided plaintiffs with compensatory and punitive damages.²²² As more plaintiffs came forward, H&S's reputation meant that it began to generate a steady stream of good cases in the area, which allowed the lawyers to bankroll their new venture and pay off a \$100,000 loan that they had taken out from a

212. Interview with Stormer, *supra* note.

213. *Id.*

214. Interview with Stormer, *supra* note 105.

215. Interview with Hadsell, *supra* note 95.

216. *Martin v. Texaco Refining and Marketing, Inc.*, No. C 613 044.

217. Lauren Blau, Jurors Award Record \$15M in Texaco Bias Case, L.A. Daily J., Oct. 4, 1991, at 1, 11; see also A Verdict to Shatter the Glass, L.A. Times, Oct. 12, 1991, at B5; Donna K.H. Walters, Texaco Is Told to Promote Winner of Sex Bias Case, L.A. Times, Feb. 12, 1992, at D1, D5.

218. See H&S, Significant Verdicts and Settlements, at <http://www.hadsellstormer.com/settleverdicts.html>; see also Lauren Blau, Retrial Set in Texaco Bias Case, L.A. Daily J., Nov. 27, 1995, at 3.

219. *Allison v. City of Long Beach*, CV 89-3240 RG (JRx).

220. See H&S, Significant Verdicts and Settlements, at <http://www.hadsellstormer.com/settleverdicts.html>. The case was later turned into a movie, *With Hostile Intent* (1995).

222. Civil Rights Act of 1991, 42 U.S.C. § 1981a; see also Sean Farhang, Congressional Mobilization of Private Litigants: Evidence from the Civil Rights Act of 1991, JSP/Center for the Study of Law and Society Faculty Working Paper 53, 2007, at <http://repositories.cdlib.org/fwp/53>.

former client to get the firm off the ground.²²³ In the mid-1990s, the firm started to succeed beyond the partners' "wildest expectations" as they began to get better cases, understand how to manage the business side of the practice, and litigate more effectively.²²⁴

Hadsell and Stormer set out with a broad conception of the firm's political goals: They "wanted to do the good work, but . . . were very loose in terms of what that meant."²²⁵ During the first few years of the firm's existence, it focused almost exclusively on sexual harassment and discrimination matters because of the reputation it had gained in the *Martin* and *Allison* cases.²²⁶ At the end of the 1990s, the firm made a conscious decision to move away from sexual harassment cases because they had "been there, done that," and also because the field had become more saturated with lawyers, which made it more competitive to get lucrative cases.²²⁷

Their partnership flourished, in part, because Hadsell and Stormer shared basic values about law practice. Both were willing to take financial risks and gave each other permission to take on a case "even though we knew it wasn't going to make a dime."²²⁸ As Hadsell put it:

[W]e've had a lot of faith that eventually something would come in because we have a lot of confidence in ourselves. But it doesn't necessarily show up in a paycheck every month.... [B]ut the firm is a big firm, it survives and we're able to meet all our expenses and eventually we'll get a paycheck—and hopefully it will be a big paycheck that will make up for the ones that you didn't get.²²⁹

From the outset, the firm took out a substantial line of credit and the partners have shared a "willingness to use it" out of a belief that "you can't really litigate on the cheap."²³⁰ In addition, the partners meshed in terms of temperament. "[W]e both are pretty laissez faire in terms of tolerance for each other's idiosyncratic ways. Dan is very, very idiosyncratic and I think in my own way I am as well. And neither of us have very strict codes of behavior for each other or for other people."²³¹

223. Interview with Hadsell, *supra* note 95.

224. Interview with Stormer, *supra* note 105.

225. Interview with Hadsell, *supra* note 95.

226. *Id.*

227. *Id.*

228. *Id.*

229. *Id.*

230. Interview with Stormer, *supra* note 105.

231. Interview with Hadsell, *supra* note 95.

One of the reasons why the firm has stayed true to its idealism and not shifted over time toward a more commercial practice is the strong political commitments of the founders.²³² The values are inscribed in the firm's physical layout, which is at once a shrine to its nonconformist ethos and radical lineage, as well as its well-deserved reputation for litigation prowess. A visitor to the firm enters to a drawing of a smug Donald Rumsfeld under the caption "Secretary of Offense," set next to a triptych-like arrangement of the Dalai Lama, Ghandi, and Martin Luther King, Jr. One ascends the stairs to be greeted by a life-sized Homer Simpson wearing a Santa outfit. The main upstairs conference room is decorated with prints of leftist icons Che Guevarra and Salvador Allende, alongside posters of rock legends Jimi Hendrix, Jefferson Airplane, the Beatles, and an autographed album cover of the Grateful Dead. A photograph of Darryl Gates, the former police chief of Los Angeles, sits ignominiously underneath a conference-room credenza to symbolize the low regard with which he is held by members of the firm, which litigated police abuse cases perpetrated under his watch. On top of the credenza is a certificate from the National Rifle Association qualifying Dan Stormer as a Marksman—an ironic nod to his upbringing in a family of subsistence farmers in rural Pennsylvania. Yet while the décor bespeaks unconventionality, it also underscores the firm's professional prestige built upon its reputation for litigation skill. Alongside the 1960s nostalgia are plaques from groups such as the ACLU, California Women's Law Center, and the NLG recognizing H&S for its extraordinary service to the public interest. The firm is also dotted with framed articles recognizing partners as litigation experts and associates as "rising stars."²³³

D. The Next Generation: Growth and Diversification

From its uncertain early days, H&S's litigation success helped establish it as a leading force in Los Angeles's progressive legal community, allowing the firm to attract a talented cadre of young lawyers—who, in turn, further reinforced its litigation prowess. By 2007, the firm had grown to ten attorneys: Hadsell and Stormer as the named partners; Keeney and Richardson as junior (nonequity) partners; and six associates: Cornelia Dai, Lauren Teukolsky, Sanjukta Paul, Fernando Gaytan, Lisa Holder, and Natalie Nardecchia. All of the associates came with impressive academic and activist credentials—and also brought greater diversity to the firm.

Dai was a Berkeley undergraduate who went to school find "the type of work that helped people."²³⁴ In college, she did an internship at the Public Defender's office in San Jose, but determined that "it wasn't quite what [she] wanted to do."²³⁵ From there, she took a year off after college to work for a solo

232. Cf. Council for Public Interest Law, *supra* note, at 145.

233. See H&S, Inc., *Southern California Super Lawyers 2007 – Rising Stars Edition 21* (2007).

234. Interview with Cornelia Dai, Associate, Hadsell & Stormer, in Pasadena, Cal. (July 19, 2007).

235. *Id.*

practitioner and tutor at-risk kids. When she enrolled at USC Law School, she did not have a precise idea of what route she would take and a summer internship in dependency court disabused her of that path. “I thought I’d really have an interest advocating for children but I just couldn’t do what I saw other lawyers doing at the dependency court. It was just too emotionally draining.”²³⁶ She was hired as a summer clerk by H&S, drawn by the fact that “it offered a variety of different types of areas to go into, more general civil rights practice rather than just a certain niche.”²³⁷ Upon graduation, she received a public interest law foundation grant to work in the consumer rights project at Bet Tzedek, a direct legal services office in Los Angeles, but found it too “narrow.” In the summer of 1999 after graduation, H&S offered Dai a position as a contract attorney. On top of being attracted to the range of issues H&S took on, the private firm model appealed to Dai because “the pace was a bit quicker, and maybe [it offered] more challenges, and offered a little be more money.”²³⁸ She accepted the job and was soon converted from a contract attorney to the firm’s only associate.

Dai was soon joined by Teukolsky, a Harvard undergraduate who graduated in the first class of the UCLA School of Law’s Program in Public Interest Law and Policy. She was an academic powerhouse, graduating near the very top of the class, serving as an articles editor on the law review, winning the school’s moot court competition, and then landing a prestigious Ninth Circuit clerkship with Judge Harry Pregerson (she also clerked on the district court for Howard Matz). In law school, she was single-mindedly focused on pursuing a public interest career, “thinking [she] would probably end up at a non-profit.”²³⁹ She spent one summer at a plaintiff-side employment and labor firm in San Francisco, which she “really loved” because it was “very organized,” had “lots of resources,” “engaged in a ton of different kinds of litigation,” and was “fast-paced” with a diverse docket.²⁴⁰ That experience sold her on the notion of working at a private PIL firm and, while clerking, she applied to a number of such firms inquiring about job openings. One attorney she applied to, Della Bahan, passed on her resume to H&S, which gave her an interview. For Teukolsky, the firm had a “great vibe” and was appealing because it did a “huge amount of different kinds of litigation,” including “employment litigation, discrimination, wage and hour class actions, [and] some fascinating international human rights work.... All of that sounded much more interesting to me than doing pension work for unions.”²⁴¹ She accepted the job in 2002, in no small

236. Id.

237. Id.

238. Id.

239. Telephone Interview with Lauren Teukolsky, Associate, Hadsell & Stormer (Aug. 17, 2007).

240. Id.

241. Id.

part because she believed she could get the “best training doing private public interest litigation.”²⁴²

Holder joined the firm in 2004 following an equally impressive trajectory. She went to the NYU School of Law on a Root-Tilden fellowship, which provides a full tuition waiver to public interest-oriented students.²⁴³ Upon graduation, she was awarded a Soros Justice Fellowship, which she used to work first at the Neighborhood Defender Service of Harlem and then at the Alternate Public Defender in Los Angeles, where she did mitigation work on capital cases.²⁴⁴ As her fellowship was coming to a close, Holder began searching for a job and came to H&S by “serendipity,” after talking to some NLG contacts who referred her to Richardson. “I just called Ann cold and told her who I was and people kept telling me about Hadsell & Stormer, and how it was probably a good fit. So Ann and I met...just for me to get to know her. I didn’t really know whether they had an opening or what was going on. We met, and then an opening came up, and she told me to come in and interview for it.”²⁴⁵ Holder got the job, becoming the firm’s first African American lawyer.

Gaytan arrived by that same year. The son of Mexican immigrants, Gaytan grew up in San Bernardino in a monolingual Spanish-speaking household. He excelled in high school but was forced to go to community college: “[M]y parents couldn’t afford to send me to college.”²⁴⁶ Gaytan rejected the advice of his high school guidance counselor to aim low, and set his sights on transferring to Berkeley. “I drove myself to Berkeley and enrolled...in community college and slept on my friend’s couch for a while until I could get an apartment.... [I said to myself] ‘Forget everything my counselor said.... Just go there...and make it happen.’”²⁴⁷ He did, earning a transfer to Berkeley despite working 40-hours a week. He majored in Ethnic Studies and began working with migrant farm workers. “Through that I saw this was what I wanted to do. I wanted a law degree and being a lawyer would provide me with the tools that I could then use to help folks invoke social change.”²⁴⁸ Gaytan enrolled at the USC School of Law and won a Skadden Fellowship to work at the Los Angeles Center for Law and Justice in East Los Angeles, where he represented immigrants victimized by notario fraud. Yet he grew frustrated with the limits of what he could achieve there. “Even if I had wanted to make [my] project bigger by doing all sorts of

242. Id.

243. Interview with Lisa Holder, Associate, Hadsell & Stormer, in Pasadena, Cal. (July 18, 2007).

244. Id.

245. Id.

246. Interview with Fernando Gaytan, Associate, Hadsell & Stormer, in Pasadena, Cal. (July 18, 2007).

247. Id.

248. Id.

litigation and filing law suits, we couldn't afford to take a position."²⁴⁹ Gaytan began exploring alternatives and friends recommended he contact Stormer, who had just been in the news for successfully representing a domestic worker enslaved by her employers. The firm seemed like a good fit for Gaytan, who "really needed to acquire skills" to effectively advocate for immigrants, and who was attracted by the firm's "broad range of cases."²⁵⁰ He met with Stormer and conveyed his "need to develop skills" and "to be able to litigate."²⁵¹ Not long after their meeting, Stormer called Gaytan in for an interview and offered him a job.

Paul joined the firm soon thereafter in 2005. She was the daughter of highly educated immigrants from India, who moved to Oklahoma at a young age to live in a lower-middle class neighborhood near her mother's friends; they later moved to Omaha, Nebraska, where Paul went to junior high and high school.²⁵² Her parents "really made it as immigrants and are very well off now," which made her experience a range of socioeconomic experiences. She carried these to Yale Law School, where she was committed to addressing economic disparity, though she did not know then "exactly what that would mean."²⁵³ She considered completing a Ph.D. in Philosophy after law school, but when that "fell through at the last minute," she joined a New York law firm for nine months, where she "made a lot of money and...experienced a world that I'll never experience again."²⁵⁴ Paul clerked on the Ninth Circuit for Judge Alfred Goodwin and sent a letter of application to H&S during the clerkship. She thought the firm "seemed perfect": "I was like: if I'm going to be a lawyer, let me actually be a lawyer. I don't want to do some half-assed thing."²⁵⁵ She interviewed at the firm, liked the people, who were "quirky and weird," and when offered the job, "just said yes."²⁵⁶

Nardecchia was the most junior lawyer at the firm, coming from the ACLU of Southern California in 2007.²⁵⁷ She was motivated to go to law school by her commitment to LGBT rights. She attended Berkeley's Boalt Hall School of Law, where she worked for the National Center for Lesbian Rights and the ACLU of

249. Id.

250. Id.

251. Id.

252. Interview with Sanjukta Paul, Associate, Hadsell & Stormer, in Pasadena, Cal. (July 19, 2007).

253. Id.

254. Id.

255. Id.

256. Id.

257. Interview with Natalie Nardecchia, Associate, Hadsell & Stormer, in Pasadena, Cal. (July 18, 2007).

Northern California.²⁵⁸ After graduating, she received a Pride Law fellowship to work on LGBT youth issues at the ACLU of Southern California, where she co-counseled a sexual orientation discrimination case with Richardson and Stormer, who she “really admired.”²⁵⁹ When her mentor left the ACLU, she applied at H&S and was quickly hired.²⁶⁰

IV. ANALYSIS

The entrance of junior lawyers as part of the overall arc of H&S’s evolution highlights important features of its “private” PIL structure. As their stories suggest, they are attracted to H&S’s foundational commitment to core progressive political values and putting law into action in the service of the less powerful. They are all deeply dedicated to different types of progressive causes and have made deliberate choices to sacrifice more lucrative and prestigious practices to pursue public interest work. Thus, the public interest orientation of the firm, forged by its partners, is a major draw. Yet, its “privateness” also matters. Lawyers come to the firm first and foremost out of political commitment, but value the diversity of cases that the firm’s litigation model allows them to pursue. They want to defend the rights of poor and marginalized communities, but also value the chance to be “real” litigators. They eschew wealth, but are attentive to the potentially greater economic stability that the firm offers over the nongovernmental sector. This Part carefully examines how the lawyers negotiate the firm’s hybrid public-private identity across three key axes of firm culture: the construction of lawyer identity (professionalism), the exercise of decision making power (power), and the management of bottom-line concerns (profit).

A. Professionalism

Organizations influence how lawyers view their political cause, while also impacting how they think of themselves as professionals.²⁶¹ In the case of H&S, the effort to pursue public interest cases within a fee-generating structure produces distinctive notions of political mission and professional role, which both bear the imprint of the firm’s hybrid identity. First, there is a symmetry between the firm’s broadly articulated mission and its need for flexibility in pursuing remunerative cases. Although the lawyers tend toward more open-textured and varied conceptions of mission as a matter of political conviction, that approach also maps onto the need to adapt to new interests and economic opportunities, and to permit a high degree of lawyer autonomy in case selection. Additionally, the fact that the firm’s work is organized around litigating actual cases (as opposed to broader advocacy) influences the lawyers’ sense of the

258. Id.

259. Id.

260. Id.

261. See Robert L. Nelson & David M. Trubek, *Arenas of Professionalism: The Professional Ideologies of Lawyers in Context*, in *Lawyers’ Ideals/Lawyers’ Practices; Transformations in the American Legal Profession 1* (Robert L. Nelson, David M. Trubek & Rayman L. Solomon eds., 1992).

scope of their ultimate political accomplishments: While they care deeply about the relation of their legal work to social change, they generally view their contributions in modest, albeit important, terms. This circumspection relates to a second observation, which is that the firm's hybridity is reflected in the dual nature of the lawyers' role conception, which contains both radical and traditional elements. While the lawyers categorically view themselves as cause lawyers—and therefore embrace a sense of professional outsidership—the firm's financial structure and commitment to litigation prowess influences a role identity that is generally client-centered. As a practical matter, this means that the lawyers relate to professionalism in a bifurcated way: client loyalty is emphasized (and accountability to broader political constituencies is downplayed) as part of the firm's commitment to effective client service, while broad professional obligations, such as pro bono, are rejected as inapt and inconsistent with firm radicalism.

1. *Mission*

The loose conception of organizational cause that animated the initial formation of H&S has continued to guide practice at the firm. In Stormer's terms, "I'm not sure if we have a big picture."²⁶²

As opposed to lawyers in PIL groups whose practice is organized around the vindication of specific political principles, the H&S lawyers operate according to the broad mantra of "fighting injustice, no matter what form it takes."²⁶³ There is, to be sure, an implicit set of political commitments, which one might define as traditional Left and which generally includes support for the rights of socially marginalized groups and the working class, tied in with a robust conception of "corporate and government accountability."²⁶⁴ Some lawyers in the firm credit this implicit political ideology as promoting cohesion among firm lawyers and avoiding the types of deep political fissures that split the Litt & Stormer firm: "[B]ecause we are friends and we want to have a peaceful mutually respectful work environment, we try to avoid having really intense debates about policy issues."²⁶⁵ Others agreed that political difference was not explicitly discussed, but were more ambivalent about whether that was positive: "[T]here are differences among us, but I think it's hard to articulate because I think that's something [that] is articulated the least—maybe because it's the most given."²⁶⁶

The breadth of the firm's conception of cause creates opportunities for periodic collective reassessment of the firm's direction. Because it is not tied to a specific movement goal, the firm can evaluate how it wants to allocate its litigation resources in light of the shifting terrain of progressive politics in Los Angeles. Of course, part of this analysis is tied to finding the types of cases that

262. Interview with Stormer, *supra* note.

263. H&S, Inc., at <http://www.hadsellstormer.com>.

264. *Id.*

265. Interview with Keeney, *supra* note 146.

266. Interview with Paul.

generate fees; but the firm members are conscious about thinking more broadly about evaluating its political impact. Every couple of years, for instance, the firm holds a retreat that provides a forum to review major policy issues within the firm. At the 2007 retreat, one item of the retreat agenda was “Where do we see the firm going in five years? Should we be selecting cases differently, i.e., different criteria, different analysis? Should we develop different areas of practice?”²⁶⁷ Out of this discussion came a decision to consider moving the practice into the area of environmental justice, which the attorneys agreed had become an important issue that was underserved among progressive legal organizations.

