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THE JEWISH LAW FIRM: PAST AND PRESENT

Eli Wald¹

I. Introduction

The rise and growth of large Jewish law firms in New York City during the second half of the twentieth century is nothing short of an astounding success story.² As late as 1950, there was not a single large Jewish law firm in town. By the mid-1960s, six of the largest twenty law firms were Jewish, and by 1980, four of the largest ten law firms were Jewish firms.³ Moreover, the accomplishment of these Jewish firms is especially striking because, while the traditional large White Anglo-Saxon Protestant (“WASP”) law firms also grew at a fast rate during this period, the Jewish firms grew twice as fast, and they did so in spite of explicit discrimination.

What happened? This chapter studies the rise and growth of large New York City Jewish law firms. It does so on the basis of the public record, with respect to both the law firms themselves and trends in the legal profession generally, and through more than twenty in-depth interviews with lawyers who either founded and practiced at these successful Jewish firms, attempted and failed to establish such firms, or were in a position to join these firms but decided instead to join WASP firms.⁴

One generic⁵ explanation is that Jewish law firms rose as the result of changes in

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² See Part III.A below for a definition of a Jewish law firm.

³ See Tables 1 and 2 below, Part III.C.

⁴ These interviews were conducted on the condition of anonymity; thus, any identifying information is excluded, with interviewees referred to as “informants” and each assigned a number for the purposes of this chapter. The transcripts of the interviews are on file with the author.

⁵ The term “generic” here borrows from Thomas Sowell, “Are Jews Generic?” in *Black Rednecks and White Liberals* (New York: Encounter Books, 2005), 76–122. In his usual provocative style, Sowell argues that hatred and persecution of Jews are generic in the sense that they have nothing to do with Jews per se. Rather, Jews are the classic “middleman minorities,” despised and discriminated against on account of the

cultural values and market conditions in American society after World War II, which saw a gradual decline in anti-Semitism and religious-based discrimination against Jews in America and an increased demand for legal services by large corporate clients.⁶ This account is generic in the sense that inherently it has nothing to do with Jewish law firms and Jewish lawyers, and, indeed, it intrinsically has nothing to do with Jews or with the legal profession itself. Rather, the decline of discrimination generally benefits minorities and in the context of the legal profession it benefited Jewish law firms and Jewish lawyers. Similarly, increased demand for corporate legal services benefited all law firms and led to the rise and growth of large law firms, including Jewish law firms. The generic explanation thus suggests that the reasons for the rise of the Jewish law firms were non-legal; that is, they were to be found outside of the legal realm, and were not uniquely Jewish. The success of the Jewish law firms was nothing more than an example of the consequences of more general trends—the decline of discrimination and increased demand for legal services.

Yet, according to the informants interviewed in this chapter, Jewish law firms were not generic. While Jewish law firms certainly benefited from the decline in anti-Semitism and increased demand for legal services, a unique combination of factors explains the incredible rise of Jewish firms. First, white-shoe⁷ ethos caused large WASP firms to stay out of “undignified” practice areas and effectively created pockets of “Jewish” practice

intermediary role they play between producers and consumers as well as their distinctive social patterns. Sowell concludes: “While there are characteristics and achievements which are uniquely Jewish, the history of middleman minorities around the world seems to suggest that it has not been these uniquely Jewish characteristics which called forth venomous hatreds but characteristics and achievements common to middleman minorities. However unique [Jews] may be, historically the kind of hostility and hatred they have faced has been generic” (121–22). To be clear, I accept neither Sowell’s conclusions regarding Jews in his essay nor the general themes in his book regarding the inferior cultural sensibilities of African-Americans. I do, however, find instructive his use of “generic” and utilize it to draw a distinction between, on the one hand, generic non-legal and non-uniquely Jewish reasons and, on the other hand, legal and uniquely Jewish explanations that account for the rise of the Jewish law firms.

⁶ See Parts IV and V below.

⁷ The phrase “white-shoe” originally referred to elite college males who wore white buckskin shoes at Ivy League schools in the 1950s, and is used to describe law firms in America that were populated by members of the WASP elite and generally excluded anyone who was not a WASP male. See Elizabeth Chambliss, “The Shoe Still Fits,” *Legal Affairs* 10 (2005): 18–19.

areas where the Jewish firms encountered little competition for their services. Second, discriminatory hiring and promotion practices by the large WASP firms helped create a large pool of talented Jewish lawyers from which the Jewish firms could easily recruit. Finally, the Jewish firms benefited from a “flip side of bias” phenomenon, that is, they benefited from the positive consequences of stereotyping.⁸

This chapter proceeds in eight parts. Parts II and III set up the discussion. Part II offers a brief history of the practice of law in New York City between the late nineteenth and the mid-twentieth centuries, highlighting the emergence of large WASP law firms and the existence of a lower stratum Jewish bar. Part III defines the notion of the Jewish law firm and documents the rise and growth of these firms. Parts IV and V investigate the “generic” trends within the American society and legal market that explain in part the remarkable success of the Jewish law firms. Specifically, Part IV explores the consequences of the decline of anti-Semitism and religious-based discrimination on Jewish law firms and Part V studies the impact of increased client demand for corporate services. Part VI examines a combination of unique factors that explain the growth of the Jewish firms: the existence of protected Jewish pockets of practice, the surprising consequences of effective WASP discrimination against Jewish lawyers and the effects of the “flip side of bias” phenomenon. Following a conclusion in Part VII, Part VIII is an appendix providing a methodological summary of the interviews that inform the analysis in this chapter.

II. A Brief History of the Practice of Law in New York City

A. Large Law Firms in New York City, 1900–1950

The large law firm emerged as a new unit of law practice around the turn of the

⁸ See Part VI below.

twentieth century.⁹ This type of firm's organizational structure, often referred to as the Cravath System, featured six characteristics: a hierarchical structure based on two distinct types of attorneys (partners and associates); close working relationships among firm attorneys, emphasizing teamwork as opposed to individual work product; investment in, and development of, candidate recruitment procedures followed by systematic training programs for associates; a probation period for associates, followed by promotion to partnership for some and an “up-or-out” policy for those not promoted; specialization of individual attorneys' expertise and departmentalization of work within the firm based on groupings of individual attorneys; and utilization of technology.¹⁰ By the 1920s, the Cravath System dominated the expanding world of large law firms,¹¹ and by the 1960s

⁹ See Magali S. Larson, “On the Nostalgic View of Lawyers' Role,” *Stanford Law Review* 37 (1985): 448 (“It is well known that the large law firm was born in the last third of the nineteenth century in a period of institutional reorganization.”); Wayne K. Hobson, “Symbol of the New Profession: Emergence of the Large Law Firm, 1870–1915,” in *The New High Priests: Lawyers in Post-Civil War America*, ed. Gerald W. Gawalt (Westport, CT: Greenwood Press, 1984), 3 (“The legal profession . . . was transformed between the 1870s and the 1920s . . . Although most lawyers in 1930 still practiced alone or with one partner, the leaders of the profession were no longer men in such firms; they were now all in large firms.”). See, generally, Marc Galanter and Thomas Palay, *Tournament of Lawyers: The Transformation of the Big Law Firm* (Chicago: University of Chicago Press, 1991), 4. “Large” has a dynamic meaning. According to James Willard Hurst, “No firms of large membership appeared, even in the great cities, until the end of the [nineteenth] century. The typical partnership was a two-man affair” (*The Growth of American Law* [Boston: Little Brown, 1950], 306). The benchmark for “large” reached fifty attorneys by the 1950s; see Erwin O. Smigel, “The Impact of Recruitment on the Organization of the Large Law Firm,” *American Sociological Review* 25 (1960): 58. By the late 1980s, “a firm of 50 members probably would not be considered large” in major cities (Justin A. Stanley, “Should Lawyers Stick to Their Last?,” *Indiana Law Journal* 64 [1989]: 473). In August 2007, the largest law firm in the world was Baker & McKenzie, with a total of 3535 attorneys. See Lindsay Fortadoa, “Dewey Ballantine, LeBoeuf Agree to Merge Law Firms,” *Washington Post*, August 28, 2007. Since 2008, restructuring in the market for corporate legal services and the Great Recession halted the growth of large American law firms. See Marc Galanter and William Henderson, “The Elastic Tournament: A Second Transformation of the Big Law Firm,” *Stanford Law Review* 60 (2008): 1867–1929; Eli Wald, “Foreword: The Great Recession and the Legal Profession,” *Fordham Law Review* 78 (2010): 2051–66; Bernard A. Burk and David McGowan, “Big but Brittle: Economic Perspectives on the Future of the Law Firm in the New Economy,” *Columbia Business Law Review* (2011): 1–117; Eli Wald, “Smart Growth: The Large Law Firm in the Twenty-First Century,” *Fordham Law Review* 80 (2012): 2867–2915.

¹⁰ See Eli Wald, “The Rise and Fall of the WASP and Jewish Law Firms,” *Stanford Law Review* 60 (2008): 1806–10. See, generally, Galanter and Palay, *Tournament of Lawyers*, 4–19.

¹¹ See Wayne K. Hobson, *The American Legal Profession and the Organizational Society 1890–1930* (New York: Garland Publishing, 1986), 201. By the 1920s the system Cravath had initiated was well established and regularized. The managing clerks of the leading law firms had even entered into a gentlemen's agreement after World War I to eliminate the practice of competitive bidding for the services of the most promising law school graduates. They established uniform beginning salaries and agreed not to pirate employees away from each other.

large firms reached their “Golden Era”¹² in terms of being recognized as the elite of the American legal profession.¹³

Wall Street, New York City was essentially the birth-place of the large law firm.¹⁴ During the first half of the twentieth century Wall Street housed not only Cravath, Swaine & Moore, the paradigmatic large firm, but also a significant number of all large American law firms. In 1948, there were 284 law firms in the United States with eight or more partners, located in fifty-seven different cities, with New York City accounting for seventy-three of them. From 1950 through 1970, at least eight of the ten largest firms in the country were New York City firms.¹⁵ Indeed, until the 1970s, due to the concentration of large law firms in New York City, the terms large “American” and “New York City” law firms could be used interchangeably.¹⁶ Moreover, the impact of New York City on the rise and growth of large law firms was not limited to the mere number of firms it hosted and its role as a key business and financial center, which enabled the Wall Street firms to rise to dominance; rather, Wall Street itself emerged as the symbolic home of the large firms—the new legal elite.¹⁷

The large law firm reflected a new professional ideology significantly different from the era's prevailing notions of lawyering. It purported to be a meritocracy in which hiring

¹² Galanter and Palay, *Tournament of Lawyers*, 20.

¹³ Robert L. Nelson, *Partners with Power: The Social Transformation of the Large Law Firm* (Berkeley: University of California Press, 1988). Nelson describes the large law firm as sitting “atop the pyramid of prestige and power within the American legal profession. Although comprising but a small fraction of lawyers, through its impact on patterns of recruitment, styles of practice, and the collective institutions of the bar, the large law firm has a significance that far exceeds the number of lawyers it employs” (1).

¹⁴ According to Galanter and Palay, large firms grew in size, first in New York City, then in other large cities, then in smaller cities, then overseas (*Tournament of Lawyers*, 14, 18–19).

¹⁵ Robert L. Nelson, “Practice and Privilege: Social Change and the Structure of Large Law Firms,” *American Bar Foundation Research Journal* 6 (1981): 104. For a discussion of the growth of large law firms outside of New York City, see Hobson, *American Legal Profession and the Organizational Society 1890–1930*, 163–88.

¹⁶ By the late 1970s, New York City lost its dominance as large law firms grew nation-wide. By 1979, all but Shearman & Sterling had been displaced on the largest law firms list by the largest firms of other cities. See below note 93.

¹⁷ See, e.g., David T. Bazelon, “Portrait of a Business Generalist,” *Comment* 24 (1960): 279 (“There is a nice vignette to be written about the popular displacement in the past few decades of the historic phrase ‘Philadelphia lawyer’ by the new and more magical ‘New York lawyer.’”).

and promotion were based upon performance, replacing traditional notions of nepotism, privilege, and class hierarchies. In 1920 Paul Cravath put this change into words as he advised his hearers that for success at the New York bar “family influence, social friendships and wealth count for little.” He further emphasized the large number of successful lawyers who had come to New York from small places and “worked up from the bottom of the ladder without having any advantage of position or acquaintance.”¹⁸

In spite of their claim to meritocracy, however, large New York City law firms recruited and promoted almost exclusively WASP attorneys and featured a white-shoe Protestant culture.¹⁹ Jewish attorneys were rarely recruited and even less commonly promoted to partnership.²⁰ Thus, the large New York City law firm club circa 1950 consisted entirely of WASP white-shoe law firms.²¹

B. Jewish Lawyers in New York City, 1900–1950

The large law firm rose against a backdrop of a changing legal profession. In 1885 there were about 5,000 lawyers in New York City, about 400 of whom were Jewish.²² The new century brought waves of immigrants and growth to the New York Bar. The years between 1890 and 1910 witnessed an immense growth in part time and evening programs in law schools, as well as great growth in the number of lawyers born abroad or

¹⁸ Robert T. Swaine, *The Cravath Firm and its Predecessors: 1819–1947* (New York: Ad Press, 1948), 265. Similarly, Arthur Dean of Sullivan & Cromwell opined: “In today's larger legal partnerships advancement is by and large by competence alone. Those who achieve positions of influence and leadership in such firms tend to be those who have manifested their ability to relate into a more comprehensive picture diverse fields of specialization and to view the major problems of clients in a broad social perspective” (Arthur H. Dean, *William Nelson Cromwell 1854–1948: An American Pioneer in Corporation, Comparative and International Law* [New York: Ad Press, 1957], 85).