The breadth of the firm’s articulated mission also creates space for individual lawyers to define the firm’s goals as compatible with their own political commitments and to advocate that the firm take on cases that advance the causes they believe in. In articulating the firm’s cause, the firm’s lawyers generally emphasized an expansive vision of social justice combined with a commitment to high-quality litigation.²⁶⁸ Stormer viewed H&S as “more of a civil rights firm, but that’s old school.”²⁶⁹ Overall, she stated that “we represent people who don’t have power against people who do have power.”²⁷⁰ Keeney did not think that “we have a single goal. We do want to be available as attorneys whenever there are significant first amendment violations or people being oppressed because of their political ideas.”²⁷¹ Other firm lawyers advanced similar broad notions of firm mission:

- [E]verybody here is interested in taking cases that both represent the under-represented and the underdog in situations against their employers, or the government . . . to make sure that fairness is really done to people who don’t have the resources and the power in society to do that for themselves.²⁷² I feel like my cause is the same one that I take the side of

267. H&S, Inc., Attorneys’ Retreat, Agenda for May 17, 2007.

268. Similar views were expressed by the firm’s summer interns. Interview with Rachel Bloomenkatz, in Pasadena, Cal. (July 19, 2007) (“I think it’s defined broadly in terms of helping people who are disadvantaged or have been wronged in a particular way by a particular system that is unfair; that is unjust.”); Interview with Susan Garea, in Pasadena, Cal. (July 19, 2007) (“I think it’s defined by...people who have been...wronged by...some kind of illegal action against them that caused them ... harm that’s unjust....”); Interview with Brooke Glass-O’Shea, in Pasadena, Cal. (July 19, 2007) (“I would say that the mission is to take on civil rights oriented cases—which I think is defined pretty broadly by the partners here—civil rights...being anything from small scale labor violations to discrimination.... And also to maintain a profitable firm.”).

269. Interview with Stormer, *supra* note.

270. Interview with Stormer, *supra* note.

271. Interview with Keeney, *supra* note.

272. Interview with Richardson, *supra* note 161.

the person who's getting screwed by the more powerful member of that equation.²⁷³

- I think generally, we want to stay on top of progressive and current issues, and play whatever part we can in being a political and progressive firm.²⁷⁴
- I think that the firm really wants to make a difference, political difference, and to raise up the voice of the underdog We represent people and causes, who may not be politically popular.²⁷⁵
- I think in this public interest community, . . . we're seen...as experts in litigation. This is what we do, we do it well That more than a substantive area of the law [defines us] [W]e all kind of share the politics and not just share it outside of work but we want that to be part of our work lives Everything else, everyone differs.²⁷⁶
- I think the firm sees itself as a private public interest law firm where lawyers come together to try to use their law degree and their roles as lawyers to influence social change and helping communities that aren't well represented.²⁷⁷
- I think the mission is . . . to effect lasting social change on a broad scale, on a scale that has somewhat of a global impact, and to disseminate a message to attorneys that you can have a tremendous impact as an attorney interested in making social change.²⁷⁸

Within this broad social change rubric, attorneys find space for pursuing the causes they believe in. One senior associate describes “corporate accountability” as one of her causes and says that, “Ninety-nine percent of my cases have been against private corporations as opposed to government entities In those cases, I have found the corporations to have engaged in some kind of misconduct—whether in the treatment of my clients or during the course of litigation, or both.”²⁷⁹ At the firm, she has “come away from every one of those cases really...feeling like we still uncovered something bad the corporation had done, and hopefully they know that people are watching, and that they have to comply with laws and that laws are important.”²⁸⁰

273. *Id.*

274. Interview with Cornelia Dai, Associate, Hadsell & Stormer, Inc., in Pasadena, Cal. (July 19, 2007).

275. Telephone Interview with Lauren Teukolsky, Associate, Hadsell & Stormer, Inc., in Pasadena, Cal. (Aug. 17, 2007).

276. Interview with Sanjukta Mitra Paul, Associate, Hadsell & Stormer, Inc., in Pasadena, Cal. (July 19, 2007).

277. Interview with Fernando Gaytan, Associate, Hadsell & Stormer, Inc., in Pasadena, Cal. (July 18, 2007).

278. Interview with Lisa Holder, Associate, Hadsell & Stormer, Inc., in Pasadena, Cal. (July 18, 2007).

279. Telephone Interview with Teukolsky, *supra* note 214.

280. *Id.*

Another attorney suggested that she had been able to pursue her commitment to “economic justice” at the firm: “I feel like I’ve been given freedom The most notable example of that is that I represented an individual domestic worker in what was ultimately a wage and hour case There was actually some dissent [because] some people didn’t feel like it made economic sense, but, I think it turned out to [because] we ended up getting a very good result.”²⁸¹ Junior associates also readily viewed the firm as providing opportunities to take on cases that aligned with their personal commitments. One stated that the international work she cared about was “totally accessible,”²⁸² while another with a background in LGBT issues said that there was “so much opportunity” for getting involved in those issues: “I’m currently working on a sexual orientation discrimination case that’s set to go to trial in the fall. So I really . . . feel like I get to work on things that I care about.”²⁸³

The associates, in particular, emphasized that the firm was quite open to accepting cases in new areas that comported with individual attorney interests and described the firm’s political goals as shaped, in part, by the ideological constellation of the individual lawyers. As Nardecchia put it, “if you have something that you’re particularly interested in and you bring it up at the attorney’s meeting, I feel like people will listen be really receptive.... It’s almost like it’s a more radical political environment than any law office I’ve ever been in.” Associates were rewarded for showing initiative. Paul, the associate who brought the domestic worker case, found it herself and worked it up for intake.²⁸⁴ She noted that Stormer “let me do everything I wanted to.... I felt like it was almost like he was my guidance person that I went to for, but I was doing the case.”²⁸⁵ In another example, the firm represented garment workers who had been countersued in a so-called SLAPP (Strategic Lawsuit Against Public Participation) suit by their employer charging the workers with defamation in an effort to get them to drop their wage claims and cease protesting over their treatment. After an associate brought the case to the firm’s attention, it was able to get the case dismissed and then “filed a lawsuit against the sweatshop owner and their attorney for malicious prosecution and got a nice settlement for the clients.”²⁸⁶

While the firm offered opportunities for lawyers to pursue different types of causes, some felt that their commitments had to be recalibrated to accord with the realities of private law practice. Dai, a senior associate who believed that the firm generally allowed her to fulfill her goal of working toward “social justice” and representing clients who had been “discriminated against or repressed,” found

281. Interview with Paul.

282. Interview with Teukolsky.

283. Interview with Natalie Nardecchia, Associate, H&S, Inc., in Pasadena, Cal. (July 18, 2007).

284. Interview with Paul, *supra* note 215.

285. Paul.

286. Telephone Interview with Teukolsky, *supra* note 214.

that such fulfillment came on a “week-to-week basis” given the range of matters she had to handle.²⁸⁷ Her more junior counterpart, Gaytan, described how he achieved his goals at the firm:

I see myself fulfilling [my] goal [of helping migrant communities] because I think it’s important for clients to see me on their side. I understand the issues we’re dealing with based on personal experience.... I understand where they’re coming from and I understand the whole process of litigation [I help] those folks through that process and also keep in mind the overall effect, which is representing them effectively with that issue on that case—and winning.²⁸⁸

2. *Community*

Given its big-tent conception of firm mission, a key question for H&S is how it remains accountable to a broader political constituency. Accountability to the communities PIL lawyers purport to serve is a long-standing concern. Indeed, the negative image of PIL lawyers placing their vision of the good ahead of affected communities is one of the unfortunate legacies of the civil rights movement.²⁸⁹

In the private firm context, the issue of accountability is in some ways more difficult. In the NGO setting, accountability is at least partly determined by responsiveness to boards that (at least in theory) have broad community representation. In addition, the requirement that NGOs account to funders for the use of philanthropic funds places an additional check on their activities. In the private firm, by contrast, these potential external checks are not in place; instead, the firm is attentive to client interests both as a matter of professional obligation and financial survival. The premium on autonomy in case selection may militate against answering to outside political groups—indeed, the attempt to build in systematic input by outside communities was one factor that ultimately led to the demise of Litt & Stormer. In the private firm context, then, a key consideration is how the firm can determine whether its political choices to take on particular types of cases are consistent with the broader needs of the marginalized communities it claims to fight for. How can it accurately evaluate whether its litigation is promoting or hindering the political movements its lawyers care about?

In general, tight accountability to a broader political constituency is traded off in the small firm context for greater lawyer autonomy in case selection and organizational practice. The result is that—without institutional clients like unions—lawyers are given greater freedom to chart their own conception of the public good and determine how to fit their litigation work into that vision. In Stormer’s terms, “I get to do what I want to do. That’s why I signed up to do this....I think I’m a reasonably political person...in the sense of [having] morals,

287. Interview with Dai, *supra* note 213.

288. Interview with Gaytan, *supra* note 216.

289. See Derrick A. Bell, Jr., *Serving Two Masters: Integration Ideals and Client Interests in School Desegregation Litigation*, 85 *Yale L.J.* 470 (1976).

but the bottom line for me is I like doing it.”²⁹⁰ “I get to make my own way. I get to eat what I kill. I get to make my own decisions.”²⁹¹

This autonomy opens up possibilities for radical work since it places the firm outside the strictures of governmental oversight or foundation mandates. But by individualizing determinations of what constitutes appropriate political investments, it also relieves lawyers of having to answer to a broader political constituency. For instance, there may be a self-serving tendency to identify cases that make the firm money with cases that advance the public good. Case decisions may also be made on the basis of partial information about community need or to advance pet political projects.

H&S attempts to counteract this tendency toward becoming too self-referential by encouraging all of its lawyers to engage with community groups and other PIL organizations, by doing outreach and serving on boards of directors, though the partners recognize that it is hard “when all we’re really doing is working every day and then go home and collapse.”²⁹² The partners themselves try to set an example, however: Hadsell, for example, is on the board of the Impact Fund and has served on the local NLG board for 30 years.²⁹³ The firm also attempts to mitigate accountability concerns by hiring a diverse range of attorneys who bring forth different political commitments and community ties. But these efforts are inevitably partial and can lead to case decisions that are politically idiosyncratic.

A related accountability concern is that lawyers, untethered to movement organizations, may forge legal strategies that are, at best, disconnected from movement goals and, at worst, undermine them. This may occur when lawyers view litigation as a paramount reform strategy and privilege it over other types of political mobilization—frequently undermining potentially more effective political efforts.²⁹⁴

The attorneys at H&S diverge from this picture. Rather than legal ideologues, championing the use of litigation as a social change tool, they are circumspect in their evaluation of legal efficacy and sensitive to the relationship between their lawyering and broader social movements. None of the lawyers harbored strong notions that the litigation they undertook was transforming society. Rather, they tended to see themselves as playing a small—though crucial—role in pushing change forward—sometimes in small ways, often incrementally, but forward nonetheless.

On the issue of how much influence lawyers exert on social change processes, the H&S lawyers tend to conform to the pragmatic viewpoint

290. Interview with Stormer, *supra* note (July 14, 2007).

291. Interview with Stormer, *supra* note (July 14, 2007).

292. Hadsell Interview.

293. *Id.*

294. See Lobel, *supra* note 19. For the classic critique of PIL litigation, see Gerald Rosenberg, *The Hollow Hope: Can Courts Bring About Social Change?* (2d ed. 2008).

expressed by Stormer, who views the firm as a “hammer”—the “place of last resort,” “not the vanguard.”²⁹⁵ His view is that litigation works well “when there’s no alternative and somebody is victimized” and that it works poorly when it is viewed as “going to resolve the issue.”²⁹⁶ In fact, Stormer often tries to disabuse clients from the notion that they will be vindicated through litigation:

I do have one speech which is I say I’m going to tell you something and you’re not going to believe me because nobody ever does but here’s the facts of life: litigation is very hard. It’s very stressful. It really makes your life far more difficult. You have to relive the experiences.... You know, I say basically that I personally, if there’s any way of not litigating, I won’t do it. You’re here because we’re your last resort.²⁹⁷

In a similar vein, Hadsell felt “fine with the notion that we’re just a very small piece of it.”²⁹⁸ For her, this conception was, in part, a reaction against the ambitious view of the firm’s obligation to play a vanguard role that split the old Litt & Stormer firm.²⁹⁹ It was also, however, a firmly held political conviction defined through years of progressive work:

301

You’re hopefully on one side of the line advancing economic justice or social justice or whatever, even if it’s only teeny weeny baby steps, at least you’re going down that path.... And to feel like we’re supporting...because we’re so small...to feel like we’re part of a family to the extent that we can contribute a little bit to the acorns of the world.³⁰²

For Hadsell, this modesty was coupled with a sense of obligation to step into the fray and contribute her legal expertise: “I guess in some ways you don’t have a choice. You’ve got to do it—someone’s got to do it. We went to school, we’ve got the skill, we’re doing it. Even if you think we took care of this problem, tomorrow there is going to be another one either exactly like it or slightly different.... So it’s never ending. You’ve just got to do it.”³⁰³ In the end, however, the urge to help is not just about duty, but also intrinsic reward: “I think it does make you feel alive as a human being to be in a fight, and to stand there

295. Interview with Stormer, *supra* note.

296. *Id.*

297. Interview with Stormer.

298. Hadsell Interview.

299. *Id.*

301. Stormer, *supra* note.

302. Hadsell Interview.

303. Hadsell Interview.

for yourself even if you end up being cut off at the knees. You have to do it to be a human being. Maybe that's all we get out of it. But that's something."³⁰⁴

Some of the attorneys expressed common skepticism about the limited nature of litigation as a social change vehicle, while they still held onto the notion that—when done right—litigation could prove empowering.

Richardson, the junior partner, stated that she came out of law school questioning litigation, but now views it as “successful when the lawyers and the clients are on the same page about the purpose.”³⁰⁸ Holder believed that “as far as creating social change and having a huge impact socially, I think litigation is very slow. It can be a very incremental development, but I think the process of litigation really can empower communities.”³⁰⁹ Nardecchia viewed litigation as “a last resort efforts a lot of times.... I think it's necessary and works best...when someone's been wronged and the other side is just really not willing to admit that they were wrong.”³¹⁰

Still others were more ambivalent. Paul put it this way: “I'm sometimes struck by the contrast of how we do things. We're more like, 'Ok, how can we fix this,' 'What can we do?'. . . I sometimes feel . . . like one of our roles is to be hired guns for social movements.”³¹¹ Another associate noted that “there are so many great things that litigation can accomplish, but there are also so many inefficient things.”³¹² Teukolsky expressed a different type of ambivalence. While she believed that “having lawyers like me exist in the world means that corporations will probably be more careful about how they interact with their employees and how they interact with society in general,” she admitted that “the cynical side of me would say what I do just makes it easier for corporations to figure out how to shred documents and not get caught....”³¹³

Other attorneys in the firm separated out distinct areas where they thought litigation worked. For instance, the area of corporate accountability was singled out as one where litigation was thought to change behavior in socially positive ways.³¹⁴ Richardson described her reaction to her first trial: “I remember the first trial I did was the *Martin vs. Texaco* case. And we got big verdict: it was 17 or 21-million dollars. And it was on the business section of the *L.A. Times*. And I remember thinking at the time: ‘The business section? Why is it on the business

304. Id.

308. Interview with Richardson, *supra* note 161.

309. Holder Interview.

310. Nardecchia Interview.

311. Interview with Paul, *supra* note 215.

312. Interview with Gaytan, *supra* note 216.

313. Interview with Teukolsky.

314. Interview with Teukolsky, *supra* note 214 (“I think probably the one area where I can say with confidence that it does make a difference, that what I do does make a difference is in the area of corporate accountability.”).

section?’...and then I realized, ‘because corporations want to know that this kind of verdict is going to affect them.’”³¹⁵ Keeney separated the areas of employment discrimination, where she believed that “the large judgments obtained by our firm and others have really forced employers to change the way that they do business,” from jail litigation, which she viewed as “a constant struggle.”³¹⁶ Holder emphasized the power of international human rights cases that had a “huge impact on people who are really suffering in other countries and also sends out this message to people in this country and globally that activists can have a huge impact on individual’s lives and an impact on a world that seems to be motivated by money and profit.”³¹⁷

3. *Clients*

Although the H&S lawyers are not tightly bound to a broader political constituency, they are still driven by political causes in ways that create potential conflicts with client interests. This tension between client and cause is a common theme in the cause lawyering literature. As opposed to the conventional professional ideal of the lawyer as a morally neutral agent of the client,³¹⁸ the notion of cause lawyering suggests commitment to political or moral ends distinct from client service.³¹⁹ It may be the case that the cause lawyer’s ends mirror those of the client’s and thus any conflict of interest is avoided; however, it is also possible that the cause lawyer views the client in instrumental terms as a means to the end of broader social change through law. The latter concern has stoked suspicion of PIL lawyers since the civil rights era: that they all too often sacrifice client autonomy in the name of their own political goals.³²¹ This is the flip side of the criticism that PIL lawyers are not politically accountable to movements; the concern here is that neither are they accountable to their clients, leaving open the possibility that they act as rogue agents, controlling cases to advance their personal political agendas, and disempowering clients.³²²

315. Interview with Richardson, *supra* note 161.

316. Interview with Keeney, *supra* note 146.

317. Holder interview.

318. See William H. Simon, *The Ideology of Advocacy: Procedural Justice and Professional Ethics*, 1978 *Wis. L. Rev.* 29.