¹⁹ See Wald, “Rise and Fall of the WASP and Jewish Law Firms,” 1810–25, which explores the apparent contradiction between the large law firm's meritocratic claim and its religious and cultural identity.

²⁰ Note, “The Jewish Law Student and New York Jobs: Discriminatory Effects in Law Firm Hiring Practices,” *Yale Law Journal* 73 (1964): 626, 635.

²¹ See Part VI below.

²² Henry W. Taft, *Legal Miscellanies: Six Decades of Changes and Progress* (New York: Macmillan, Co., 1941), 77.

with foreign-born parents.²³ The newcomers crowded the lower stratum of the bar, competing fiercely for clients and a livelihood.²⁴ Top educational credentials served as barriers to exclude these unwelcome newcomers.²⁵ Indeed, “barriers to access became more formidable as the desirability of access increased . . . [and] professional opportunity depended upon ethnic, social, religious, and educational credentials.”²⁶ In this formative era of the New York City legal profession, “Cromwells and Cravaths rose to the top; ‘Hebrews’ sank to the bottom.”²⁷

Both trends—the growth of the bar and the increased stratification—continued to dominate the New York City legal profession even after 1950, so much so that “in 1960, there were approximately 26,000 lawyers in Manhattan and the Bronx, about 20,500 of whom were active practitioners,” and 17,000 of whom were in private practice.²⁸ The city's bar was almost all native-born white males, and was slightly over sixty percent Jewish.²⁹ At the same time, ethnic- and religious-based discrimination (intertwined with socio-economic-cultural bias) in the large law firm segment of the New York City bar became common knowledge.³⁰ Moreover, “Jewish lawyers [were] less likely than their non-Jewish colleagues to gain access to the high-status position in the bar.”³¹ While they constituted sixty percent of the New York City Bar, Jewish lawyers were overly represented in individual practice (seventy-seven percent) and small firms (seventy-six

²³ Jerold S. Auerbach, *Unequal Justice: Lawyers and Social Change in Modern America* (New York: Oxford University Press, 1976), 95–96.

²⁴ *Ibid.*

²⁵ *Ibid.*, 95–101.

²⁶ *Ibid.*, 25.

²⁷ *Ibid.*, 26.

²⁸ Jerome E. Carlin, *Lawyers' Ethics: A Survey of the New York City Bar* (New York: Russell Sage Foundation, 1966), 11.

²⁹ *Ibid.*, 18–19.

³⁰ “The Jewish Law Student and New York Jobs,” 635 (“Gentiles were more successful than Jews in getting good jobs, and in getting the jobs of their choice.”).

³¹ Carlin, *Lawyers' Ethics*, 22.

percent), and significantly under-represented in large law firms (twenty-five percent).³²

C. New York, New York

In the first half of the twentieth century Wall Street was the center of corporate law practice and had a larger concentration of large law firms than anywhere else in the country and the world. New York City was also where the large Jewish law firm emerged after 1950.³³ It is important to note, however, that the rise of the WASP firms, and subsequently the Jewish firms, was not restricted geographically to New York City and took place in other large metropolises; first in Chicago, Washington, D.C., Boston, and Philadelphia, later expanding to the west coast, and eventually spreading to many large cities throughout the United States.³⁴

Nonetheless, the informants suggest that both the rise of Jewish law firms and the success of Jewish lawyers were due, at least in part, to the unique professional and cultural conditions present in New York City. For example, describing the ideology and approach of the New York City Bar Association, an informant observed:

It's sort of like the legal conscience of the world. There is no subject the New York City Bar, a city, local bar association will not comment on, anything, human rights in China. The City Bar has a very expansive notion of its jurisdiction. And I went to the meetings of the House of Delegates for the New York State Bar because it's such an extraordinarily interesting social institution. And New York is almost a microcosm of the country. [On the other hand] I've never been active in the ABA, it's just too big for me, too monolithic.³⁵

A partner at a large Jewish firm captured the interplay between cultural and professional conditions in New York City and its impact on the practice of law:

³² Ibid., 28. Protestants attorneys, on the other hand, who constituted only about eighteen percent of the bar, accounted for forty-three percent of the large law firm pool, and only nine percent of the individual practitioner pool.

³³ See Part III.C below.

³⁴ See, e.g., Toni M. Massaro, *F. Daniel Frost and the Rise of the Modern American Law Firm* (Tucson: The University of Arizona, 2011) (on the transformation of Gibson, Dunn & Crutcher from a California-based regional to a global law firm).

³⁵ Informant #12, 17–18.

A Shomer Shabbas [Sabbath observer] attorney will work Saturday night or Sunday to make up the time. In almost all cases, it doesn't upset the work flow at all. . . . A number of times in my career, I had to impose on other attorneys to take over on a Friday or Yom Tov [a day of religious observance], and it is even more difficult for a day or a few days. I always feel uncomfortable when . . . imposing on somebody to do that. Sometimes clients have to understand what's going on, especially if you are not a New Yorker and they don't quite understand what it is all about.³⁶

Other informants explored the less obvious impact of New York City and its culture on the rise of Jewish law firms. For instance, one informant said:

That is partly America, partly New York, which is very polyglot and we hardly realize it, but you accept it and you only recognize it when someone comes from outside of New York and step[s] in a subway and [is] startled by the multiple nationalit[ies] and races and everything, which we take completely for granted.³⁷

Another informant described the present impact of New York culture with the following remarks:

For sure, New York City has always, in my judgment, been more progressive and is more progressive today-liberal or progressive-call it what you will, in accepting . . . diversity than places in the Midwest . . . I'm sure New York is way ahead. I know, from personal experience, that when it comes to prejudice against women . . . there are firms in the Midwest that are back where [New York was] thirty years ago. . . . Five or ten years ago, one of the major firms [down south] had a "wet t-shirt" contest at their summer outing . . . I remember reading about that and saying, "Are they in the Middle Ages?" I mean, there's no way a thing like that could happen at . . . any New York City law firm. We're just ahead.³⁸

III. The Meaning of a Jewish Firm

A. The Jewishness of the Jewish Firms

In this chapter, a Jewish law firm refers to a firm whose majority of lawyers, both partners and associates, between 1950 and 1980 were Jewish. While there is no precise record of the religious affiliation of their attorneys, law firms were commonly known as

³⁶ Informant #6, 13.

³⁷ Informant #4, 17.

³⁸ Informant #5, 13.

WASP, Jewish, Catholic, or mixed. For instance, one informant stated, “In those days, I think, there were some Jewish firms—predominant Jewish firms—and non-Jewish firms.”³⁹ Another informant labeled a specific firm “a Jewish firm,” adding, “The counsel of the firm was James Marshall, son of Louie Marshall. The make-up was really Jewish. That firm was still . . . a Jewish firm. It might have had non Jewish [associates] but all of the partners were Jewish.”⁴⁰

By a “Jewish” firm, I do not mean to suggest that such a firm featured a unique Jewish firm culture, any specific Jewish values, professional or otherwise, or any commitment to or knowledge of Jewish law.⁴¹ In fact, the Jewish firms were Jewish by discriminatory default; namely, due to the discriminatory hiring and promotion practices at the elite WASP firms, many Jewish attorneys flocked to the “Jewish” firms, thus constituting these firms as Jewish.⁴²

In theory, Jewish law firms could have developed as institutions organized around Jewish themes, values, and culture.⁴³ One can imagine, for example, law firms with a special commitment to the notion of doing mitzvahs (i.e., good deeds) in the form of enhanced pro bono.⁴⁴ An informant postulated that Jewish firms, or at least Jewish partners, could build on the affinity between Jewish law and American law and use the

³⁹ Informant #6, 6.

⁴⁰ Informant #2, 5, 8.

⁴¹ In contrast, WASP firms did have a uniquely Protestant identity, coupled with a white-shoe cultural identity. See Wald, “Rise and Fall of the WASP and Jewish Law Firms,” 1810–25.

⁴² See Part VI below.

⁴³ On the relationship between faith and professional identity, see, generally, Thomas L. Shaffer, *Faith and the Professions* (Provo, Utah: Brigham Young University, 1987); Marc Galanter, “A Vocation for Law? American Jewish Lawyers and Their Antecedents,” *Fordham Urban Law Journal* 26 (1999): 1125–47. On the interplay between religious identity and professional identity, see Sanford Levinson, “Identifying the Jewish Lawyer: Reflections on the Construction of Professional Identity,” *Cardozo Law Review* 14 (1993): 1577–1612; Martha Minow, “On Being a Religious Professional: The Religious Turn in Professional Ethics,” *University of Pennsylvania Law Review* 150 (2001): 661–68; Russell G. Pearce, “Reflections on the American Jewish Lawyer,” *Journal of Law & Religion* 17 (2002): 179–88.

⁴⁴ Indeed, historically, Jewish law firms were known for their commitment to pro bono work. For example, “The Scholarship and Defense Fund for Racial Equality (CORE SCDF) . . . was a mixed black and white group . . . It fell apart with the rise of Black Power and tensions in New York City between Jews and Blacks . . . Both Jews of World War II, and Israel and Blacks were all viewed as underdogs, and still remain to this day. And so that was an outlet” (Informant #2, 10).

latter to instruct and introduce young Jewish students to the former.⁴⁵ To be clear, however, Jewish law firms did not develop such a Jewish identity. While many Jewish lawyers were actively involved with Jewish causes, their support was usually rendered in their personal capacity outside of their legal practice rather than in their professional capacity as lawyers. Judaism did not emerge as a central organizational theme or underlying professional value. For instance, one informant recalled:

When I was interviewed [by a large Jewish firm,] I mentioned that I was a Sabbath observer; the person who interviewed me wanted to know what that was although he was Jewish. . . . I explained it to him [and] . . . he said, “Just work your tail off we don't care when it is and that will be that.”⁴⁶

Another informant noted:

Being [observant] was much more of a problem in terms of these [Jewish] firms than just the mere fact that you were Jewish or Catholic, from my point of view. I remember being interviewed in well-established Jewish firms. One I can remember now the partner who interviewed me was a Shomer Shabbat [Sabbath observer] himself and he told me that it would be a mistake for me to come there because of the hard time he had. And then going to another firm the guy said to me, “well, you're going to have to go home early on Friday.” Kind of put me in that kind of a corner. And I was interviewed by some big [Jewish] firms. But it was more . . . like a courtesy, I think, everybody was just going through the motions.⁴⁷

The informant went as far as to characterize practice realities at the Jewish firms as discriminatory vis-à-vis observant Jewish attorneys, noting:

⁴⁵ The informant believes that, currently, Jewish law and legal studies inform and enhance each other: “Certainly today it [referring to the synergy between Jewish and legal studies] does . . . I think it's a tremendous thing to teach kids [today], to show the roots when you're teaching a high school class because they're smart kids, you know, they're in high school already to teach them that the roots of law in the United States, where law's derived from is fascinating it helps strengthen their belief in the Talmud and in the Jewish tradition and their continuity and also, I think it's just fascinating” (Informant #15, 10). On the affinity between Jews and American law, see generally, Jerold S. Auerbach, *Rabbis and Lawyers: The Journey from Torah to Constitution* (Bloomington: Indiana University Press, 1990).

⁴⁶ Informant #10, 3.

⁴⁷ Informant #7, 1–3. Moreover, the same informant reported, “I'd say the lawyers I knew were kind of single practitioners, kind of more my father's peers. And if they were observant they had to be single practitioners because they couldn't get jobs anywhere else” (6). Another observant Jew, working for a large Jewish firm believed that “I was the first Orthodox hired by a Jewish firm” (Informant #14, 2).

I like to think of [an observant Jewish attorney with a large Jewish law firm] as a role model except he came after me [graduating in 1958]. In my view, for whatever it's worth, I think he's the guy who broke the glass ceiling [for observant Jewish attorneys at Jewish firms] so far as many people were concerned. When he made the success that he did make very quickly, it opened the door to Yeshiva graduates who were observant.⁴⁸

Another informant describing the hiring patterns of Jewish law firms noted, "The major Jewish law firms weren't hiring first or second generation Jews."⁴⁹ Other observant informants, however, had a more pleasant experience interviewing with Jewish firms:

During the interviewing process [my religious observance] sometimes came up and came up also to the effect that I would not work on Saturday. [At one interview] someone said, 'you're exactly what we want, I hope you'll work on Saturday when we need you,' and I told them, 'no I won't work on Saturday.' He said, 'it won't happen too often.' I said, 'no it won't work.' So that was more of the negative type of interview. In this firm, as in most of the [Jewish] firms, at least the spoken word was that there would be no problem, that they would support the fact that I had to leave early on Friday and not come in on Saturday. But sometimes you never know until you get someplace.⁵⁰

Of course, some Jewish lawyers were not as ignorant of Jewish customs and habits, yet they still chose not to emphasize their Jewish identity, let alone celebrate it as an important component of their professional identity.⁵¹ One informant witnessed this behavior, stating:

I know people that are involved heavily in the Jewish federation . . . They got involved in the 50's and the 60's and thought [that] to be involved in [the] federation you should take off the Yarmulke when you go into the building. . . . It's interesting.