319. See Austin Sarat & Stuart Scheingold, *Cause Lawyering and the Reproduction of Professional Hierarchy: An Introduction*, in *Cause Lawyering: Political Commitments and Professional Responsibilities* 3 (Austin Sarat & Stuart Scheingold eds., 1998); see also Norman Spaulding, *Reinterpreting Professional Identity*, 74 *University of Colorado L. Rev.* 1 (2003).

321. See Gerald P. López, *Rebellious Lawyering: One Chicano’s Vision of Progressive Law Practice* (1991); Derrick Bell, *Serving Two Masters: Integration Ideals and Client Interests in School Desegregation Litigation*, 85 *Yale Law Journal* 470 (1976).

322. The critique of big-firm lawyers is the opposite: that they lack autonomy from their large commercial clients, who hold out the promise of ongoing legal business for the firm. See Nelson, *supra* note 25, at 232.

Yet on the question of balancing client interests and political commitments, the lawyers at H&S tend to locate themselves on the client-centered side of the lawyering spectrum. This is not to say that they lack commitment, but rather that they achieve close identification between lawyer and client goals through the case selection process—screening in cases that fit within the firm’s ideological parameters. Once clients have retained the firm, the lawyers emphasize the paramount nature of their interests in guiding litigation decisions, referring to their professional duty to the clients as the touchstone.

For discrimination cases where the question is compensation for wrongdoing, the potential for conflicts is mitigated, since the issue is simply how much money the client will receive. However, when there is a law reform or injunctive component of a suit, the case is more difficult. For example, H&S sometimes co-counsels cases with the ACLU in which the goal is often to litigate to judgment in order to create precedent that shapes prospective government (or corporate) conduct. In these situations, firm lawyers attempt to memorialize an understanding with the client at the outset of the representation that makes clear that the objective of the suit is to achieve a specific outcome, rather than gain the client compensation. Where a conflict still arises, the lawyers defer to client wishes: “Basically we have an ethical obligation to our clients that takes precedence over the political goals that we would like to accomplish.”³²³ Hadsell emphasized the importance of building trust with the client and resolving conflicts with an eye to client interests: “Hopefully they’re trusting you with the end...and if they’re asking you should I go forward or not, you can’t really say, well there is a fifty percent chance you’re going to lose or who knows how it’s going to grind out, but do it for the cause. It’s difficult to do that.”³²⁴ Holder agreed that there was “always the tension of whether to push for settlement or to push for trial,” but noted that “ultimately you’re going to look out for your client’s best interests.”³²⁵

With respect to client relations more generally, the lawyers vary on their lawyering styles and the degree to which they provide the clients their professional views about the merits of particular case decisions. At one end of the spectrum, Stormer views his role as a seasoned attorney as telling his clients his point of view. “[T]here’s a reason why . . . I’ve done reasonably well at this for awhile which is I have an understanding of the process so I will tell the clients what I think they should do. And sometimes I’ll tell it in fairly strong terms. I don’t think you’re doing the client any favor by saying ‘Well . . . do you want to do this or do you want to do this?’ And then saying, ‘Well, you’re giving each one equal weight.’ I mean, if you’ve got thirty-four years of experience, you’d better share it with the client.”³²⁶ Similarly, Hadsell thought that “the further you go along towards trial, the more the attorneys know, the more likely it is we’re going to be start exerting more pressure on the client...just because we know

323. Interview with Richardson, *supra* note 161.

324. Interview with Hadsell, *supra* note 95.

325. Interview with Holder, *supra* note.

326. Interview with Stormer, *supra* note.

more about the case.”³²⁷ Richardson, for her part, adopted a more explicitly neutral approach, articulating all the possibilities to the client but making clear that “[u]ltimately it’s your decision.”³²⁸

Other lawyers stressed the empowering nature of their client relations or described the bonds that they developed. Junior partner Keeney, for instance, viewed her role “ultimately as empowering [clients] to tell their story in the most persuasive way possible and to realize who they are and their ability to convince other people that they deserve respect and . . . compensation.”³²⁹ With respect to settlement decisions, however, Keeney noted that it was important that she give “them the information, so that they can make an informed decision.”³³⁰ Teukolsky, the senior associate, noted that she was “very close” to her clients: “we talk about all aspects of their lives, and they ask me about my life and so we really do develop a pretty strong relationship.”³³¹ In terms of how that influenced the advice she gave, Teukolsky distinguished her approach in different contexts, stating that “in the area of whether to settle a case or go to trial, that is an area in which I’m particularly deferential to my client and I go to extraordinary lengths to educate them about their case and to say to them this is ultimately your decision, here’s my advice.”³³² On questions of discovery, however, she noted that the process was more “interactive.”³³³ Paul stated that, in a somewhat atypical fashion for her, she became highly involved with a domestic worker client in a case seeking redress for abuse, to the extent that she would “pick her up and take her to depo.”³³⁴

Yet firm lawyers did not idealize their clients and noted times when relationships turned sour. Richardson stated that one lesson she had learned “is that our clients are not angels.”³³⁵ She recounted one story in which she represented an older man passed over for a promotion in an age discrimination case: “[H]e started making these racist remarks about how he really hadn’t been promoted because he’s White and there were all these Mexicans that don’t deserve the position...and at first I was shocked, because I thought, you know, how can you say that to me when you know that I’m a public interest lawyer and I’m representing you because it’s age discrimination?”³³⁶ Keeney echoed this feeling, noting that “[o]ccasionally we have taken cases where I have lost

327. Interview with Hadsell, *supra* note.

328. Richardson Interview, *supra* note.

329. Interview with Keeney, *supra* note 146.

330. *Id.*

331. Interview with Teukolsky, *supra* note.

332. Interview with Teukolsky, *supra* note 214.

333. *Id.*

334. Interview with Paul, *supra* note 215.

335. Interview with Richardson.

336. *Id.*

confidence that my client is either telling the whole truth or...sometimes [you find that] your client perhaps was not the best employee, perhaps did not disclose everything to you when they came in.”³³⁷ Hadsell was more blunt: “Sometimes you take on what you think are just causes and maybe the causes are good, but the client turns out to be a total and complete ass.”³³⁸ The lawyers, however, stressed their professional duty to do their best to resolve the case favorably for the clients, however much they might dislike them. And they also recognized the reputational value in this type of approach: “[T]here’s a lot of cache to being known as the firm who will take even the most difficult case all the way to the end.”³³⁹

H&S lawyers generally had traditional views vis-a-vis other standard client ethics issues. With respect to the potential for conflicts between firm financial interests and client interests, particularly around the question of settlement, the firm lawyers all emphasized the primacy of their ethical obligations to adhere to the client’s wishes on settlement questions—even if it meant deferring to a client’s choice to go to trial in a risky case in which a bad outcome could lose the firm money. In discussing settlement with clients, Stormer does attempt to take the emotion out of it so that they can make a rational decision: “What I tell [clients] is this standard speech I have, which is: ‘You know I’ve got lots of cases and I go to trial a lot—in fact, I go to trial more than virtually anybody I know. And the Monday after this cases is done, win or lose, I just open my door a little bit, a [new] case falls I, and I start working again. We lose, you got nothing.’”³⁴⁰ Nonetheless, if a client wants to press ahead despite the risks, Stormer stresses that the lawyer has to accept that choice and not dwell on the risk of losing fees: “You can’t think about it. Because the minute you start thinking about that, you’re giving up something.”³⁴¹ In terms of routine ethical conflicts, firm lawyers suggested that it was common to experience conflicts between plaintiffs in class actions or other multiple-plaintiff suits. Hadsell estimated that conflicts occur in about one-fifth of multiple plaintiff cases, though she noted that they were usually resolved and rarely were disqualifying.³⁴² Intra-plaintiff conflicts could be most acute at settlement, where one client had a stronger case or one client favored settlement while the other was adamant about proceeding. In these scenarios, the firm would “just get advice if necessary, farm it out to another attorney and have them take on the one case.”³⁴³

337. Keeney Interview.

338. Interview with Hadsell.

339. Interview with Hadsell.

340. Interview with Stormer.

341. Interview with Stormer, *supra* note 105.

342. Interview with Hadsell, *supra* note 95.

343. *Id.*

4. *Profession*

While the attorneys at H&S take care to express their adherence to client obligations, they generally (though not uniformly) disclaim broader professional duties to engage in conventional notions of “public service.” Instead, they view their work as intrinsically aligned with the public good, thus eliminating the need for any “extra” efforts to “give back” to the community at large. In this sense, their self-conception as lawyers for the “underdogs” means that they view all their work through the lens of social activism and do not bracket out specific cases as pro bono matters that are qualitatively distinct from the cases that comprise the rest of their docket.³⁴⁴ The H&S lawyers thus view public service as an inherent part of their lawyering—a view that is consistent with that expressed in other studies of plaintiff’s lawyers, who generally see their work in terms of helping the individual,³⁴⁵ and distinct from their big firm counterparts who approach pro bono as an addendum to fee-generating practice.³⁴⁶ As Stormer stated bluntly: “I don’t believe in pro bono.”³⁴⁷

Nonetheless, the way that case selection played out at H&S meant that some cases became, in effect, “pro bono” cases in the sense that it was either clear at the outset or became quickly apparent that the firm would be unable to collect any fees on the case. “We won’t say pro-bono. But we’ll say we’re taking this case, and we’ll never get fees on it.”³⁴⁸

One case in this vein was a suit brought to protect a fourteen-acre community garden located south of downtown Los Angeles, whose occupants organized themselves as the South Central Farmers Feeding Families to prevent the garden from being demolished and the land sold for commercial purposes. The City of Los Angeles had acquired the property by eminent domain on the condition that it would resell the property to the original landowner if not used for public purposes within ten years. The City granted a permit to the Los Angeles Regional Food Bank to operate a community garden. When the original owner sued for breach of the contract to repurchase, the City agreed to resell him the land, giving him the power to evict the farmers. H&S agreed to represent the South Central Farmers in a suit to block the resale. The judge issued a preliminary injunction, but it was eventually lifted. Though the farmers attempted to raise money to purchase the garden, they fell short and in June 2006 were evicted, during which forty protesters who had rallied to save the garden were arrested. The firm subsequently filed a class action on behalf of the gardeners to nullify the sale for lack of public notice; the case was appealed after a district court judge ruled against the farmers, who attempted to negotiate with the city to acquire an alternate site.

344. Interview with Stormer, *supra* note 105.

345. See Seron, *supra* note 7, at.

346. See Cummings, *supra* note 7, at.

347. Interview with Stormer, *supra* note 105.

348. Interview with Keeney; see also Interview with Richardson (“sometimes we also have understandings with organizations that we’re basically doing pro-bono work”).

The firm took on the case because Stormer felt strongly it was the right thing to do. One attorney raised concerns about the case, but they were focused on the politics of taking sides in a community dispute over the proper use of the land, as an African American group that had been involved in a prior effort to stop the land from being used as a waste incinerator was opposing the farmers.³⁴⁹ However, “Dan felt very strongly that we should represent the farmers and other people would represent the interests of the original community group that had been involved and other people in the neighborhood.”³⁵⁰ Stormer also believed that it was important to give voice to the farmers and stand up for their interests against the City Councilmember and the Mayor who were pushing redevelopment.³⁵¹ In the end, the firm spent “thousands of hours on that and financially it made no sense at all.”³⁵² As Hadsell described it:

That was a case [Stormer] fell in love with and he wanted to do it because he felt it was the righteous cause . . . but there was a period of time last summer when every single person in this law firm—and I mean every single—except for one—our bookkeeper, I think—every single paralegal, every single secretary, every single clerk, every single associate—was down on the farm, working with the Guild. We were just there camping out during the nighttime, there during the day in case the police came to try and evict them. It wasn’t legal work, it was political work. Every single member of this law firm did that (but for one). And that went on for a very long time and so that meant people weren’t working or being able to work on other cases and that has an economic detriment but it also is a very positive economic advantage because people know when we say we’re going to take it to trial or we’ll take it wherever we’re going to take it—we do.³⁵³

Other H&S attorneys pointed to similar situations in which the firm took on cases that were not technically “pro bono” but that everyone in the firm understood that the chances of recovery were quite small because they presented a “huge uphill battle.”³⁵⁴ These included representing garment workers in the SLAPP suit, school children challenging English only standardized tests (*Coachella Valley Unified School District v. State of California*), and a Guantanamo Bay detainee from Afghanistan. A few attorneys suggested that, in a small number of cases, the agreement to proceed pro bono is more explicit. Holder, a former public defender, noted that she had “done some minor misdemeanor cases on a pro-

349. Interview with Keeney, *supra* note 146.

350. *Id.*

351. *Id.*

352. Interview with Stormer, *supra* note 105.

353. Interview with Hadsell, *supra* note 95.

354. Interview with Richardson.

bono basis, like criminal cases where activists who don't have a lot of money are getting arrested."³⁵⁵

H&S's skepticism toward pro bono reflects a deeper ambivalence about their relationship to the profession to which they belong. The lawyers at H&S are, in a tangible sense, professional outsiders. Their close identification with progressive political causes and the interests of their less powerful clients, coupled with their status as plaintiff's lawyers, means that they are viewed by the mainstream bar as unconventional—even threatening.³⁵⁶ This sense of outsidership is reinforced by the fact that the firm's attorneys have not generally participated actively in mainstream bar associations. While Hadsell and Stormer have both been long-time members in the NLG, they have had only sporadic connections with the local and state bars. Stormer, for his part, was on the Los Angeles County Bar's Labor Law Symposium Committee, but his "deal" with them was that while he'd plan a symposium panel, he "wouldn't go to the meetings...[or] participate in the process."³⁵⁷ Hadsell used to attend the County Bar employment section meetings, which are generally dominated by employment defense firms, but stopped going because, "I just want to sock them most of the time. I'm old enough. I don't have to do it, I don't want to do it, so I don't."³⁵⁸ The other partners similarly have had only limited involvement in bar activities, though the firm has encouraged one associate to be involved in the local bar's employment section in order to counteract its emphasis on employment defense.³⁵⁹

Yet, despite their outsider status, the lawyers have accumulated profession status predicated upon claims to litigation skill.³⁶⁰ Stormer's reputation as a trial expert has conferred a long list of professional accolades, which include being named Attorney of the Year by *The California Lawyer* and making the list of top lawyers in numerous local and national surveys.³⁶¹ The other partners have all received similar recognition: In a 2005 Southern *California Super Lawyers* publication, Hadsell was ranked as one of the area's top 100 lawyers, while Keeney and Richardson both were ranked in the top 50 female lawyers.³⁶² This recognition, in turn, has allowed the firm to attract top young legal talent, which has served to reinforce its reputation as a high-level litigation boutique.

This is true both of the associates, whose credentials rival those of young lawyers at the most elite corporate law firms. It has also allowed the firm to attract top-flight summer associates, who receive a \$10,000 stipend for their work. Of the four summer associates in the summer of 2007, three were students

355. Interview with Holder.

356. See Scheingold & Sarat, *supra* note 2, at.

357. Interview with Stormer, *supra* note 229.

358. Interview with Hadsell, *supra* note 95.

359. *Id.*

360. See Scheingold & Sarat, *supra* note 2, at.

361. See Dan Stormer, at <http://www.hadsellstormer.com/dstormer.html>.

362. H&S, Inc., Southern California Super Lawyers, Feb. 2005, at 59.

in UCLA's Program on Public Interest Law and Policy, all of whom were on the Law Review (one subsequently received a clerkship on the U.S. Supreme Court); the fourth was a USC student.³⁶³ Like the associates above them, the summer interns all described the attraction of H&S in terms that emphasized the possibility of combining progressive work with professional development. As one summer associate put it, "there are not too many other organizations that are doing the big litigation where you as a law clerk can really get in on the action."³⁶⁴ Another emphasized that the firm gave her "a lot of responsibility," provided "good feedback," and had the "capacity" with "an amazing support staff" to properly supervise her work—though she noted that the downside was that there was not a lot of client contact and thought that the firm was not community-based.³⁶⁵ One intern felt less well supervised and, instead, described the summer job as "unique in requiring a lot of individual initiative."³⁶⁶ Her view was that the firm's size made it big enough "that people have a hard time keeping track of what you're working on, what you've done, what you know, what you may have researched and what you don't know anything about. And yet there's so much important work to be done that people just throw things at you anyway. So it's an odd in between position where you're given a lot of responsibility but there are not necessarily people who are there to back you up because everybody's busy."³⁶⁷ In the end, the view of the summer associates underscored the distinctive professional status of H&S: a firm that combined the traditional advantages of pay and professional development with a commitment to progressivism.

B. Power

In the context of large corporate law firms, governance is controlled by partners with the strongest connection to lucrative clients.³⁷⁶ Thus, partners derive their internal organizational "power" from external market factors.³⁷⁷ How does power operate within the private PIL firm? H&S combines a commitment to egalitarianism with a traditional pyramid firm structure, in which a small number of rainmaking partners are supported by a larger staff of associates (and two junior partners). This structure pulls in opposite directions. H&S's public-spirited

363. The firm hires four summer associates even though there are significant space constraints out of a sense of building the PIL community. According to Hadsell, "we aren't going to be able to offer jobs, this is a service we can give to the public interest...it's just kind of a political contribution." Interview with Hadsell.

364. Interview with Rachel Bloomekatz, Summer Associate, Hadsell & Stormer, in Pasadena, Cal. (July 19, 2007).

365. Interview with Susan Garea, Summer Associate, Hadsell & Stormer, in Pasadena, Cal. (July 19, 2007).

366. Interview with Brooke Glass-O'Shea. Summer Associate, Hadsell & Stormer, in Pasadena, Cal. (July 19, 2007).

367. Interview with Glass-Oshea.

376. See Nelson, *supra* note 25, at 5.

377. See *id.* at 18-19.

ethos militates in favor of decentralized, consensus-based decision-making, yet the reality of who carries the economic risk operates to centralize power in the partners. In practice, this means that firm governance operates along two tracks: Broad decisions relating to firm politics, such as whether to pursue new categories of cases, are made with wide participation, while specific questions relating to firm economics, particularly how cases are staffed and financed, are made in a more hierarchical manner.