⁴⁸ Informant #7, 6.

⁴⁹ Informant #17, 17.

⁵⁰ Informant #18, 6–7.

⁵¹ That is not to suggest that Jewish identity, values, and experiences did not indirectly influence and shape the professional culture and organization of Jewish firms. One informant, for example, discussing the growth pattern of his firm, noted: "Probably the fundamental thing was, we were never sure where we would be going and so on. When you start out, you can go one of two ways. One, you can sort of gamble and keep expanding and so on. The other you can be very conservative and not take the next step until you're sure you have the right base. All of us were basically very conservative people. We never felt that confident that tomorrow would be there so that was probably fundamental" (Informant #17, 11). The same informant further explained, "Well, keep in mind, we grew up during the Depression, we didn't come from rich families, never sure that we were going to be that successful" (13).

Every once in a while Clinton used to say to me, “Rabbi . . . ” I insisted I didn't want to be called Rabbi even though I was [a Rabbi] . . . I wanted them to know a layman wears a Yarmulke.⁵²

In some instances, Jewish interests were outweighed by the desire for professionalism and loyalty to clients' interests. A partner at a large Jewish law firm described his firm's decision to open an office in Germany, despite the legacy of the Holocaust, as follows:

Frankfurt is the center of business across Europe and if we were going to grow, we had to be there, and our clients insisted that we go. We have clients that are very active in the European markets and, you know, if you don't want to open, that's fine, but we'll go elsewhere.⁵³

One can take opposite views regarding the Jewish reaction to post-Holocaust Germany, ranging from opposition to opening an office in Germany to celebrating such an office as a triumph over evil. What is significant about the informant's perspective is that it reflects no Jewish consideration whatsoever.⁵⁴ The relevant issues were clients' needs and the firm's competitiveness in global legal markets.⁵⁵

Certainly, Jewish firms employing nearly exclusively Jewish attorneys developed some benefits from the homogeneous religious affiliation of their practitioners. An attorney in a Jewish firm confirmed:

We had a . . . very nice firm. It was congenial. There were never any real problems with rooms. Everybody kind of liked everybody else. I never brought up at a firm meeting any issue unless I had first cleared it with most of the partners. It was

⁵² Informant #10, 13–14.

⁵³ Informant #1, 9.

⁵⁴ Ibid.

⁵⁵ Ibid. Similarly, another informant recalled a conversation in which he was told about a prominent Jewish attorney representing a Congressional committee. On a Friday evening, a member of the committee asked the attorney, ““Mr. XXX, don't you have to go home?” So I said, ‘Well what did Mr. XXX say?’ And he said [that Mr. XXX replied,] ‘Oh Mr. Senator, for matters of national security I'm permitted to violate the Sabbath’” (Informant #15, 22). Once again, client needs and professional identity took precedence over personal identity and religious observance.

worth the time and the aggravation to persuade people, so there was never a hostile vote taken or anything like that.⁵⁶

Moreover, at times, Jewish elements did impact the practice of law at the Jewish firms. For example, an informant said of his Sabbath observance:

Many times when I leave on Friday, my non-Jewish partners and associates see me leave . . . They see that advantage I have by having a strict regimen which can't be violated. I have to say, it probably does give to me a psychological advantage over many of the people who don't have that rest or can't count on the rest.⁵⁷

Similarly, another said of Yom Kippur observance:

So the joke around here was: there was a relatively senior lawyer, a partner in the corporate department . . . a very devout Catholic . . . We called him the "house guy" because the question was if he's good what is he doing here, why isn't he downtown or something like that? He would call me every February. I'll never forget, every February he'd say, "Yom Kippur, it's six months from now." I'd say, "Why do you care?" and his answer was, "Well, the trouble is, I'm always setting meetings with Jewish lawyers and they never think of these things and then suddenly we find out—oh, the day before Yom Kippur—[they] can't come to the meeting [because] it's Yom Kippur."⁵⁸

Also affecting the practice of law at the Jewish firms was a particular emphasis on the pro bono commitments and extra-curricular activities of Jewish partners, as is noted in the following:

At that time, there was no such thing as a program to go to Israel for a year after high school . . . In fact, some years later on, I helped to set that up, eventually. That's a whole separate story. Someone now in Israel wanted to go, needed Jewish Agency approval to get the money . . . I knew people at the Jewish Agency [who] went to Israel, met with the appropriate people, but that's a different success story.⁵⁹

Another informant said of such extra-curricular involvement: "I got involved in the Jewish Community Relations Council which is a bridge, kind of an umbrella over sixty

⁵⁶ Informant #1, 9.

⁵⁷ Informant #6, 15.

⁵⁸ Informant #10, 2–3.

⁵⁹ Informant #4, 2.

different organizations and worked on the Committee [in various roles].”⁶⁰

Yet, unlike Black corporate firms,⁶¹ Jewish law firms did not have a mission to create lasting Jewish institutions. The Jewish firms were Jewish by discriminatory default, and Judaism simply did not play a constitutive role in their organization and professional identity. One informant's account of the role of Judaism in his life captures the role Judaism played in many Jewish firms: “I have been interested in my Jewish roots. I identify and am interested in the Jewish tradition and its scholarship and play with that occasionally. I suppose it was Stendahl who said ‘life is love and work.’ And I have been very happy in my marriage and my family and have been generally very happy in my work. And I continue to support humanitarian causes with hope if not with optimism.”⁶² While certainly mindful of his Jewish roots, Judaism for the informant was separate and distinct from his work, something to “play with” after hours, something that informs, in an indirect fashion, commitment to humanitarian causes.⁶³ Similarly, in many Jewish firms and for many Jewish lawyers both at Jewish and at WASP firms, Judaism was of interest, a source that informed pro bono and extra-curricular activities, and yet it

⁶⁰ Informant #2, 11. Another noted: “when you're a Jewish lawyer, you definitely get approached by, you know, causes, working for legal services they figure will appeal to you, so you have that kind of work, so certainly, you know synagogues” (Informant #15, 31).