1. *Financial Structure*

A bedrock principle of corporate law is that control follows risk.³⁷⁸ Yet private PIL partners, who carry the ultimate risk, may yield some of their power on ideological grounds. Whether—and how much—they do so depends in part on their normative commitments. But it also is shaped profoundly by the financial stakes. Therefore, before we can understand how firm governance operates, we must have a picture of H&S’s financial structure.

a. High-Stakes Partners

In the firm, Hadsell and Stormer, as the founding partners, carry the highest risk and are entitled to the highest rewards.³⁷⁹ The central financial risk that the firm carries is the line of credit, which allows the firm to underwrite large-scale cases that require substantial up-front out-of-pocket investments. In describing the importance of the credit line, Hadsell stated that there was not “a case in the last...ten years where the cost hasn’t been at least...[in the] 60-75 thousand dollar range that we advance. For a simple case. It just happens.”³⁸⁰ To finance that outlay, the firm draws down its credit line, which is essential to its reputation that it will spend whatever it takes to litigate effectively: “Unfortunately, we’ve never learned how to not spend money.”³⁸¹

Because Hadsell and Stormer are on the line of credit and are subject to taking losses if they occur, they ultimate control financial decisions that bear on risk exposure. And, in addition, they are first in line for any distribution of profits. The distribution system is structured so that Hadsell and Stormer split profits on a fifty-fifty basis up to a preset threshold (below which no one else shares in the profit distribution). As between the named partners, the compensation is strictly egalitarian and not eat-what-you-kill.

b. Risk-Adjusted Partners

Next in line for profit distribution are the junior partners, Keeney and Richardson, who jointly asked Hadsell and Stormer to make them partners after having spent several years at the firm. When they did so, “they weren’t at that

378. See William A. Klein & John C. Coffee, Jr., *Business Organization and Finance: Legal and Economic Principles* 56 (10th ed. 2007).

379. Cf. Kelly, *supra* note 14, at 45.

380. Interview with Hadsell.

381. Interview with Hadsell.

time...interested in risk. So we worked out this formula which kind of gives them an upside but it doesn't really put them at any risk."³⁸²

The formula works out to provide Keeney and Richardson, who are not obligated to creditors, a tiered profit distribution that depends on how well the firm does in a given year. Up to a present base profit level, Hadsell and Stormer receive 100% and Keeney and Richardson receive zero. However, if profits go above the baseline, Keeney and Richardson receive an increasing share, which is pegged to certain benchmarks. Thus, if the firm generates a profit above an initial benchmark (Tier 1), Keeney and Richardson will receive a designated percentage; if profit surpasses higher benchmarks (e.g., Tier 2, 3, etc.), their percentage share increases accordingly. Within each distribution tier, Keeney and Richardson share profits 50-50.

The junior partners also receive a fixed salary. Richardson estimates that the compensation is one-quarter of what someone at her level would make at a large firm and about one-third more than in a nonprofit profit organization.³⁸³ In 2007, the average Profit Per Partner at the AmLaw 200 firms was nearly \$1 million. If we use this as a point of comparison, discounting for seniority, we would estimate that the junior partners make roughly \$200,000 per year in salary. Presumably, Hadsell and Stormer would, on average, make some order of magnitude more than this, although their compensation would be subject to variation based on how well the firm did in a given year.

c. Lock-Step Associates

The associates received a fixed salary based on seniority level that increases in lock-step fashion each year. The salary starts around \$60,000 for a first-year associate and climbs by approximately \$10,000 per year. Salaries are not based on merit or on business generation. Each year, the associates typically receive a fixed bonus, which can be larger in lucrative years. Associate salaries are pegged to the market for similarly situated small firm associates, with the partners evaluating the market periodically to determine what the going rate is for associates.³⁸⁴ Compensation is not tied to performance or case outcomes, in order to avoid "tension."³⁸⁵ Perhaps as a result, the associates uniformly consider the compensation structure to be fair. As one put it, "I think that lawyers in general in our society are obscenely overpaid.... [F]or example, I generally get paid a lot more than teachers get paid. Do I think I get paid enough? Sure, yes."³⁸⁶

382. Interview with Hadsell.

383. Interview with Richardson, *supra* note 161.

384. Interview with Hadsell, *supra* note 95.

385. Interview with Hadsell.

386. Interview with Teukolsky.

2. Governance Structure

What roles do the attorneys play in firm governance? In general, H&S's small size and informal culture mean that its governance structure is relatively flat as compared with large bureaucratic firms. Stormer described it as "ad hoc."³⁸⁷ There are many issues on which all the attorneys actively participate in firm decision-making, including hiring,³⁸⁸ case selection, and strategic planning. Nonetheless, there is also a degree of role differentiation, which is influenced both by market factors and organizational status.³⁸⁹

The major divide is between partners and associates. Though the associates have a wide scope of participation, the four partners are primarily responsible for dealing with sensitive personnel issues and making macro-level financial decisions. For instance, when the firm decided in the mid-2000s to change from a defined benefit pension plan to a 401(k)-style plan, the partners made this decision among themselves. The four also collectively decide whether it makes financial sense for the firm to take on massive cases with large resource commitments, though the junior partners recognize that Hadsell and Stormer have more weight (and ultimate authority) given their greater degree of risk.³⁹⁰ Thus, although Keeney and Richardson actively participate with Hadsell and Stormer in substantive firm decision making, their status as junior partners affects the scope of their power: "Dan and Barbara still have more of the responsibility and the decision making as far as . . . what bank and the financial choices, line of credit, that kind of thing. They are the ones that are on the hook for all that."³⁹¹ In addition to this broad partner-associate dichotomy, the attorneys assume more finely tuned organizational roles.³⁹²

a. The Finder

Stormer is the closest to a "rainmaker" that the firm has.³⁹³ His reputation as a trial lawyer generates significant business for the firm. "Dan is definitely the trial man of our group."³⁹⁴ His reputation for trial skill is built upon a sense of fearlessness. Stormer is routinely described as "fearless" in taking a case to

387. Stormer, *supra* note July 14, 2007).

388. Cf. Carroll Seron, *The Status of Legal Professionalism at the Close of the Twentieth Century: Chicago Lawyers and Urban Lawyers*, 32 *L. & Soc. Inquiry* 581, 591 (2007).

389. See Nelson, *supra* note 25, at 70-77.

390. Interview with Keeney, *supra* note 146.

391. Interview with Richardson, *supra* note 161.

392. My titles for these roles play off those identified by Nelson in the large firm context. See Nelson, *supra* note 25, at 69.

393. Interview with Keeney, *supra* note 146.

394. Interview with Hadsell.

trial.³⁹⁵ “[H]e’s not afraid of anything.”³⁹⁶ Stormer himself ascribes his trial skill to his upbringing:

One of the benefits of growing up in a rural and a poor background is that you spend a lot of time talking and analyzing and participating in discussions about people and about things...what you learn is the art of telling a story...So one of the things that I’ve learned is how to take real facts and turn them into an understandable scenario...at story if you will. So that—that is really a great benefit.³⁹⁷

Stormer combines the art of storytelling with a fearlessness that, in his view, distinguishes him from many of his adversaries: “In litigating against big firms, I rely upon the fact that most of my opponents were highly successful in every aspect of their lives....That scenario creates the fear of losing because if you lose, you will not be respected. And a lot of cases get resolved...because of a fear of losing.”³⁹⁸ He, in turn, prides himself on the ability to separate his performance in court from his view of himself outside it: “When my kids were younger, if I won a case, I’d go to the park with them. If I lost a big case, I’d go to the park with them.”³⁹⁹

As a result of his trial prowess, Stormer’s views about firm governance, particularly as they relate to financing, are given substantial deference. He tends not to get involved in the details of firm management, but does monitor firm finances, and is the one “most likely to say . . . [the firm] need[s] some more money” and thus should take on particular types of cases.⁴⁰⁰ In terms of structure, the firm is organized to give him maximum space to focus on his comparative advantage, which is “making and assigning strategic decisions in litigation.”⁴⁰¹ This means, in practice, that firm members must be prepared to adapt to his self-described penchant for procrastination, which he describes in contrast to Hadsell: “Barbara is a Sherman tank. I mean Barbara knows everything about everything and...she’s prepared a month in advance of trial and she’s just a force of nature when she goes in there. I have a trial tomorrow. I’m going to be up all night scrambling to get everything in order.”⁴⁰² It also means that other attorneys working with Stormer often have to sometimes fend for themselves and take over aspects of litigation that Stormer prefers not to do. For instance, Stormer asserts

395. Interview with Teukolsky,

396. Interview with Dai.

397. Interview with Stormer.

398. Interview with Stormer.

399. Interview with Stormer.

400. Interview with Stormer, *supra* note 105.

401. Interview with Keeney, *supra* note 146.

402. Interview with Stormer.

that he “never write[s] anything,”⁴⁰³ and acknowledges his particular approach to associate supervision: “If it’s me, you’ll be supervised if you come in and ask questions.”⁴⁰⁴

b. The Minder

Hadsell, in contrast, is a careful supervisor, detail-oriented litigator, and the person who acts as the firm’s hands-on manager. She is viewed as the one who puts issues on the firm agenda, organizes meetings, monitors personnel and administrative issues, and oversees the implementation of firm policy. As Stormer puts it, “She’s the least cowardly among us.... Barbara’s the hammer.”⁴⁰⁵

Hadsell is also considered a master at advancing large-scale, complex cases and coordinating between co-counsel.⁴⁰⁶ These are the same qualities that she exhibits in litigation: “My personal strength? Well . . . in [one of H&S’s prominent] litigation [cases] . . . I was given the whip because I was the boss . . . I’m stubborn . . . I’m very honest and if I say . . . please do this, or we will do this, and they don’t do it, then I do what I said I was going to do. And so I follow through, I think, in a comparatively meticulous way.”⁴⁰⁷ This is a view shared by associates: “She’s very meticulous and very thorough, and I think her strength is she won’t miss anything and she’s very good at laying out the story of the case as far as the details. She’ll know the details herself, because she will go through it herself and know it...and she can make decisions quickly and effectively, and weigh factors very clearly.”⁴⁰⁸

Hadsell’s penchant for order also affects the firm’s culture. In one telling anecdote, she instituted a policy that associates had to be in the office by 9:30 and not leave before 5:30. “She was the one who really cared about that... [H]er point was that there’s a business day and you kind of need to be here for a business day unless you’re in court or deposition or something. So, she’s the one who keeps order and I think that’s important for the office.”⁴⁰⁹

c. The Mediators

Both Hadsell and Stormer, though accessible, are perceived as one step removed from the associates, particularly when they have issues about work assignments or questions about substantive legal issues. The junior partners, Keeney and Richardson, assume mediating roles in the organization. They are formally designated as associate mentors and provide guidance on questions of managing

403. Interview with Stormer.

404. Interview with Stormer.

405. Interview with Stormer.

406. *Id.*

407. Interview with Hadsell, *supra* note 95.

408. Interview with Dai.

409. Interview with Dai.

cases and litigation strategy; they deal with associate issues on an informal basis as well.⁴¹⁰ As such, they are viewed as the “go-between or an intermediary step between the associates and Dan and Barbara,”⁴¹¹ or, in different terms, “pseudo-parents/big siblings.”⁴¹²

This means that when associates have issues with work load, staffing, or personnel disputes, they generally approach Keeney and Richardson first. When the issue relates to work load, for instance, Keeney will try to determine whether it is a question of the associate’s time management or if there is a real problem with overload; if so, she goes “immediately to Dan or Barbara...and say this person has way too much work, we’re going to have to figure out how to redistribute it. So, I kind of feel like I’m an advocate for the associates with Dan and Barbara about fair case load, making sure that they are not stuck with dog cases.”⁴¹³ This mediator role runs in both directors: when associates are too “scared” the named partners to respond well to their requests, Hadsell and Stormer often ask the junior partners to intervene to help the associates “change, improve, or focus.”⁴¹⁴

Keeney and Richardson play other importance governance roles as well. For instance, the two generally serve as a buffer on routine administrative questions, dealing with the office manager on issues related to office logistics like filing and staffing in order to “prevent Dan and Barbara from having to deal with too much of that.”⁴¹⁶

In terms of other domains of firm governance, Keeney and Richardson viewed themselves as having a wide range of input, though acknowledge that it stopped short of influencing fundamental financial decisions. Keeney, for her part, stated that “there’s very little hierarchy,” and was impressed that “despite the fact that there is a distinction between our legal roles in the firm, that they’ve actually shared decision making very equally,” even on issues related to whether to take on large-scale human rights cases with significant financial risks.⁴¹⁷ The junior partners also recounted being consulted on issues related to sensitive personnel issues that the associates were excluded from.⁴¹⁸ The junior partners acknowledged, however, that their governance role stopped short of full participation on ultimate financial decisions: “[T]here’s no attempt to claim that we are a consensus organization because we’re not. The partners ultimately have

410. Id.

411. Interview with Keeney, *supra* note 146.

412. Interview with Dai.

413. Id.

414. Interview with Keeney.

416. Id.

417. Interview with Keeney.

418. Interview with Richardson.

the financial responsibility of the firm and feel like they have more say.”⁴¹⁹ However, Keeney and Richardson felt that the named partners were respectful of how they wielded this ultimate power: “[T]here isn’t this kind of you know, ‘Well I’m a partner so now everybody shut up and listen to me.’”⁴²⁰

d. The Grinders

The associates’ role in governance is important within defined domains of firm management. They are active in the case selection and hiring processes, and play a role in defining the firm’s political agenda through participation in strategic planning. However, their input in each of these domains is limited by their lower status within the firm and they have little authority on broader questions of firm management, particularly questions of finance. Their major function is to staff the resource-intensive litigation matters and carry out much of the heavy-lifting of discovery and research.

They are thus crucial to the firm’s operation and the firm invests a great deal of time screening candidates for open positions, placing significant weight on academic credentials, political commitment, and perceived “fit.”⁴²¹ In terms of credentials, the firm values clerkships because they win many cases on the briefs and therefore cogent writing allowing the firm to get “beyond the summary judgment”⁴²² is key. “[W]e win a huge number of our battles on our research and writing skills and on discovery.”⁴²³

For the partners especially, demonstrated commitment to PIL is crucial. “I think the first issue is commitment...the person who comes from the large firm and says, ‘Well I really want to do public interest law.’... [T]here’s no political background there.”⁴²⁵ “We do put people through a political litmus test...You have to have paid you dues and shown a real interest in public interest stuff or we really don’t pay very much attention.”⁴²⁶ Issues of diversity also factor into hiring decisions. “We try and be conscious about not being an all white firm.”⁴²⁷ Hiring is generally a “consensus type approach,” though “at the end of the day if a partner has strong feelings against hiring somebody, we don’t hire them. If an associate has a strong feeling, it’s discussed, but that doesn’t mean that that person isn’t going to be hired.”⁴²⁸ Indeed, Hadsell stated that “if the four of us

419. Interview with Richardson.

420. Interview with Richardson.

421. Interview with Richardson.

422. Interview with Stormer, *supra* note.

423. Interview with Hadsell.

425. Interview with Stormer, *supra* note.

426. Interview with Hadsell.

427. Interview with Hadsell.

428. Interview with Dai.

[partners] came to an agreement, we would veto whatever the associates thought.”⁴²⁹

Once hired, associates are given wide latitude and a great deal of case responsibility.⁴³⁰ The tradeoff is less institutional input on higher-order firm governance decisions. There is an effort to enlist associates in specialized governance areas, with special committees on technology and other administrative issues that give associates key roles.⁴³¹ However, overall, associates are screened off from many of the details of governance in order to focus on gritty work of moving litigation forward.

Although race and gender dynamics undoubtedly existed in the firm, it was not ultimately clear how they affected governance patterns. All the partners (three women and one man) are white; of the associates, all but one are women and four are people of color. On the one hand, the power structure is female-dominated, though one might observe a somewhat stereotypical division of labor with the women partners tending to the details of office management while Stormer is given more independence. The salience of race is more difficult to discern, though one associate opined that she was “sure there have been times when the partners have not seen an issue the same way as one of the associates have based on the fact that they are a person who color who experienced certain things and their background.”⁴³² Overall, however, associates of color did not express dissatisfaction with their level of participation. As Holder put it, “I think that my voice is listened to, and I’ve never felt like my opinions have not been taken seriously. Even if they are ultimately disagreed with, I feel like I definitely have a say.”⁴³³

C. Profit

As H&S’s governance structure reflects, the distribution of power within the firm maps onto the distribution of profit. In this way, the firm adopts a traditional governance structure despite its nontraditional culture. This is, in part, a function of control following risk. It also suggests the benefits of command-and-control decision making in the context of complex litigation, in which clear lines of authority and work flow reduce transaction costs and maximize expertise. This is particularly important in a firm like H&S, which has a lean staff and thus has to increase productivity in order to compete against the highly resourced corporate law firms that tend to be on the other side of its cases. Thus, some hierarchy is accepted in the firm’s pursuit of litigation success and economic viability.

It is also clearly the case that profit is *not* a dominant motive at H&S. As Stormer put it, “The reality is, we’re very ad hoc and there’s not a lot of penciling out that

429. Interview with Hadsell.

430. See Private Public Interest and Plaintiff’s Firm Guide, *supra* note 48, at 7.

431. Interview with Dai, *supra* note 213.

432. Interview with Dai.

433. Interview with Holder.

we do.”⁴³⁴ It is a firm founded on political commitment and a shoestring budget. Its partners embrace egalitarianism and reject materialism, and it is a firm that attracts lawyers who could take almost any legal job they desire—making far more money—and yet chose H&S as a vehicle for realizing their political values. Nonetheless, it is also a vehicle for the lawyers to earn a living, which requires attention to bottom-line concerns, even though they are not the firm’s *raison d’être*.

This Section focuses on the central mechanisms through which H&S’s seeks to balance its political commitments with bottom-line considerations. As it suggests, the lawyers approach firm economics from a double-bottom line perspective, in which *monetary returns* to the firm measured by profit (revenue minus cost) are balanced against *the external benefits* generated from their cases—in terms of the positive externalities associated with the enforcement of antidiscrimination, employment, housing, and other progressive social policies. This is not always the case: there are times in which large fee recoveries both maximize economic return and social impact (which is the purpose of fee-shifting statutes). However, there are other cases in which the time investment is not entirely recouped through fees. It is in these cases that the lawyers must determine how much slack there is within the firm to justify the commitment of resources; choices also have to be made among different types of worthy cases competing for firm attention. In addition, the firm may contemplate expanding its resources by accepting high-return (but nonpolitical) cases as a way to finance politically important, but economically risky cases.

There are three central mechanisms by which H&S seeks balance principle and profit. First, with respect to case selection, the firm develops a case portfolio that combines a small number of risky—but politically “righteous”—cases with a high volume of low-risk, high-yield civil rights and some non-PIL cases with predictable fee outcomes. Second, with respect to case staffing, the firm maximizes internal output through leveraging associate work contributions; if it requires more resources, the firm enters into flexible collaborations with outside lawyers that allow them to quickly expand (and then contract when the need no longer exists). Finally, the firm over-selects damages cases (relative to injunctive relief ones) and structures its retainer agreements to guarantee fees; in this way, it ensures economic stability—but at the cost of generally avoiding structural reform cases with no chance of fee awards.

1. *Case Selection: Portfolio Assembly and the Double Bottom Line*

Assembling a case portfolio that advances H&S’s double-bottom line is a complex and constant process—more art than science. I begin with an overview of the procedural side of case selection—how the case pipeline is built and managed—then turn to an examination of substantive selection choices and how they relate to the firm’s political and economic goals.

434. Interview with Stormer.

a. Process

As Stormer jokes, “I would be terrified to advertise,”⁴³⁵ acknowledging the firm’s challenge of responding to the substantial number of inquiries it receives for its services. H&S’s pipeline is large, with several hundred requests for assistance per year—a fact attributed to its size, history, and reputation. The firm is thus in the unique position of receiving a high volume of contacts from potential clients. From these contacts, the firm takes on about 40 cases at one time. How does it choose?

There is both a formal and a more informal intake process. The formal intake process was set up in the mid-2000s to systematize the procedure for screening intake calls (and inquiries through the firm’s website), and rotates among firm attorneys who are responsible for screening cases and working them up for review. The current intake process does away with the requirement that potential clients fill out a lengthy questionnaire, which the firm found too cumbersome and time-consuming.⁴³⁶ Now, intake calls come to one legal assistant, who is trained to conduct a quick evaluation that is written up and given to the attorney on intake duty for that week. Once the intake attorney gets the short evaluation, it is her responsibility to follow up with the potential client if she thinks the case might have merit. This process of screening involves reviewing the claim for political, legal, and financial merit. For junior attorneys at the firm, the process can be challenging, since they must learn what questions to ask, what facts are salient, and how to apply the firm’s intake criteria to individual matters.⁴³⁷ With experience, attorneys report becoming more efficient with intake procedures as they can more easily home in on important facts and quickly know what types of records to ask for.⁴³⁸ As a formal matter, intakes that make it through the on-duty attorney screen are presented to the firm at the weekly Attorney’s Meeting each Friday morning.

The firm estimates that it accepts approximately five to ten percent of the cases that come in the door annually through this formal process.⁴⁴¹ A significant amount of winnowing occurs at the initial point of intake either because: cases are not within the firm’s area of specialization (like worker’s compensation), cases are not legally “ripe” (because, perhaps, the person has not been terminated), there is no legally cognizable harm, or the person seeking help simply does not follow up on requests for more information.⁴⁴² Sometimes, intake attorneys can make these decisions on the spot; other times, they screen cases out after routine investigation. Only about fifteen percent of intakes therefore reach the Attorney’s Meeting stage for more intensive evaluation. Of

435. Stormer, *supra* note Interview.

436. *Id.*

437. Interview with Stormer, *supra* note 105.

438. Interview with Teukolsky, *supra* note 213.

441. Telephone Interview with Barbara Hadsell, Partner, Hadsell Stormer Keeny Richardson & Renick LLP (Nov. 12, 2010).

442. *Id.*

these, only about half are finally accepted.⁴⁴³ Factors that cause cases to be rejected at the meeting stage include lack of interest or enthusiasm by the lawyers, insufficient evidence (for instance, no witnesses), low damages, or other case defects (such as an assessment that the person would not make a good witness or is too difficult to handle).⁴⁴⁴

While the formal intake process is designed to keep track of the inflow of requests for assistance, it is overlaid on an informal process that operates through the individual firm attorneys. Most of the senior attorneys, and particularly the partners, get regular direct calls from a variety of sources—both private lawyers and nonprofit groups—asking them to take on cases.⁴⁴⁵ Most of the firm’s cases come from referrals from other plaintiff’s attorneys with whom the firm has good relations and nonprofit organizations;⁴⁴⁷ some come from referrals from clients and opposing counsel.⁴⁴⁸ In most of the cases that are referred in this way, the question is whether H&S will co-counsel. The firm estimates that about three-quarters of its cases come through “organizations and lawyers we like and can work with.”⁴⁴⁹ “Because these cases have already been filtered by another attorney, they have a higher rate of getting accepted.”⁴⁵⁰ Technically, informally referred cases are supposed to be presented to the entire firm at the Attorney’s Meeting for group evaluation. However, Stormer conceded to periodically agreeing to cases he is asked to do without consultation.⁴⁵¹

The Attorney’s Meeting is technically the venue for making ultimate case acceptance decisions, both for matters that come through the formal process and for matters referred through the firm’s network. The meetings are generally relaxed, albeit serious, affairs, during which the group asks questions that go to the political and legal merits, the strength of the facts, and the amount of damages. Where there is a general group consensus, cases are accepted. This consensus-based process operates in a very loose manner. There is, for instance, no formal vote; nor is it true that any individual attorney exercises a “veto” over a particular case. Instead, attorneys tend to discuss a case until there is a general sense that everyone is either in favor of or opposed to it. When concerns are raised, they are either quickly dealt with or mushroom into a broad critique that erodes support. Strong, well-articulated criticism typically results in a case’s rejection. “If some person really says, especially if it’s a partner, but I think also

443. *Id.*

444. *Id.*

445. Interview with Stormer, *supra* note 105.

447. *Id.* This is consistent with the pattern reported by Kritzer in his study of contingency fee lawyers. See Kritzer, *supra* note, at 49.

448. Interview with Hadsell, *supra* note 95.

449. Telephone Interview with Hadsell (Nov. 12, 2010).

450. Telephone Interview with Hadsell (Nov. 12, 2010).

451. *Id.*

any associate who can really articulate the position about why something on the merit is dubious, we usually won't take it."⁴⁵²

As this comment suggests, the source of the intake matters in the process of evaluation. When partners bring cases to the group, for instance, there is more of a presumption of acceptance; and when partners express concerns, it is not unusual for associates to defer to their judgment to reject a case. In Stormer's terms: "All pigs are equal. Some pigs are more equal. In reality . . . I think there is a heavy weighting in the process [toward] the partners."⁴⁵³ "I wouldn't describe it as consensus. I'm sure in the process the opinions of the partners are more cohesive than the opinions of the associates, but they are intended to be consensus."⁴⁵⁴ Nonetheless, the lawyers generally believed that the firm was open to "the associates coming to [the partners] and saying 'This is righteous, we want to do this.' Sometimes, they'll let us do it."⁴⁵⁵ Part of the ultimate calculus is who is willing to put in the time on the case. If a lawyer really feels strongly about a case *and* commits to take the laboring oar, the firm is more likely to accept it (provided that it fits in with the firm's overall staffing pattern).⁴⁵⁶ In the end, though the firm evaluates cases through the lens of political impact, legal merit, and financial viability, the firm's case selection criteria are not always as systematic as this would suggest and many case decisions are, in Richardson's terms, "loosey-goosey."⁴⁵⁷

b. Substance

In his study of contingency fee lawyers, Kritzer argues that contingency fee practice can be viewed as the management of a case portfolio, in which the goal is to maximize returns by spreading risk among a range of diversified matters—combining high-payout/low-probability cases with low-payout/high-probability ones.⁴⁵⁸ Gilson and Mnookin posit the same model for understanding big-firm practice, suggesting that firms aggregate different specialty areas to hedge against the downside risk in any given practice field.⁴⁵⁹ Both of these studies presume that the lawyers are profit-maximizing agents. This raises the question

452. Interview with Keeney.

453. Interview with Stormer, *supra* note 105 (paraphrasing George Orwell, *Animal Farm* (1946) ("All animals are equal but some are more equal than others)).

454. Interview with Stormer, *supra* note (July 14, 2007).

455. Interview with Teukolsky.

456. Interview with Richardson.

457. Interview with Hadsell.

458. See Kritzer, *supra* note, at 12; see also Herbert M. Kritzer, *Seven Dogged Myths Concerning Contingency Fees*, 80 *Wash. L. Q.*, 739, 754 (2002); Yeazell, *supra* note *Re-Financing Civil Litigation*, at 200.

459. See Ronald J. Gilson & Robert H. Mnookin, *Sharing Among the Human Capitalists: An Economic Inquiry into the Corporate Law Firm and How Partners Split Profits*, 37 *Stan. L. Rev.* 313 (1985).

of how portfolio management looks when the lawyers involved hold out the public interest as a dominant motive of practice.

As mentioned earlier, the firm’s fee structure allows it to align principle and profit so that “happily, there is often a lot of overlap” between cases that advance mission and pay the bills.⁴⁶⁰ “In a lot of the cases that do have political goals, they also happen to have compelling facts. And when you have compelling facts, it makes it more likely that you are going to get a higher settlement or higher judgment at trial.”⁴⁶¹ As a result of this alignment, the firm’s lawyers generally believed that “nearly all of our cases have a really strong public interest bent to them.” Yet within the range of political cases, some are more highly valued by firm members than others; and everyone acknowledged that there were some direct tradeoffs between fee-generation and mission advancement.

This section examines these tradeoffs by looking at the types of cases H&S selects and why. It suggests that one can think of H&S’s case selection procedures as seeking to promote a *double-bottom line that balances financial reward and social impact* through a mix of four different types of cases: “righteous,” bread-and-butter, “white-male,” and “massive” cases.

i. The Righteous Case

The *raison d’être* of H&S is the “righteous” case—the case that presents a compelling injustice, where there is the possibility of legal redress (or, at least, the possibility that litigation may create leverage for a political solution). The righteous case is the case that stirs passion in the firm attorneys, who see their legal intervention as helping to right a manifest wrong. As a general matter, the firm only takes on cases where the client has been aggrieved either by a corporation or the government. Thus, there are two distinguishing features of the righteous case: (1) that the client is from a social group deemed less powerful; and (2) the financial outcome of the case for the firm is uncertain.

These cases comprise a minority of those on the docket, but there is the sense in which they are the firm’s lifeblood, providing the moral and political authority that sustains the firm’s collective mission. The South Central Farmers case typifies a righteous case in which the firm took on the cause of the poor occupants of the community farm without expectation of compensation. Other cases that fit this mold include *Coachella Valley Unified School District v. State of California*, in which the firm represents Coachella Valley in seeking an injunction against the practice of English testing for compliance with No Child Left Behind in a district with a high proportion of English learners;⁴⁶² *Bowoto v. Chevron*, which challenges the oil giant for human rights abuses related to its support of the Nigerian military in the shooting of protestors on a Chevron oil platform and the destruction of two villages in the Niger Delta;⁴⁶³ and *Doe v.*

460. Interview with Teukolsky.

461. *Id.*

462. *Coachella Valley Unified School District v. California*, XXXX

463. *Bowoto v. Chevron*, XXXXXXXX

Wal-Mart, a class action on behalf of workers at Wal-Mart manufacturing contractors in China, Bangladesh, Indonesia, and Nicaragua for labor abuses.⁴⁶⁴ Just because a case is “righteous” does not mean that it is a financial loser. In *Doe v. Unocal*, a seminal human rights suit against the oil company for supporting the Burmese military in committing abuses against workers on Unocal’s oil pipeline, the firm initially viewed the case as a financial long shot, but after a crucial appellate court ruling upholding key aspects of the lawsuit,⁴⁶⁵ the firm ended up settling the case for an undisclosed, but presumably large, amount.

ii. The Bread-and-Butter Case

The paradigmatic case for H&S is still the employment lawsuit,⁴⁶⁶ both in the area of employment discrimination, whistleblower retaliation, and wage-and-hour violations. About a half of its docket is comprised of these cases, which have more predictable settlement patterns and can be lucrative when the plaintiffs terminated had high incomes, since part of the fees may come out the damages award for back pay. By specializing in employment cases, the firm is able to reap returns to scale.

In selecting employment cases, the firm is attuned to the amount of potential damages and nature of the grievance. In terms of damages, the firm tends not to take cases in which ultimate damages projection is less than \$350,000 to \$400,000.⁴⁶⁷ The firm seeks to bring many of their employment-related cases in state court because of legal limitations on awards under federal discrimination and wage-and-hour laws.⁴⁶⁸

The types of cases the firm takes has changed over time. Although Hadsell and Stormer pioneered some of the early sexual harassment cases, the firm has moved away from this area, in part because they got “tired of doing the same type of case,”⁴⁶⁹ but also because once it became a viable area of practice, “lots of people wanted those cases” and “we didn’t really sort of force the issue to try to get more... And there were areas that we could go into where there was a need.”⁴⁷⁰ In addition, there was a perception that employers had changed their policies to make claims more difficult to prove and it was become more difficult to compete for the good cases in a saturated attorney market, in which some were aggressively advertising.⁴⁷¹

464. *Doe v. Wal-Mart*, XXXXX

465. *Doe I. v. Unocal Corp.*, 395 F.3d 932 (9th Cir. 2002), vacated and reh’g en banc granted, 395 F.3d 978 (9th Cir. 2003).

466. Interview with Richardson.

467. Interview with Hadsell, *supra* note 95; cf. Kritzer, *supra* note, at 86.

468. Interview with Stormer.

469. Interview with Stormer, *supra* note.

470. Interview with Stormer.

471. Interview with Keeney.

Instead of these cases, the firm has focused more on discrimination and, increasingly, whistleblower cases. Stormer indicated that “we have done a number of cases [on behalf of] women of color in highly compensated jobs.... Then we have sort of the high-end male whistle blower [cases].”⁴⁷² While the lawyers generally viewed these types of cases as consistent with the public interest, one associated suggested that some of the whistleblower cases were on the outer edge, at times involving “a high-paid sales executive [with a] 2-3 million dollar home.”⁴⁷³ Another associate agreed that some employment cases were not what she considered “real public interest cases,” but felt that they nonetheless involved the enforcement of important “age discrimination laws or whistle blower retaliation laws,” even though the cases themselves “weren’t as close to my heart.”⁴⁷⁴ And, she added, “in my 5 years here, I probably have spent 75-85% of my time doing totally righteous work.”⁴⁷⁵ Moreover, it seemed that the firm was solicitous to lawyers who felt too bogged down with “high net worth cases,” and was willing to recalibrate a lawyer’s work load to incorporate more “public interest” cases if the balance got too far off.⁴⁷⁶

Recently, the firm has taken on a growing number of wage-and-hour class action cases, which also advance its double-bottom line goals in that their large scale offers the potential for high damages and they tend to involve lower-paid workers deprived of basic employment rights. Moreover, the firm prefers to litigate these cases when “tied to a political organizing campaign” since that reinforces their political merit.⁴⁷⁷ About one-quarter of the firm’s cases were devoted to wage-and-hour class action lawsuits.⁴⁷⁸

iii. The White Male Case

Although the firm is deeply dedicated to the public interest, it has over time taken on cases that it categorizes as strictly commercial.⁴⁷⁹ Though these are still plaintiff-side cases, they tend to be on behalf of highly compensated clients, many of who are white males, who have breach of contract employment disputes.⁴⁸⁰ “They’re not exactly the underdog or the underprivileged in society but we are still comfortable doing those cases because we’re still representing the employee and we’ve kind of drawn a line in the sand that won’t take cases where

472. Interview with Stormer, *supra* note.

473. Interview with Dai.

474. Interview with Teukolsky.

475. Interview with Teukolsky.

476. Interview with Keeney.

477. Interview with Stormer, *supra* note.

478. Interview with Richardson.

479. Cf. Kritzer, at 36.

480. Interview with Hadsell, *supra* note 95.

we are going to have to take positions that are at odds with the employee's position."⁴⁸¹

The firm is explicit about taking on these cases to pay the bills. They provide a steady stream of income for the firm and are low-risk cases because of the nature of the disputes. It is typically Stormer who both identifies the need for such cases and who actually handles the substance of the work. He does "probably about 80 or 90 percent" of the firm's financial analysis;⁴⁸² when he sees "we are not doing such a good job so therefore we need something else to fill in the financial holes."⁴⁸³ Stormer suggests that there is no science to his approach, which he characterizes as "really not well thought out": "[I]t's not so documented or planned. It's more like, 'Well, we owe X on the line of credit....'"⁴⁸⁴ Although Stormer takes the lead on identifying the need for these cases, Keeney states that "all of the partners are pretty conscious of where we are—what our financial outlook is at all times. And that translates...into taking more cases that we think will generate money in the short run, and restricting the number of cases that may impose too much of a financial burden right now. Dan's fairly explicit about it. We'll be discussing two cases, and he'll say I think we can really take these cases, I think we can resolve them quickly, they're high-net worth individuals, I think we can get them in an out, and we should do it now."⁴⁸⁵

And, in fact, Dan is the lawyer who is primarily responsible for litigating these cases, which are relatively straightforward and, given Stormer's negotiation expertise, can be resolved in a fairly expeditious manner. Nevertheless, other lawyers are sometimes brought in for support. Indeed, associates are told during the interview process that "this is a private firm and sometimes we'll take a case that is not pushing the [firm's] social agenda."⁴⁸⁶ Though the cases do not provide high motivation for the firm's associates, they understand that they must work on them as part of the business model of the firm—they recognize that "there's always this practical side."⁴⁸⁷ And some view them as part of building legal skills that can then be used to advance the causes they believe in: "Certainly my first year here I had more of those types of cases where it doesn't necessarily link up perfectly with the images that I have of what I should be doing [But] I see that work being done and cranking out the briefs as just another way of developing more skills . . . [in order to help] the community that motivated me to go to law school in the first place."⁴⁸⁸

481. Interview with Richardson.

482. Stormer Interview (July 14).

483. Interview with Stormer, *supra* note.

484. Interview with Stormer, *supra* note.

485. Interview with Keeney.

486. Interview with Nardecchia.

487. Holder Interview.

488. Interview with Gaytan, *supra* note 216.

In the end, these “white male” cases comprised only a small fraction of the firm’s overall docket—but provided a crucial supplement that allowed the firm to “fill in spaces for money.”⁴⁸⁹ According to Hadsell, it was “nice to have something that pops up on the radar screen so you can spin it around like a pizza.”⁴⁹⁰ She estimated that they constituted about five percent of the firm’s “effort and recovery.”⁴⁹¹ Other attorneys estimated that the firm took on 2 to 5 such cases at a time.⁴⁹²

The firm employed other strategies to manage cash flow. For instance, the firm “tries to have cases that do not all have same birth” so that it space out both recoveries and the timing of when the firm will have to engage in time-consuming discovery.⁴⁹⁴ The firm had also taken on some other types of cases for “financial reasons,” including a consumer class-action lawsuit that it co-counseled with a former H&S associate, Randy Renick, who invited the firm on board. “[W]e’re not really interested in the cases too much, besides which, there is a kabob of people up there who want to have hands on...and we’re not part of the party,...which is fine. So, we don’t do much work, we advance costs, we may send someone up to review records for a week or two or three just to have sort of a presence. Eventually those cases turn over and bring in money.”⁴⁹⁵

iv. The Massive Case

Size is an important constraint on case selection for a small firm like H&S. Though it regularly takes on class actions and other large-scale cases, the firm must be cautious about over-extending its personnel and resources. The decision to accept large-scale cases is informed by an assessment of the political and legal merits in combination with a projection of how resource intensive the case is likely to be. Sometime massive cases are “righteous” ones, as in the case of *Bowoto v. Chevron*; other times, they may simply be important, but not crucial to the firm’s identity. Massive cases are generally financed on the firm’s line of credit.⁴⁹⁶

Massive cases range across substantive areas. The international human rights cases the firm does, for instance, although “endlessly absorbing” are extremely costly.⁴⁹⁷ In *Bowoto v. Chevron*, the litigation involved “shuffling lawyers from here to Africa. We virtually had somebody in Africa probably about ninety

489. Telephone Interview with Hadsell (11/12/10).

490. Telephone Interview with Hadsell (11/12/10).

491. Telephone Interview with Hadsell (11/12/10).

492. Interviews with Richardson, Paul, Teukolsky.

494. Telephone Interview with Hadsell (11/12/10).

495. Interview with Hadsell.

496. This is a common practice for small plaintiffs’ firms. See Yeazell, *supra* note Re-Financing Civil Litigation, at 203-204.