⁶¹ See David Wilkins, “‘If You Can't Join ‘em Beat ‘em!’ The Rise and Fall of the Black Corporate Law Firm,” *Stanford Law Review* 60 (2008): 1733–1801.

⁶² Informant #3, 91.

⁶³ The separation between one's professional identity as an attorney and one's religious identity as a Jew was likewise noted by several informants: “The people of my generation [following WWII and the Holocaust] even if we were not personally touched, we were touched, so that has basically defined my interests; I think that plus the fact that I was ambitious, I wanted to succeed, I worked hard, I did everything I could to advance my position but I always from that time became touched by Jewish issues” (Informant #13, 6). Moreover, the same informant reported, “The religious identity was something that I developed as time went by. My background, training, from schools and professional experiences [was different], religion was not a part of it at all.” Another informant explained: “I would say that [my religious identity] was not relevant to [my professional identity]. I mean, I am familiar with Jewish charities and such but I don't think one had anything to do with the other” (Informant #19, 8). But for one informant, his Jewish identity, culture, and experience did inform and shape the practice of law: “[My interest in immigration law] was sparked by my study of Jewish history. I have felt always . . . you know if you do a study of what went on in the 1930s, the German quota was open at all times for immigration to the United States and if you go through the correspondence between the American Consul General in Berlin and his superiors in Washington . . . you'll see that these anti-Semites said, ‘no Jews.’ So I felt that I could help people [in such] circumstances . . . and I have had the privilege over the years of doing a lot of such cases” (Informant #20, 12–13).

was independent of their “work,” the practice of law.

Another informant questioned, “it is hard [for a person] to separate religious identity from other identities” and “I always tried to do the right thing. Is it [doing the right thing] being Jewish?”⁶⁴ Similarly he was uncertain about what it would mean for the firm to have a Jewish identity, saying, “People like people they can deal with and feel they know. So religion in that sense was relevant.”⁶⁵ But beyond such a sense of cultural familiarity, he did not believe Judaism played a role in the organization, structure and practice of the firm.⁶⁶

B. Who is a Jew?

The issue of defining Jewish identity is a highly controversial one. In the context of characterizing law firms, even the basic definition of a Jewish firm as one that employed a majority of Jewish attorneys is not without its challenges because no record lists lawyers by their religious affiliation. That said, for the purposes of this chapter, such a headcount is not necessary, nor is a “definite” list of all Jewish law firms of the era.

Instead, suffice it to note that commonly referred to Jewish law firms included “traditional” Jewish law firms established before 1950 (such as Stroock & Stroock & Lavan; Weil, Gotshal; Kaye, Scholer; Proskauer, Rose; Fried, Frank; and the Rosenman firm) and “start-up” Jewish firms founded in the early 1960s (such as Schulte, Roth & Zabel, and Kramer, Levin).⁶⁷ In addition, a group of mixed firms, never known as Jewish law firms, existed with a significant contingency of Jewish attorneys, some “traditional”

⁶⁴ Informant #14, 2.

⁶⁵ Ibid.

⁶⁶ Ibid.

⁶⁷ A partner at a start-up Jewish firm described his first few years of practice with an established mixed firm as “happy years.” Along with colleagues from several other Jewish firms as well as from his own firm, he helped establish a somewhat less “traditional,” more “entrepreneurial” firm (Informant #16, 2–3).

(Paul, Weiss⁶⁸ and Cleary, Gottlieb⁶⁹), and others “start-up” (Wachtell, Lipton, Rosen & Katz⁷⁰ and Skadden, Arps⁷¹).⁷²

C. The Rise and Growth of the Jewish Law Firms

In 1950 the New York City elite corporate bar consisted of only well-established, large law firms. Without exception, every member of the elite club was a WASP law firm. Not a single member of the elite large law firm club was a Jewish firm; in fact, there were no large Jewish firms in New York City.⁷³ This is not surprising given that five years earlier, in 1945, not a single Jewish firm had more than ten lawyers. As one

⁶⁸ The firm was formed in 1945 as Mr. Weiss and Mr. Wharton joined forces with Mr. Paul and Mr. Garrison. Unique not only in the heterogeneous religious affiliation of its named partners and attorneys, Paul, Weiss was the first major Wall Street law firm to move to midtown (in 1949), the first to elect a female partner (in 1946 at its D.C. office) and the first to hire a black associate. Judge Rifkind joined the firm in 1950, and the firm enhanced its reputation as a leading litigation law firm. By 1949, the firm had 13 lawyers; by 1970, the firm had 110 lawyers; and by 1972, it had 138. See Paul Hoffman, *Lions in the Street: The Inside Story of the Great Wall Street Law Firms* (New York: Saturday Review Press, 1973), 112–21.

⁶⁹ Cleary, Gottlieb was formed following a split from Root Carter. “Most Jewish attorneys followed Gottlieb to Cleary,” and Gottlieb became the first Jewish named partner in a major Wall Street law firm (Hoffman, *Lions in the Street*, 65). The firm grew rapidly, from 17 attorneys as of December 31, 1946, to 27 lawyers four years later, and to 63 lawyers on December 31, 1960. See Leo Gottlieb, *Cleary, Gottlieb, Steen & Hamilton: The First Thirty Years* (New York: The Firm, 1983), 76–77, 138.

⁷⁰ Wachtell, Lipton, Rosen & Katz was formed by four Jewish partners. Like Paul, Weiss, Cleary, and Skadden, Wachtell never developed a reputation as a Jewish firm, quickly earning a reputation as one of the elite law firms in New York City and setting the mark for the highest paid associates and the highest profits-per-partner. See Steven Brill, “Two Tough Lawyers in the Tender Offer Game,” *New York Magazine*, June 21, 1976, at 55 (describing Skadden, Arps and Wachtell, Lipton as “younger firms, many of which were started by Jewish lawyers who were not as welcome then at the old-line firms”). Wachtell has maintained its reputation as a leader in profit-per-partner. See http://www.abajournal.com/weekly/skadden_wachtell_top_amlaw_100 (last visited July 10, 2013).

⁷¹ In 1963 Skadden, Arps had ten lawyers. By 1980, it had 205; and, by 2004, it was the second largest law firm in New York City with over 1700 attorneys. Skadden, Arps never developed a reputation as a Jewish firm, although many of its attorneys, including some of its founders, were Jewish. See Brill, “Two Tough Lawyers in the Tender Offer Game,” 55. See, generally, Lincoln Caplan, *Skadden: Power, Money, and the Rise of a Legal Empire* (New York: Noonday Press, 1993).