497. Interview with Hadsell.

percent of the time for a couple of years.”⁴⁹⁸ The case, which had gone on for over five years, had totaled “hundreds and hundreds and hundreds of thousands in costs...hundreds and hundreds and hundreds and hundreds.”⁴⁹⁹ “We can only get involved in one or two at the most ...international cases at a time.”⁵⁰⁰

Slum housing litigation is another type of case that is resource intensive and time consuming; although Hadsell has specialized in these cases and cares deeply about them, the firm at the time of the study was only handling one. The firm also must pay attention to the number and type of wage-and-hour class actions that it takes on—particularly those on behalf of low-wage workers. Again, part of the issue is the degree to which the case involves intensive discovery. In *Flores v. Albertsons*⁵⁰¹, in which the firm sued the major Southern California grocery chains for violating wage and hour laws in contracting out janitorial services, the discovery involved extensive travel to Mexico to track down immigrant clients:

We had to send investigators and some attorneys down to Mexico. We found out some of the villages where many of these janitors had come from and they literally spent weeks down there climbing around in villages and going up to mountain pastures—I’m not lying—trying to find these people and tell them that we were going to need to remain in contact with them so that we could notice the depo Well, not many outfits out there would take this stuff on. It was a huge commitment of time and energy, but because we were able to get all these people together the defendants eventually caved in and we settled the case.⁵⁰²

As a result, the firm had limited itself to three such cases “in the pipeline” because “there’s a huge resource strain.”⁵⁰³

v. Denied Cases

In addition to denying cases because of lack of legal merit and other administrative reasons, H&S sometimes says no on political and financial grounds.

In terms of political content, the firm will not take on “reverse discrimination cases” out of principle. “We’ve had a couple of times when clients have called us that were white who felt that they were being discriminated against and all the people in power at that particular employer were black, and we decided on political grounds not take that case.”⁵⁰⁴ Similarly the firm refuses to take what

498. Interview with Stormer, *supra* note 105.

499. Interview with Stormer, *supra* note (July 14, 2007).

500. Interview with Richardson.

501. *Flores v. Albertsons*, XXXXXX

502. Interview with Hadsell, *supra* note 95.

503. Interview with Hadsell.

504. Interview with Richardson.

might on the legal merits be a “great case” if the potential client himself engaged in some type of misconduct, such as sexual harassment.⁵⁰⁵

A low damage projection can also be a decisive factor in rejecting a case. Particularly for big cases in which the firm would “end up putting tons of money into it” for very little return, the bar for acceptance is high.⁵⁰⁶ “If you end up...working 200 hours on a case whose damages on the best day are \$25,000, economically that just doesn’t make sense. But we do that a lot (laughs) and we just try to balance that out by taking other cases where we can get a higher return.”⁵⁰⁷ As this suggests, such cases are not automatically rejected, but do require a persuasive showing on the political and legal merits to overcome the presumption against acceptance. The lawyers emphasize that “if we want to take [low damages cases], we do” based on “how sympathetic the plaintiff is, how really bad the conduct of the defendant is” and the quality of the evidence.⁵⁰⁸ As Hadsell put it, “We are spoiled brats. We take on what we want to take on.”⁵⁰⁹ Ultimately, the lawyers may be pulled by the compelling nature of the case and the personal satisfaction that they derive from taking on cases for very poor clients. Keeney, for example, remarked that her cases for low-income clients “have probably been the most personally satisfying to me because relatively speaking getting the money in those cases means more to those clients than it does in other cases.”⁵¹⁰

Yet, as a practical matter, cost-benefit concerns mean certain types of cases are more likely to be rejected. Stormer, for example, suggested that he would like to do more “jail cases” but that they “are not money makers.”⁵¹¹ In addition, the firm tends not to take on pure injunctive relief cases except in rare circumstances. One associate could think of only one that the firm had accepted, *Fitzgerald v. City of Los Angeles*, in which the firm and the ACLU challenged the city’s practice of parole sweeps in Skid Row.⁵¹² Stormer agreed that he would like to take on more cases like *Fitzgerald*, but said “I have mouths to feed. And if I start going for every case I think I want to take,...there are people here [who] will not be able to raise their children.”⁵¹³

505. Interview with Stormer, *supra* note.

506. Interview with Keeney.

507. Interview with Richardson.

508. Interview with Richardson.

509. Telephone Interview with Hadsell (11/12/10).

510. Interview with Keeney.

511. Interview with Stormer, *supra* note.

512. Interview with Paul.

513. Interview with Stormer, *supra* note.

2. *Case Management: The Fusion of Hierarchy and Flexibility*

H&S operates under a litigation model, which means that the firm tends to prepare each case as if it were going to trial.⁵¹⁴ Though most cases settle, the firm's value added is the credible trial threat. This means that the firm lawyers must "litigate hard" in the run-up to trial and have a reputation for sparing no expense.⁵¹⁵ In H&S's case, the threat is also based on a sense of unpredictability: "We are a little crazy and not that predictable and there is benefit to that; it scares opposing counsel sometimes."⁵¹⁶

However, the litigation model places strains on the resources of the ten-lawyer firm. From this perspective, the firm's size may seem too small to accomplish its core function of litigating large-scale, resource-intensive cases against large law firms. However, size imposes its own costs in that partners are forced to devote more resources to managing subordinate lawyers and office staff; this may also detract from the firm's litigation function, particularly if it creates a zero-sum situation in which partner resources are devoted *either* to litigation *or* to management. Moreover, there is an ebb and flow to the litigation process such that the firm must predict how many lawyers it will need to staff cases at a given time in the future. If the firm over-staffs, then it loses money by underutilizing hired lawyers. In this sense, the firm has an incentive to staff leanly.

How does H&S balance its need for litigation resources and its desire to minimize managerial costs and the risk of overcapacity? As this Section details, the firm does so through a strategy that combines (internal) *vertical hierarchy* with (external) *horizontal flexibility*. Inside the firm, work is structured to gain maximum productivity from associates; staffing is lean and billable expectations are high (partners also work hard). This arrangement maximizes internal productivity while hedging against the risk that the firm will experience a slowdown in work. The firm also frequently looks outside for collaborative co-counseling arrangements, that allows it to flexibly expand and contract at the margins without overinvesting in staff and to take on cases with external lawyers and organizations with which it wants to partner. The way that work is allocated inside and outside the firm suggests that there are some litigation functions for which hierarchy works better, particularly organizing more mundane types of lawyering tasks, while for others, team collaboration across firms is more desirable.

a. Vertical Hierarchy: Leveraging Commitment

The firm's internal work structure is hierarchical. Associates do not run their own cases, but rather staff cases with partners. Typically, the arrangement is one partner and one associate per case, though large cases often require the investment of multiple associates at different points in the case life cycle.

514. See Kritzer, *supra* note, at 96-97.

515. Telephone Interview with Hadsell ("I think there are not all that many firms out there who it can be said defendants really believe we will take it to trial.").

516. Telephone Interview with Hadsell.

Associates are given cases on the basis of interest and need. The partners try to accommodate associates who express a desire to work on particular cases, but sometimes cases are assigned because there is an immediate need for work and each attorney in the firm is given at least one “dog” case (one that has low, or no, political contact).⁵¹⁷ However, the firm is sensitive to balance: “We try and make sure everybody has a mixture of all of them so that nobody gets burned out or feeling like ‘what am I doing with my life’ or anything that.”⁵¹⁸

How much autonomy associates have and what types of responsibilities and supervision they are given is a function of the partner to whom they are assigned. Stormer has a reputation as a big-picture strategic thinker and hands-off manager who talks to associates about what needs to get done and expects them to handle the rest. Hadsell, on the other hand, is known as more detail oriented, providing more extensive feedback on briefs and more specific and defined assignments. She described the differences in approach this way:

If you’re with me,...I want every letter put on my desk, I want to meet with you, and I do a lot of those hands on kind of training stuff. Dan is more...his expectations are more big. Like a very typical Dan conversation would be ‘could you meet me here at 3 in the morning...or I was supposed to do this depo tomorrow, I can’t do it anymore. Sometimes it’s because I’m going skiing sometimes it’s because I forgot I had another thing, sometimes it’s because I’m doing a depo for somebody else.’⁵¹⁹

Nardecchia explained that everyone had something “different they teach,” with Hadsell helping her to “improve my [writing] style” and Stormer great for discussing “strategy.”⁵²⁰

Though the firm’s culture is informal, the work load for the associates is intense and the expectations for their productivity are high. Associates are expected to bill a minimum of 2400 hours per year, a figure that exceeds the formal requirements at many big firms. Of these hours, 2150 are supposed to be billable to specific matters; the remainder is billed on activity related to administration and other case management.⁵²¹ The high work requirements placed on associates allow the firm to leverage increased output from its small size and low associate-partner ratio (1.5). This means that it can better match the resources of its big-firm adversaries, while also generating more income for the firm, since fees are pegged to hours billed.

Upon joining the firm, associates are prepared for the work intensity since the expectations are clearly stated.⁵²² Yet the pressures are significant. Working

517. Interview with Hadsell, *supra* note 95.

518. Interview with Richardson.

519. Interview with Hadsell.

520. Interview with Nardecchia.

521. Interview with Dai.

522. Interview with Holder.

evenings and weekends is routine, especially when trial looms. This pace made it challenging for some to strike a work-life balance. Dai suggested that the situation had improved in terms of quality-of-life as the firm has added more associates: “[When] there were only 3 of us,...not one of us could say no, I’m going to draw the line here. Now that we have 6 [associates], people can draw lines, and I think the partners recognize that associates don’t have to [work] like that. So, I think now there’s better potential to have a balanced life.”⁵²³ However, she acknowledged that she still had trouble drawing her own lines: “Some people are better than others at doing it frankly. I strictly am not.”⁵²⁴ At the time of the study, only one associate (Gaytan) had a child (he subsequently left to work at the Legal Aid Foundation of Los Angeles); another associate (Teukolsky) also left for an NGO after having her first child. Dai believed that it was “possible now” to balance work and family, given the number of associates. Although the firm did not have specific parental leave policies, the junior partners who had children suggested that the firm was flexible in allowing them time to care for newborns. Richardson was grateful that the firm “really worked with me” on structuring her post-maternity work schedule, giving her “a lot of slack” by allowing her to come back part-time and first and easing her way back to full-time status.⁵²⁵

The intensity of H&S’s work environment distinguishes it from the more lifestyle-friendly approach taken by many NGOs—and in a context where the economic incentives for work are very different than in big firms. In the big-firm model, the tournament theory suggests that associates submit to the discipline of long billable hours because of the financial incentive of deferred compensation available in the form of partnership.⁵²⁶ Firms are thus able to reduce agency costs (particularly shirking and leaving) by holding out partnership as a difficult, but not impossible, goal—and one that confers a financial “super-bonus.” But there is no tournament here to bind associates at H&S; and the firm refuses to grow exponentially by adding partners. Indeed, partnership is not generally presented as a viable option. The partners are “pretty vague” about partnership when associates are hired and there is no formal “partnership track.” Implicitly, the policy is up and out: “I think there haven’t been any associates who have been made partner for a very long time so [it is] just kind of understood.”⁵²⁷ This policy helps limit growth, though the tradeoff is turnover and the cost of training new associates to fill in for those that leave.⁵²⁸ However, there is an informal partnership track available. Keeney and Richardson followed this route, which involved jointly approaching Hadsell and Stormer after they had both been at the firm several years and asking for junior partner status; Dai, the most senior

523. Interview with Dai.

524. Id.

525. Interview with Richardson.

526. See Marc Galanter & Thomas Palay, *Tournament of Lawyers: The Transformation of the Big Law Firm* (1991).

527. Hadsell Interview.

528. Telephone Interview with Hadsell (11/12/00).

associate, anticipated that at some point she would also have to raise the partnership question. Those associates who stick it out and are given positive feedback along the way,⁵²⁹ may thus have an opportunity to argue for an enhanced role—though this happens at their own initiative.⁵³⁰

Given the absence of a partnership promise and the intensity of the work environment, what attracts and binds associates to H&S? Money is not irrelevant, though it is hardly the most important factor. The salary for associates is higher than in the NGO setting and thus associates accept some higher work requirements in return for relatively higher incomes.

Associates are also motivated by a range of other non-monetary reasons. First, the associates have intrinsic motivation based on their commitment to the firm's overarching political cause, as well as the specific issues at stake in a given case. Camaraderie is also "really important"—being "surrounded by other people who share my political views and my goals in terms of what we want public interest litigation to accomplish."⁵³¹ Despite its intensity, the firm's small size and empathetic culture made it a supportive environment: There is "a real sense that you matter or your concerns matter and if you have problems in your life...that there's a human aspect there that makes it a very good workplace."⁵³² In addition, the associates care about their reputations in the firm and the broader PIL community, which is small, and thus invest their time as a way to build and preserve professional capital.

Associates also accept the rigor of firm life as an inevitable feature of gaining litigation skill. Associates viewed H&S as "great for associates who are developing their skills,"⁵³³ and a "really wonderful place to learn."⁵³⁴ Training is definitely on-the-job and somewhat "ad hoc,"⁵³⁵ although the firm does try to adopt an organized approach to associate development. The firm's training program does not follow a "specific plan" although there are similar patterns, such as gradually easing associates into more complex situations: "[F]or the first period of time people are not going to do depositions. They are going to sit in on a few. They are not going to take or defend and then we typically will have them maybe take an easy one and then it sort of moves from there."⁵³⁶ Nardecchia described the approach as encouraging associates to take on new tasks at their

529. The firm does have a formalized yearly evaluation system in which everyone (attorneys and nonattorneys alike) are reviewed by the partners.

530. At the time of the study, Keeney and Richardson were negotiating for a genuine partnership stake. (Keeney and Richardson later were made full equity partners and Dai was promoted to junior partner.)

531. Interview with Teukolsky.

532. Interview with Richardson.

533. Interview with Holder.

534. Interview with Nadecchia.

535. Interview with Richardson.

536. Interview with Stormer, *supra* note.

own “comfort level,” which meant that they could progress at different paces: “[I]f you want a lot of responsibility you could get it and if you feel you need some more help...you just have to ask.”⁵³⁷ Richardson notes that, in the end, the firm tries “to make sure that people do get experience both with a variety of different kinds of cases, and with a different, ah, variety of different kinds of litigation skills.”⁵³⁸ However, reviews of the training system were mixed. While associates appreciated the formal system in place, there was a sense that “generally you’re kind of just thrown in.”⁵³⁹ One associate noted that she received a lot more supervision when she started, but that it had tapered off—in part because it was less necessary.⁵⁴⁰

b. Horizontal Flexibility: The “Accordion” Firm and Collaborative Litigation

A central question in the literature on firms is why people choose to organize economic activity within firms rather than across markets. As we have seen, part of the answer to that question in the H&S case is that the firm can leverage associate productivity in such a way as to litigate resource-intensive cases. Another answer is that the firm structure allows the H&S partners to share their human capital—particularly their reputation and skills—with the associates in order to expand the work they can do and lower the cost.⁵⁴¹ The firm also allows the lawyers to specialize in complex civil rights litigation matters and thus gain returns from scale.⁵⁴² In addition, the firm structure permits the experience of collegiality and esprit de corp.

Yet there is a limit to the benefits of “firm-ness” in the H&S context. The firm is still small by most standards, with ten attorneys, which Stormer suggests is the ideal size.⁵⁴⁴ This small size is the norm in the broader private PIL firm sector.⁵⁴⁵ What are the factors that limit firm size? One is simply a partner preference for a small, nimble litigation outfit over a more bureaucratic firm structure. Though the firm could have expanded given its reputation, the partners decided, in contrast to Litt & Stormer (where Litt wanted to grow the firm) to keep the firm relatively small in order to avoid devoting an excessive amount of time to management.⁵⁴⁶ “Dan Stormer has many talents, but being an administrator is

537. Interview with Nardecchia.

538. Interview with Richardson.

539. Interview with Dai.

540. Interview with Holder.

541. See Kelly, *supra* note 14, at 269.

542. See *id.* at 281; Yeazell, *supra* note Re-Financing Civil Litigation, at 199.

544. Interview with Stormer, *supra* note 105.

545. See Center for Public Interest Law at Columbia Law School & Bernard Koteen Office of Public Interest Advising at Harvard Law School, *Private Public Interest and Plaintiff’s Firm Guide 6* (2007).

546. Interview with Hadsell, *supra* note 95.

not one of them.... [When we started the firm, we] said we are going to have a limited sized firm because the bigger it gets, the less time you get to do what you really want....So you can't grow endlessly.⁵⁴⁷

In order to overcome some of the deficits of size in particular cases, the firm makes extensive use of co-counseling relationships—which allows it to remain small as a formal organizational matter over the long-term. In this way, the firm can quickly expand to meet the resource demands of any given case and then contract again once the case is over in order to avoid carrying the ongoing overhead costs of adding permanent staff.⁵⁴⁸ It thus expands and contracts like an accordion, building teams across markets that collaborate on specific cases and disband after the cases are finished.⁵⁴⁹ This type of team production across firms is generally notable for the absence of the strong internal hierarchy that characterizes the traditional firm.⁵⁵⁰ However, in the litigation context, the parties have formal arrangements that specify the decision making structure in case of disagreements. Thus, collaboration allows H&S to share resources and expertise.⁵⁵¹ Yet decisions to collaborate turn more than just bottom-line concerns, as I explore in this section.

i. When Does the Firm Co-Counsel?

H&S makes widespread use of co-counseling arrangements, following a pattern that characterizes the wider plaintiffs' bar, which typically deploys "inter-firm referral and fee splitting to achieve many of the advantages of larger firms."⁵⁵² According to Stormer, the firm co-counsels in over half of its cases.⁵⁵³ At the time of this study, the firm was co-counseling 26 out of 42 cases.⁵⁵⁴

Co-counseling occurs in two general categories of cases. On one side are employment cases. When these involve individual plaintiffs, H&S tends to co-counsel with another small employment or labor law practitioners. In most cases, they are approached by these outside firms, which ask H&S to come into the case in order to increase its value.⁵⁵⁵ In employment class actions, H&S typically co-

547. Telephone Interview with Hadsell (11/12/10).

548. Interview with Renick (stating that co-counseling allows H&S to "get more cases and more leverage without having to take on additional management responsibilities").

549. See William A. Klein & Mitu Gulati, *Economic Organization in the Construction Industry: A Case Study of Collaborative Production under High Uncertainty*, 1 *Berkeley Bus. L.J.* 137, 139 (2004).

550. See *id.*

551. See Leslie Levin, *Preliminary Reflections on the Professional Development of Solo and Small Firm Practitioners*, 70 *Fordham L. Rev.* 847, 879 (2001).

552. Yeazell, *supra* note Re-Financing Civil Litigation, at 203.

553. Interview with Stormer, *supra* note 105.

554. See H&S Docket (Aug. 2, 2007) (on file with author).

555. Interview with Stormer, *supra* note 105.

counsels with two or three other firms.⁵⁵⁶ On the other side are class action or multi-party cases in PIL lawsuits, in which H&S is asked by an NGO to co-counsel. These types of cases tend to fall in specific categories: “The slumlord cases, the first amendment cases, the use of force cases,...those tend to come from nonprofits.”⁵⁵⁷ Less frequently, when H&S receives big cases that the lawyers want to do but cannot adequately staff, they reach out to other practitioners for assistance.

The physical layout of the H&S office facilitates much of its co-counseling. The firm owns its building with Traber & Voorhees, which has four attorneys. The two firms are highly integrated in terms of space. The Traber & Voorhees’ partners have offices on the top floor of the building, interspersed between H&S offices such that a casual observer would not recognize any distinction between the firms. The lawyers from both firms frequently interact and hold discussions about potential and current cases. Downstairs are the offices of the Traber & Voorhees associates, as well as the offices of Randy Renick, a former H&S associate who went off on his own and now specializes in wage and hour class actions.⁵⁵⁸ At the time of the study, the firm was co-counseling five cases with Renick’s firm and two with Traber & Voorhees (one of which was the massive *Bowoto v. Chevron* case).

ii. Why Does the Firm Co-Counsel?

What drives collaboration? On the one hand, co-counseling is driven by economic considerations. Whether H&S outsources part of its own case or comes in on another firm’s case, it does so in part based on a calculation of what it needs to do to win.⁵⁵⁹ “I don’t think we get out-resourced in most cases. [I]f it’s a big case...we have a coalition.”⁵⁶⁰ The firm also co-counsels based on a cost-benefit analysis of how much financial return it will receive for a given level of resource investment. But the firm’s co-counseling relationships are many times also formed for reasons that are not strictly economic, such as the desire to work with friends or to connect with new attorneys in the PIL community. This Section covers the range of reasons that guide H&S’s collaboration decisions.

(a) Risk Allocation

Co-counseling permits the assembly of litigation teams that allocate the financial risk to the firm best able to bear it. Even though H&S is small by corporate firm standards, it is the “big” firm in the civil rights litigation field. Accordingly, solo practitioners or very small firms frequently refer cases to H&S that would threaten to become disproportionately large investments relative to

556. Id.

557. Interview with Stormer, *supra* note.

558. Interview with Randy Renick, Principal, Law Offices of Randy Renick, in Pasadena, Cal. (July 20, 2007).

559. See Interview with Stormer, *supra* note 105.

560. Interview with Stormer, *supra*.

their broader case portfolio. In this way, referring firms seek to enter into co-counsel relationships with H&S in part because they can offload the downside risk of large cases to the firm,⁵⁶¹ which is better positioned to take on the costs of litigation because of its staffing structure and line of credit.⁵⁶²

The referring firms take a reduced stake in the case, which allows them to benefit from H&S's litigation expertise and still recover a share if the suit is successful.⁵⁶³ For H&S, the risk-reward calculus is reversed. They make a large investment, though typically for a shorter period (since they are brought in later in the life cycle of a case), in exchange for the possibility of a large return. They can offset their risk by their larger portfolio of cases. And they adjust their fee based on the level of risk that they take on. In general, the closer to trial it is, the higher the fee H&S charges, with a top rate of 50% for coming into a case on the eve of trial.⁵⁶⁴ The trial is the highest risk investment because of its winner-take-all format and because H&S has not been able to work the case up by collecting facts and defining the issues throughout the litigation. On the positive side of the equation for H&S is the fact that when they come in late in a case and succeed, the payoff is quicker.⁵⁶⁵ Co-counsel seek this arrangement because "they are afraid they are going to lose" at trial and can offload trial costs to H&S (and thus be left with only their sunk costs). If they ultimately win because of H&S's contribution, they still receive some payout: "50% of something is better than 50% of nothing."⁵⁶⁶

(b) Value Enhancement and Reciprocity

From the perspective of outside firms, a key element in the decision to collaborate with H&S is the value that it adds to the case. "We started being brought in on cases a lot . . . because we won a bunch of them . . . [and] mediators . . . would tell us that us coming in the case substantially will enhance the value of the case."⁵⁶⁷ The entry of H&S tends to raise the value of a case for three major reasons. First, it acts as a signal to the defense that the firm, which has a reputation for taking on high-quality cases, views the case as having substantial merit. As one co-counsel put it, having H&S "gives more validity to your case just by their name being associated."⁵⁶⁸ Second, the cost of defending

561. See Yeazell, *supra* note Re-Financing Civil Litigation, at 213.

562. Interview with Renick ("Sometimes they pay most of costs. Cost is where the risk is.").

563. See *id.* at 214.

564. Interview with Hadsell, *supra* note 95.

565. Interview with Stormer, *supra* note 105.

566. Telephone Interview with Hadsell.

567. *Id.*

568. Interview with Toni Jarmilla.

the case increases because of H&S's willingness to go to trial and litigate hard.⁵⁶⁹ Third, it tends to affect the defense's perception of the quality of representation on the other side.⁵⁷⁰ Lawyers call H&S to "bring the cavalry in,"⁵⁷¹ sending a message to the other side "We're in this for the long haul."⁵⁷²

Outside firms also bring cases to H&S because they may expect the future referral of cases that H&S declines to take on.⁵⁷³ And, in fact, H&S relies on the network of relationships formed through co-counseling to direct cases to other firms that it cannot accept either because the expected damages award is too low or the firm is too busy.

(c) Expertise and Resources

When H&S is brought into a case, it is often because co-counsel views them as bringing relevant expertise and deep pockets⁵⁷⁴: "The brain trust increases."⁵⁷⁵ There are two different models of co-counseling at H&S that depend on the type of case. In the employment arena, it is typically the case that smaller firms or solos bring cases to H&S "when they realize how big the case is,"⁵⁷⁶ which is, in Stormer's terms, "bigger than...they can handle."⁵⁷⁷

In general, H&S comes into these types of cases after they have been filed and frequently after some of the main issues have been briefed.⁵⁷⁸ This is because what other lawyers seek from H&S is not simply substantive expertise, but also—and perhaps most crucially—trial counsel.⁵⁷⁹ Della Bahan, an employment and labor attorney with her own small law firm, recounted how she had come to collaborate with H&S on a high-profile sweatshop case on behalf of enslaved garment workers: "[O]ne of my first calls was to Dan because obviously this was too huge for me to handle by myself.... I thought he would be really fun to work with, and he didn't know that much about the substantive law, but I didn't know that much about how to put together a case for trial.... It was just a

569. Interview with Hadsell, *supra* note 95 ("I think more important is just that we have this reputation of doing really high quality written work and not being afraid.").

570. Interview with Stormer, *supra* note 105.

571. Interview with Jarmilla.

572. Interview with Rosenbaum.

573. See Yeazell, *supra* note Socializing Law.

574. See Yeazell, *supra* note Re-Financing, at 203.

575. Interview with Toni Jarmilla.

576. Interview with Stormer, *supra* note 105.

577. Interview with Stormer, *supra* note.

578. Interview with Della Bahan.

579. *Id.*

natural fit.”⁵⁸¹ Stormer has a reputation for being especially effective in settlement talks, so he is often sought out for that “particular expertise.”⁵⁸²

Solos and small firms also come to H&S because of their capacity to absorb large litigation costs through their line of credit.⁵⁸³ Co-counsel repeatedly emphasize that bringing in H&S “helps a lot with the costs.”⁵⁸⁴ One expressed awe that H&S was able to advance substantial costs so consistently: “I always feel like they kind of pull rabbits out of hats.”⁵⁸⁵

The same factors (trial expertise and the ability to cover litigation expenses) motivate H&S’ collaborations with nonprofit groups like the ACLU, though these arrangements have distinctive features. For one, these cases tend to be carefully set up at the outset to include H&S as part of a broader team of PIL NGOs that contribute different types of substantive expertise. Thus, in contrast to the employment litigation model where Hadsell is brought in after the case is filed when co-counsel realizes its magnitude, in the PIL model, the team is assembled in advance with H&S selected to provide the litigation support the NGOs anticipate they will need.⁵⁸⁶ The ACLU’s Director of Litigation, Mark Rosenbaum, states that “we typically go to them . . . because we don’t have the resources to do it in house” and they are “equal or superior to any firm in terms of trial experience and trial abilities.”⁵⁸⁷ Rosenbaum emphasized the importance of H&S’ trial expertise and also noted that one advantage of co-counseling with the firm was that “you don’t have to be concerned in terms of the themes that will be developed in the case and the integrity of the case with respect to civil liberties objectives When they sign on to do a case . . . they are aggressive and committed and you never have to look back.”⁵⁸⁸ NGOs also report affiliating with H&S because its “associate dependent” structure makes it set up to litigate:⁵⁸⁹ “[T]hey do all that discovery grunt work and legal research—and we do all the people work.”⁵⁹⁰

581. Telephone Interview with Bahan.

582. Telephone Interview with Su.

583. Interview with Stormer, *supra* note 105.

584. Interview with Jarmilla.

585. Telephone Interview with Cindy Cohen.

586. *Id.* There are exceptions to this rule. For example, Stormer described a case that he tried that with the ACLU that had first been put together by Latham & Watkins pro bono: “They had done all the discovery, . . . but when it came time to try it, [the ACLU] came to use and asked if we would try it and I said yes.” Interview with Stormer, *supra* note (July 14, 2007).

587. Telephone Interview with Mark Rosenbaum, Legal Director, ACLU of Southern California, in Los Angeles, Cal. (Aug. 21, 2007).

588. *Id.*

589. Telephone Interview with Bob Newman.

590. Telephone Interview with Tai Glenn.

(d) Cash Flow

Even though H&S could make money on a case by co-counseling, it does not always choose to do so. Part of the decision is based on the need for cash to cover ongoing expenses. When the firm experiences a cash flow crunch, it is much more inclined to take on co-counseled cases. Stormer explained that the decision to take on co-counseled employment cases requires him to “readjust my schedule” and thus he tends not to accept cases when “we don’t need the money right now.”⁵⁹¹ This is true even of “good” cases that the firm would support politically. Stormer explained the reason for rejecting three recent offers to co-counsel cases: “They are good cases. One is a class action wage-and-hour case—a very good case. One is a race discrimination case. One is a whistle blower public official. All good cases. If we were more strapped, I would...move other stuff around to do [those trials] because they pay off quicker and none of them would be a case you wouldn’t otherwise take.”⁵⁹²

(e) Collegiality and Teamwork

In addition to taking on cases for financial reasons, H&S and its collaborating firms also work together for reasons rooted in personal relations and community.⁵⁹³

Bob Newman, a long-time PIL attorney at the Western Center on Law Poverty who also runs his own practice, frequently co-counsels cases with H&S, primarily in the employment area. Though he noted that one reason he does so is because the firm brings “trial experience and . . . a level of resources I just don’t have,” he also emphasized that “[f]riendship is part of it. Dan is one of my closest friends, and I consider Ann, Virginia and Barbara friends as well.”⁵⁹⁴ Thus, he reaps the benefits of collegiality and H&S gets “partnership ability where I don’t work for them.”⁵⁹⁵ Behan reported reaching out to Dan on the sweatshop case “because I just really like Dan, and Dan really likes me, and we were just close personal friends.”⁵⁹⁶ In addition, she emphasized the importance of “camaraderie, the sense that you’re not jousting at windmills all by yourself.”⁵⁹⁷ The ACLU’s Rosenbaum echoed this notion: “[T]he other part of it is they are such nice people . . . and it’s such fun to litigate a case with them . . . [C]ivil rights cases are about passion and . . . community. [H&S] are the center point of the civil rights community here. Not just as litigators but as activists and sensitive individuals who have made this a part of their lives. And you know, if

591. Interview with Stormer, *supra* note 105.

592. *Id.*

593. Interview with Teukolsky.

594. Telephone Interview with Bob Newman, in Los Angeles, Cal. (Aug. 13, 2007).

595. Telephone Interview with Newman.

596. Telephone Interview with Della Behan, in Los Angeles, Cal. (Aug. 7, 2007).

597. *Id.*

you do a case with Dan Stormer, it's really an enjoyable experience. I mean, it's fun!"⁵⁹⁸

Teresa Traber, whose firm shares office space with H&S, said that they co-counsel with H&S because "in some ways they're part of our firm and we're part of there's. I've worked with Dan my entire career. I've worked with him as a law student, then at Litt & Stormer, and in this setting. I've worked with Barbara for many, many years on these cases. It's partly about community and it's partly about respect."⁵⁹⁹ The arrangement of consistent co-counseling with H&S provides the benefits of collegiality while preserving her own autonomy over firm management and finances.⁶⁰⁰ As Bahan put it, "I felt like if we were partners, it might just ruin a beautiful friendship."⁶⁰¹

(f) Mentoring

H&S has also co-counseled cases out of a broader sense of commitment to supporting the development of PIL attorneys in Los Angeles. Stormer, in particular, is often singled out as strong mentor who "genuinely likes to help the young lawyers...who he thinks have a good hear and are trying to do good."⁶⁰² One attorney, who runs her own small plaintiff-side employment firm, described her relationship with Stormer in these terms:

Dan is my contact, he's been my mentor all these years and so I just pick up the phone and I say Dan, you know, here's the case and he'll say okay, come over and let's go over it. I go over there and he'll say okay, well I got to talk to my partners, and I'm like, oh c'mon Dan, you could do it—(chuckles). Just agree.⁶⁰³

The ACLU's Rosenbaum similarly emphasized that one advantage of co-counseling with H&S was that "it means that for young lawyers we know that they will get very well mentored."⁶⁰⁴

Tai Glenn, a housing lawyer from the Legal Aid Foundation of Los Angeles, described how she affirmatively approached H&S to co-counsel a slum housing

598. Telephone Interview with Rosenbaum, *supra* note 349.

599. Telephone Interview with Traber, *supra* note 129.

600. *Id.*

601. Telephone Interview with bahan.

602. Telephone Interview with Toni Jaramilla.

603. Telephone Interview with Toni Jaramilla, in Los Angeles, Cal. (Aug. 6, 2007).

604. Telephone Interview with Rosenbaum, *supra* note 349. As part of this commitment to mentoring, Stormer also instituted what he calls a "friends and family" program: "I started sort of picking out kids to try to encourage them to do better...and started hiring them in high school and it was very successful. [Out of three guys], all of whom are from families where you're expected to go to prison and not college, we just had two of them graduate, one Phi beta Kappa, from UCLA." Stormer July 14, 2007.

case with her because “we want to learn how to do slum cases your way.” Her organization was considering opening up an affiliated group that would litigate slum housing cases and thought “it would be a great way to get trained” on H&S’s model of “intense damages cases” in which they try to “eek out every single dollar of damages they can for their client.”⁶⁰⁵ She also noted that “we really wanted to kick this guy’s ass.”⁶⁰⁶

iii. How Does the Firm Co-Counsel?