⁷² One informant explained that while the “mixed” firms never developed a reputation for being “Jewish,” the Jewish firms, defined as recruiting and promoting almost exclusively Jewish attorneys, underwent “Cravathization”; that is, over time they began to regularly recruit and promote the best talent, Jewish and non-Jewish attorneys alike, to overcome and “get outside the characterization of a Jewish firm” (Informant #16, 5). The sentiment is consistent with an account given by another informant, a partner at a mixed firm, who explained that the hiring criteria at his firm were always based on merit: “One of the reasons we thought it was very important to hire out of law school is that we wanted people to sort of grow up with us” (Informant #17, 15). See Part VII below.

⁷³ In 1950, when the benchmark for a large firm was 50 lawyers, Weil, Gotshal was the largest Jewish law firm with a total of 19 attorneys; Kaye, Scholer had 18; Paul, Weiss had 17; Proskauer, Rose had 15; Stroock & Stroock & Lavan had 13; Fried, Frank had 12; and the Rosenman firm had 7. See the *Martindale-Hubbell Law Directory* (Summit, N.J.: Martindale-Hubbell, 1950).

interviewee confirmed, “[There were no] Jewish firms . . . [in] the 50s. [The Jewish firms] were very small firms . . . [One] existed with eight lawyers.”⁷⁴

Table 1: Jewish Law Firms in New York City, 1932–1950⁷⁵

Firm Name	1932	1935	1940	1945	1950
Fried, Frank, Harris, Shriver, & Jacobson ⁷⁶	7 ⁷⁷	6 ⁷⁸	8 ⁷⁹	6 ⁸⁰	12 ⁸¹
Weil, Gotshal & Manges	3	3	9	12 (+1 tax counsel)	18 (+1 in Washington, DC office)
Cleary, Gottlieb, Steen & Hamilton ⁸²	N/A	N/A	N/A	N/A	6 (+1 in Washington, DC office, +1 in Paris, France office) ⁸³
Paul, Weiss, Rifkind, Wharton & Garrison ⁸⁴	4	4	4	4 ⁸⁵	16 (+1 counsel) ⁸⁶
Stroock & Stroock & Lavan	1 ⁸⁷	2	2	3	13
Kaye, Scholer, Fierman, Hays & Handler	N/A	N/A	4	9	18 ⁸⁸

⁷⁴ Informant #8, 7.

⁷⁵ Numbers are based on *Martindale-Hubbell Directories* for the years 1932 (the first year it was published) and 1935 through 1950, at five-year intervals.

⁷⁶ Fried, Frank's predecessor was Limburg, Riegelman, Hess & Hirsch. Walter Fried joined the Riegelman firm in the late 1930s or 1940.

⁷⁷ Limburg, Riegelman, Hirsch & Hess. Walter Fried was apparently a solo practitioner.

⁷⁸ Riegelman, Hirsch & Hess. Walter Fried was still apparently a solo practitioner.

⁷⁹ Walter Fried was part of the firm by this time.

⁸⁰ Riegelman, Strasser, Schwarz & Spiegelberg.

⁸¹ H.J. Frank had joined the firm by this time. Frank was apparently in solo practice before his association with the Riegelman firm.

⁸² See Hoffman, *Lions in the Street*, 62–63 (stating that Cleary, Gottlieb was formed in 1945 when George Cleary and Leo Gottlieb left the well-established Root Clark firm).

⁸³ Cleary, Gottlieb, Friendly & Fox.

⁸⁴ Paul, Weiss grew out of the firm of Cohen, C (name could not be determined), Weiss & Wharton.

⁸⁵ 1932, 1935, 1940, and 1945 numbers all reflect Cohen, C, Weiss & Wharton. See Hoffman, *Lions in the Street*, 112 (Paul, Weiss, Wharton & Garrison was formed in 1945 and had 13 lawyers).

⁸⁶ By 1958, the firm had grown to fifty lawyers. See Hoffman, *Lions in the Street*, 45.

⁸⁷ The firm was known as Stroock & Stroock until the 1940s. Peter I.B. Lavan, a.k.a. Peter I.B. Levine, joined the firm in 1945 according to *Martindale-Hubbell Directory*.

⁸⁸ By 1958, the firm had grown to 43 lawyers. See Hoffman, *Lions in the Street*, 45.

Proskauer, Rose	8 ⁸⁹	7	9	11 (+1 counsel) ⁹⁰	14 (+1 counsel)
Rosenman, Goldmark ⁹¹	N/A	N/A	N/A	N/A	7

By the mid 1960s, however, this reality had changed significantly. Growing much faster than the WASP firms, the Jewish firms had “caught up” with the WASP firms and penetrated the elite law firm club, constituting six of the twenty largest law firms in New York City. In less than a fifteen-year time span, Jewish law firms grew, as a group, at an average of 200%, with Fried, Frank and Paul, Weiss growing by 400% and Kaye, Scholer by 375%. To be sure, WASP firms also grew at an impressive rate. As a group, however, WASP firms grew at 50% the rate of Jewish firms, averaging about 100%. This trend of faster growth continued between 1963 and 1980, and by 1980 Jewish firms accounted for four of the ten largest firms in New York City. WASP firms also grew at an impressive rate; however, except for Shearman & Sterling, all of the WASP firms grew by less than 100% during this time.⁹²

Table 2: New York City Large Law Firms⁹³

Firm Name	1950	1963	1981
Shearman & Sterling	31	134	335

⁸⁹ Proskauer, Rose & Paskus.

⁹⁰ Proskauer, Rose, Goetz & Mendelsohn.

⁹¹ Hoffman indicates this was another of the “Jewish giants” (*Lions in the Street*, 33). Its predecessors were Rosenberg, Goldmark & Colin (*Martindale-Hubbell*, 1932) and Goldmark, Colin & Kaye (*Martindale-Hubbell*, 1945). By 1950, it was known as Rosenman, Goldmark, Colin & Kaye. In 1973, when *Lions in the Street* was published, it was known as Rosenman, Colin, Kaye, Petschek, Freund & Emil.

⁹² Information in the preceding paragraph regarding the largest New York City law firms between 1963 and 2006 was collected using the following sources: “Growth of 20 Large Law Firms-1963–1981,” *New York Law Journal*, Mar. 16, 1981, 3; “National Law Firm Survey,” *National Law Journal*, Sept. 18, 1978, 14–17; “National Law Firm Survey,” *National Law Journal*, Oct. 6, 1980, 32–37; “The NLJ 250,” *National Law Journal*, Sept. 30, 1985, S4–S18; “The NLJ 250,” *National Law Journal*, Sept. 24, 1990, S4S32; “The 20 Largest Firms Based in New York City,” *New York Law Journal*, Oct. 1, 1990, S3–S4; “The NLJ 250,” *National Law Journal*, Oct. 9, 1995, C6–C22; “Top 25 New York City-Based Firms,” *New York Law Journal*, Dec. 11, 2000, S20; “The NLJ 250,” *National Law Journal*, Nov. 15, 2004, S16–S27; “Top 25 New York City-Based Firms,” *New York Law Journal*, Dec. 13, 2004, 34 (“Growth of New York Law Firms”).