(a) Team Assembly

The formation of inter-organizational litigation teams tends to follow two distinct patterns. As mentioned above, in the most frequent scenario, H&S is enlisted as co-counsel by an outside firm or NGO. In small single-plaintiff employment cases, the process is straightforward. Typically, the suit is initially brought by an attorney outside the firm, who screens the matter, files the pleadings, begins discovery, and has primary contact with the client. At the point when the case becomes too large to handle, the outside attorney approaches H&S and requests that they come in to undertake key discovery, brief important motions, or conduct the trial.⁶⁰⁷

In more complex cases, the process of team assembly involves putting together multiple personnel who take on distinctive roles.⁶⁰⁸ In these cases, H&S sometimes is invited in by outside firms and NGOs who need litigation assistance. One illustration of this is the case of *Flores v. Albertsons*, in which H&S joined a team of nonprofit and for-profit organizations representing a class of mostly immigrant workers employed by a contracting company for the major Southern California grocery chains who had been denied minimum wage and overtime pay.⁶⁰⁹ That case was originally brought to labor lawyer Behan through her contacts in organized labor.⁶¹⁰ The lawsuit sought to hold the supermarkets liable for the gross wage-and-hour violations perpetrated by their subcontractors against thousands of immigrant workers. As such, it promised to be a massive in scale, with significant repercussions for the movement to advance the rights of low-wage immigrant workers.⁶¹¹

605. Telephone Interview with Glenn.

606. Telephone Interview with Glenn.

607. Telephone Interview with Behan, *supra* note 354 (“Typically, I would be the one who brought the case, number one. Number two, I would have the most knowledge of the substantive law. Number three, I would typically have briefed many of the issues before, so we wouldn’t be starting from scratch. I speak Spanish and I have probably a better rapport with the actual main plaintiff.”).

608. See Klein & Gulati, *supra* note 325, at 174.

609. *Flores v. Albertsons*, XXXXXX

610. Telephone Interview with Behan, *supra* note 354.

611. *Id.*

Behan, realizing it was too big to do on her own, called Newman at the Western Center, who agreed to come in as co-counsel on the condition that others were brought in as well.⁶¹² Behan contacted H&S, which agreed to litigate the case and, in turn, enlisted the additional support of Traber & Voorhees. Behan was primarily responsible for client outreach and coordination, helping to organize janitor caravans that traveled throughout the state to apprise night janitors about the case.⁶¹³ H&S handled the nuts and bolts of the litigation. A union representative contacted the Mexican American Legal Defense and Education Fund, which came into the case early on because of its political significance in the immigrant community.⁶¹⁴ MALDEF brought in Marvin Krakow, a small firm employment lawyer with extensive trial experience, primarily in the discrimination area.⁶¹⁵ They were joined by Cohen Weiss & Simon, a labor law firm, and Mark Talamantes, who ran his own small firm in San Francisco and came into the case to represent the Northern California class members.⁶¹⁶ In addition, Sandra Munoz, who had been an associate at H&S and then moved to another small plaintiffs' firm in Los Angeles, stayed involved in the case. In the end, the assembled team brought together lawyers with interlocking and complementary skill sets; litigation tasks were divided based on comparative expertise. The "virtual firm" of lawyers that ended up involved in the case was uniquely adapted to the ends of the litigation, which sought to use the lawsuit both to win back pay for the aggrieved workers, but also to challenge the industry's subcontracting system in order to pave the way for unionization. The legal and political expertise for such a strategic case was not available within any particular firm and thus had to be constructed across firms through collaboration.

In some large-scale cases for which it does not have sufficient in-house capacity, H&S becomes actively involved at an early stage in designing the litigation team. An example of this is the human rights case of *Bowoto v. Chevron*.⁶¹⁷ That case built upon the network of relations formed when H&S litigated *Doe v. Unocal*, the seminal human rights case on behalf of Burmese villagers placed into force labor and abused by the Burmese military in connection the construction of Unocal's oil pipeline.⁶¹⁸ There, H&S came in as the litigation arm of a team that included Earthrights International, the Center for

612. *Id.*

613. *Id.*

614. Telephone Interview with Tomas Saenz, General Counsel to Mayor Antonio Villaraigosa, Former Director of Litigation at MALDEF, in Los Angeles, Cal. (Aug. 23, 2007).

615. Telephone Interview with Marvin Krakow, in Los Angeles, Cal. (Aug. 8, 2007).

616. Telephone Interview with Mark Talamantes, Principal, Talamantes Villegas & Carrera, in San Francisco, Cal. (Aug. 6, 2007).

617. *Bowoto v. Chevron*, XXXXX

618. *Doe v. Unocal*, XXXX

Constitutional Rights in New York, and Paul Hoffman, who is the former Legal Director of the ACLU of Southern California and has close ties to H&S.

Bowoto also started out as a collaboration between Earthrights and CCR, which again asked H&S to act as lead counsel. The magnitude of the case and the cost of litigating part of the case in Nigeria caused H&S to initially demur; Stormer then went to Traber and asked if she wanted to help.⁶¹⁹ She agreed and became co-lead counsel, along with Hadsell. In addition, Judith Chomsky agreed to work on the case as a cooperating attorney with CCR; Bob Newman was brought in because of his relationship to H&S; Michael Sorgin, an employment discrimination attorney, was asked to provide litigation support; Carol Watson, a retired police abuse attorney, conducted some depositions in Nigeria; and Hoffman also provided litigation support. Cindy Cohen, who was a private human rights attorney and now heads the Electronic Frontier Foundation, was brought in as local counsel in San Francisco, where Chevron is based.⁶²⁰ The team thus was thus assembled in order to enlist attorneys who would bring “commitment and expertise,” “financial support,”⁶²¹ and the willingness to travel to Nigeria and elsewhere to conduct discovery.⁶²²

(b) Team Management

Once H&S enters into a co-counseling arrangement, the question of who makes final case decisions immediately arises. Generally, case decisions tend to be made by consensus among the cooperating attorneys. In large cases, the attorneys typically hold conference calls once a week to discuss strategy and assign work. Though teams strive for consensus around questions of strategy, disagreements invariably come up. To deal with dissent, cooperating attorneys are bound by a contractual agreement that designates a management team and allocates decision making authority. In most cases that it co-counsels, H&S is designated as either Lead or Co-Lead Counsel.⁶²³ A typical co-counseling agreement will state that “all decisions concerning the conduct of the litigation by Co-counsel will be made, where possible, by consensus.”⁶²⁴ Where consensus is impossible, the decisions are made by a team comprised of Lead Counsel—the primary attorneys from each of the cooperating organization.⁶²⁵ “In the absence of consensus among Lead Counsel, decisions shall be made by Lead Trial Counsel.”⁶²⁶ An H&S attorney typically is designated Lead Trial Counsel and

619. Interview with Traber, *supra* note 129.

620. Telephone Interview with Cindy Cohen, Director, Electronic Frontier Foundation, in San Francisco, Cal. (Aug. 10, 2007).

621. Interview with Traber, *supra* note 129.

622. Interview with Hadsell, *supra* note 95.

623. Interview with Stormer, *supra* note 105.

624. H&S Co-Counsel Agreement, at 1 (on file with author).

625. *Id.*

626. *Id.*

thus gives the firm final decision making authority. The rationale is that authority should be weighted toward the firm with the biggest financial stake.⁶²⁷

(c) Division of Labor

Once teams are formed, work tends to be assigned based on who is available to a particular task at a specific moment in time. There are, however, broad parameters that guide work assignments. In general, H&S takes the lead on trial preparation and conducting the trial: “You really don’t want anyone else addressing the jury at critical moments or conducting the essential cross examination.”⁶²⁸ With respect to critical motions and depositions, the most important will go to H&S, depending on its attorneys’ time availability and who else is on the co-counseling team. When the team consists of other senior litigators, they might take on some of the critical brief writing, particularly when it can be done without the need for large input of staffing resources. In the Flores case, for instance, Bob Newman did much of the significant briefing on the main legal issues, such as the class certification reply and the motion for approval of the settlement.⁶²⁹ This work was not associate-dependent and reflected Newman’s particular comparative advantage as a seasoned solo litigator with extensive substantive and procedural expertise. In other cases, such as the slum housing case that the firm is co-counseling with the Legal Aid Foundation of Los Angeles, the division of labor is such that H&S conducts the bulk of the discovery, legal research, and motion work, while the legal aid attorneys focus more on client relations.⁶³⁰

At times, this approach can cause friction within the team. In the *Flores* case, for example, one junior MALDEF attorney felt that he had to fight to get substantive litigation assignments in order not to be relegated to client relations, particularly because he spoke Spanish.⁶³¹ His assertiveness ultimately paid off with substantive assignments like brief writing and deposition taking. Julie Su, the Director of Litigation at the Asian Pacific American Legal Center, who worked with H&S on a high-profile sweatshop case against garment retailers and manufacturers for the enslavement of immigrant workers, similarly complained of being “ignored”: “I am talking about the attorneys on our side who say, ‘If you want to do all that political and educational stuff, organize meetings with the workers and visit them in their homes at night, go ahead and do that. But leave

627. Interview with Traber, *supra* note 129.

628. Telephone Interview with Rosenbaum, *supra* note 349.

629. Telephone Interview with Newman, *supra* note 353.

630. Telephone Interview with Tai Glenn, Senior Staff Attorney, Housing Improvement Project, Legal Aid Foundation of Los Angeles, in Los Angeles, Cal. (Aug. 13, 2007).

631. Telephone Interview with Stephen Reyes, Associate, Kaufman & Downing, Former Staff Attorney, MALDEF, in Los Angeles, Cal. (Aug. 23, 2007).

the ‘real’ lawyering—the hard-core strategizing, brief writing and arguing—to the real lawyers.”⁶³²

(d) Distribution of Risk, Reward, and Credit

The assembly of litigation teams also raises questions about the allocation of financial and professional responsibilities. There are three areas in which co-counsel must negotiate distributional issues: allocating costs, allocating fees, and assigning credit.

The allocation of costs and fees are dealt with formulaically. Because H&S is typically the most resource-rich firm, it shoulders the lion’s share of the costs. In its co-counseling agreements, the contributions of each co-counsel to costs are broken down in percentage terms. Small organizations are protected by capping responsibility for costs at an absolute upper limit. And co-counsel consent to reimburse the others for advanced costs in order to maintain the agreed-upon balance; costs are ultimately reimbursable out of any recovery in the case. Lead counsel typically has the power to approve expenditures over a threshold amount, usually \$1000.⁶³³ In general, because H&S tends to carry the financial risk of the case, co-counsel defers to it on “money decisions.”⁶³⁴

The issue of media relations is also a sensitive one in the public interest world, where one’s reputation is built in part based on one’s public profile. Being quoted in the newspaper or identified as responsible for an important case carries significant professional status, which is particularly important in a sector where lawyers forego money as an indicator of prestige. Here, too, the boundary lines between co-counsel must be negotiated. One standard co-counsel agreement specifies that each co-counsel is “jointly responsible for all press relations” and that each should consult “reasonably far in advance” with the others concerning any public statement that “could have any impact on the litigation.” It also provides that co-counsel should give “reasonable notice” in advance of any public encounters to maximize attendance by other co-counsel and that if any “have had primary or heavy responsibility for any issue which has occasioned the press conference or speaking engagement, they shall be given credit for their work in written and oral statements to the press and they shall participate in any press release and/or conference.”⁶³⁵ Although disputes do occur over the distribution of appropriate credit, attorneys who have co-counseled with H&S emphasize that H&S attorneys are “very sensitive” to making sure that credit is given where it is due.⁶³⁶

632. Julie A. Su, *Making the Invisible Visible: The Garment Industry’s Dirty Laundry*, 1 *J. of Gender, Race & Justice* (1998).

633. H&S Co-Counseling Agreement, at 3 § 3.

634. Telephone Interview with Cohen.

635. *Id.* at 7 §5.

636. Telephone Interview with Behan, *supra* note 354.

3. *Case Resolution: Balancing Private Fees and Public Impact*

The resolution of cases reintroduces the potential for tradeoffs between profit and the public interest that are endemic to civil rights practice. In cases where the plaintiff is only seeking damages, the conflict between profit and the public interest is lessened to some degree. In theory, the attorney and plaintiff both want the same thing: to maximize recovery. Fee-shifting statutes are designed to align the interests of civil rights plaintiffs and their attorneys by severing the attorney's fee award from the damages recovery. Two cases have complicated this arrangement: *Evans v. Jeff D.*,⁶³⁷ which authorizes defendants to make so-called "sacrifice offers" that condition a damage settlement on the waiver of attorney's fees, and *Buckhannon Board & Care Home, Inc. v. West Virginia Department of Health and Human Resources*,⁶³⁸ which eliminates fees in a lawsuit that operates as a "catalyst" for voluntary changes in a defendant's conduct through settlement, instead requiring that "prevailing plaintiffs" win a judgment on the merits or a court-approved consent decree in order to recover fees.⁶³⁹

When damages are at issue, H&S avoids the impact of these cases by structuring its retainer with clients to both prohibit the acceptance of any sacrifice offer,⁶⁴⁰ and to provide for a contingency fee in the absence of a statutory fee award.⁶⁴¹ Contingency fees are tiered to provide higher returns based on when the firm recovers in the case's life cycle, with later recovery entitling the firm to a higher percentage recovery (reflecting its larger investment of work).⁶⁴² Where fees are recoverable, H&S hedges its downside risk by providing that it is entitled to the statutory fee award or the contingency amount, whatever is higher.⁶⁴³ Fees are generally calculated on a pro rata basis, with each firm receiving a share of the proceeds calculated by multiplying their hours work times a numerical weighting that reflects seniority. Conflicts still arise during settlement when the firm has made a major investment of resources and the settlement amount on the table would result in a contingency fee that would not cover the firm's cost investment. In these situations, the firm and client must negotiate a resolution that balances both of their interests.⁶⁴⁴

At the other end of the spectrum are cases where damages are not the goal; instead, the plaintiffs are seeking some type of injunctive relief typically to end a targeted governmental practice. In this type of paradigmatic public law reform case, the issue of fees becomes more complicated. On the one hand, these types of cases are much more susceptible to the Buckhannon problem, since the

637. 475 U.S. 717 (1986).

638. 532 U.S. 598 (2001).

639. See Albiston & Nielsen, *supra* note, The Procedural Attack, at 1089.

640. Interview with Stormer, *supra* note 105.

641. Interview with Hadsell, *supra* note 95.

642. Interview with Stormer.

643. Interview with Hadsell, *supra* note 95.

644. Telephone Interview with Voorhees, *supra* note 143.

absence of settlement damages from which to take a contingency fee makes them high-risk from the firm's point of view.⁶⁴⁵ Thus, voluntary compliance by the defendant negates the opportunity to get fees. In response to this problem, a firm may choose to avoid injunctive relief cases or to try to bring them under state law (when possible) in order to take advantage of the California private attorney general statute, with its broader fee provisions. For its part, H&S has generally opted for the first route—it does not to take many injunctive relief cases—although the issue of taking on more has recently been raised by associates as part of the firm's strategic planning.⁶⁴⁶ At bottom, the choice between injunctive and damages cases reflects the broader tradeoff between principle and profit: injunctive cases pursue institutional reform for its own sake, while damages cases allow the firm to “do well” and “do good.”

CONCLUSION

How should we ultimately view the private PIL firm within the broader field of social justice practice? This Article, focused as it is on a single firm, can offer only tentative answers to this question. One thing is clear: As with any type of legal practice premised on the ideal of serving public goals, the constraints of financing place limits on the scope of cause-oriented work. This, of course, is true across the PIL sector: The politics of legal aid constrains the advocacy of groups funded by the federal Legal Services Corporation, while economics of big-firm client relations places clear limits on pro bono work. NGOs reliant on foundation grants also report being constrained by funders' predilection for politically popular causes and reluctance to fund heavy litigation.

These limits in other domains have raised the profile of firms like H&S that trade on their capacity to litigate hard against corporate and governmental adversaries. And, judging by the range of groups that co-counsel with the firm, its litigation power is perceived to be its biggest asset within the wider PIL field. What my study of H&S reveals is that the fuel for this power—attorney's fees—imposes its own unique set of economic constraints. These constraints are negotiated through the process of client selection, with inevitable tradeoffs made between core mission-driven cases and those that simply pay the bills. Whether these tradeoffs are ultimately worth it—and what, if any, alternatives exist—requires further study of the distributional impacts of privatizing PIL.

In the meantime, I can make a few general, albeit still tentative, observations about the nature and consequences of private PIL practice. First, against the backdrop of politically progressive aims, its lawyers adopt a relatively conventional practice structure, driven by the centrality of client service. As one H&S lawyer stated, they are, like their large corporate firm counterparts, “hired guns”—although for clients challenging corporate and governmental power, rather than exercising it. These lawyers, are to be sure, motivated by political ends, which they endeavor achieve through case selection; yet once the firm is retained, it adheres to conventional professional norms. Similarly, in terms of work structure, the private PIL firm is—at bottom—a *firm* in which partners

645. See Albiston & Nielsen, *supra* note 392, at XX.

646. Interview with Hadsell.

exercise power and associates respond to it. Of course, this power is deployed toward egalitarian ends. Hence, a paradox: power inequality is accepted inside the firm in order to challenge its effects in the outside world.

Second, the organization of private PIL firms like H&S—with its “double-bottom” line case portfolio, pyramid structure, and collaborative co-counseling relationships—is designed to maximize litigation power on behalf of selected political causes. Yet, although privatizing PIL may produce better *litigation*, it may not necessarily produce better *social outcomes*. The distribution of cases within private PIL firms may not represent the areas of most important social need. There is an incentive for firms to pass up financially risky cases on behalf of the most economically marginal clients in favor of more certain payouts. Overall, then, private PIL firms are likely serve the “better-off” of the less well-off. This allows the firm to bankroll political consequential—and financially precarious—cases, but these are by necessity exceptions to the rule, which is to serve mainstream civil rights interests. These interests are, to be sure, socially important. But they represent only a slice of the underrepresented interests PIL was created to address.

In the end, however, the defined social change role that private PIL firms play is part of their strength. Instead of purporting to advance a specific reform agenda, they provide a tailored resource that may help broader struggles for social change at key moments when legal rights are at stake. To the extent that important social issues are resolved through adversarial legal struggle, private PIL firms are crucial counterweights to the ability of corporate and government actors to finance high-powered legal advocacy. They are optimally suited to complement their NGO counterparts by bringing more legal muscle to bear and filling in substantive gaps in the system of legal representation. They therefore achieve a central aim of the PIL movement: giving voice to less powerful groups. In this sense, although private PIL firms may not provide more justice in the aggregate, they provide justice when it counts.