⁹³ The 1950 numbers are based on *Martindale-Hubbell Law Directory* (1950). The 1963 and 1981 numbers are based on “Growth of 20 Large Law Firms-1963–1981,” *New York Law Journal*, Mar. 16, 1981, 3.

Skadden, Arps, Slate, Meagher & Flom	6	10	240
Cravath, Swaine & Moore	21	124	225
Fried, Frank, Harris, Shriver, & Jacobson	12	61	222
Davis, Polk & Wardwell	25	112	221
Weil, Gotshal & Manges	18 (+1 in Washington, DC office)	42	220
Coudert Brothers	14 (+1 tax counsel)	40	218
Sullivan & Cromwell	24	113	216
Dewey, Ballantine, Bushby, Palmer & Wood	16 ⁹⁴	121	212
Milbank, Tweed, Hadley & McCloy	26 (+1 Counsel, +1 in Washington, DC office)	120	210
Simpson, Thacher & Bartlett	21 (+1 Counsel)	109	209
Cleary, Gottlieb, Steen & Hamilton	6 (+1 in Washington, DC office, +1 in Paris, France office)	75	206
Cahill, Gordon & Reindel	18	88	202
Paul, Weiss, Rifkind, Wharton & Garrison	16 (+1 Counsel)	83	202
White & Case	27	125	189
Donovan, Leisure, Newton & Irvine	20 (+1 Counsel)	69	182
Rogers & Wells	18 ⁹⁵	62	176
Cadwalader, Wickersham & Taft	17	70	171
Stroock & Stroock & Lavan	13	N/A	170
Kaye, Scholer, Fierman, Hays & Handler	18	86	164

Two general trends taking place post-World War II explain, in part, the rise and growth of the Jewish law firms: 1) a gradual decline in anti-Semitism and religious-based

⁹⁴ In 1950 Dewey Ballantine was known as Root, Ballantine, Harlan, Bushby & Palmer. The firm had sixteen lawyers.

⁹⁵ In 1950, Rogers & Wells was known as Dwight, Royall, Harris, Koegel & Caskey. It had eighteen lawyers. William Rogers joined in 1950. The firm became known as Rogers & Wells in the early 1970s.

discrimination that made it easier for Jewish law firms to expand their corporate client base; and 2) an increased demand for legal services by corporate clients that exceeded the capacity of the dominant WASP law firms and opened the door for other law firms, including Jewish firms. While generally confirming the existence and consequences of these twin trends, the informants' accounts in Parts IV and V shed light on how they specifically contributed to and shaped the growth pattern of the Jewish firms.

IV: Diminished Discrimination and its Impact on the Growth of the Jewish Firm

A. Overall Decline in Anti-Semitism and Religious-Based Discrimination

Describing the prevailing discriminatory status quo in America in the years before World War II and immediately after it, one informant recalled, “I went to work as an engineer for a very brief time and I went to work for [a large engineering company] but in those times [late 1940s], they did not hire Jews, and neither did anyone else, engineering was not a Jewish profession.”⁹⁶ When asked about the decline in anti-Semitism in American society beginning in the 1950s, one informant stated:

Well, it changed; the world changed it in several respects, I guess. People, I think, the whole notion of anti-Semitism, of any ethnic discrimination . . . The society has really progressed quite dramatically. Discrimination against Jews certainly in the eastern part of the United States in major cities was dramatically less.⁹⁷

The decline of anti-Semitism and religious-based discrimination was a slow, gradual process. Beginning in the 1950s and intensifying in the 1960s, the process reached its culmination in the 1970s. One informant described the trend as follows:

Now remember in the late 60's, the world was beginning to open up with the Vietnam War and so on, all the prejudices began to disappear, and certainly after the Second World War the prejudices began to wear down the dam just broke,

⁹⁶ Informant #21, 2.

⁹⁷ Informant #5, 12.

because every institution was questioned. Every institution was questioned and the young people, including me were questioning everything. And all the old rules began to disappear. And somehow or other Jews began to be able to get into things, and we got hired by clients.⁹⁸

Another informant opined,

The 70's was a time where I believe there was great openness generally and people understood the need [for diversity,] whether they verbalized it or [not], . . . [and that] they were losing out on talent by [not] exposing themselves to various types of people. I think there was a general cultural change going on in the United States, and I think there was a greater need for lawyers in the 70's and the 80's. That was a time of huge growth in the law firms with [greater] need for lawyers, and I think people recognized that they should be focusing on getting the best possible lawyers.⁹⁹

The decline in discrimination, to be sure, centered on ethnic and religious grounds and did not extend to the same degree to racial and gender considerations. One informant remarked, "I think there is also some change in the country. America generally changed in terms of the kinds of discrimination it was willing to practice, putting race aside."¹⁰⁰

One informant described how increased religious tolerance altered the practice of law and, in particular, courtroom practices:

We were sitting down for the scheduling conference, depositions, Friday meeting or something like that and he assigned the schedule and [the federal judge] said, "Oh well we can't set that up because you need to leave early on Friday." I mean, he knew every Jewish holiday, he knew because he had [a Jewish] law clerk and to me, in 1960, this was like unbelievable. I had judges who would on a Friday afternoon make me sit and wait and not let me go home until 3 o'clock even though the case hadn't started, just to sit and wait. An Italian judge would say to me, "I know when the sun sets!" Like I had to be home when the sun set and ten minutes before would [not be a problem]. And one time I remember it was Friday and it was Chanukah so you had to get home particularly early because you had to light candles before Shabbat. And I said to my client, it was about 3 o'clock "I'm going home. Anything happens, you just say 'he had to leave.'" Today, you go into a

⁹⁸ Informant #21, 6. The same informant further clarified: "Did I say this country has no discrimination today? No obviously there still is. There are still places you can't go to play golf, places you can't buy a house, but there are many more where you can" (16).

⁹⁹ Informant #6, 10–11.

¹⁰⁰ Informant #4, 16–17. See Elizabeth Chambliss, "Organizational Determinants of Law Firm Integration," *American University Law Review* 46 (1997): 739–40. Chambliss cautions against the tendency to treat women and racial minorities as a single, undifferentiated group.

judge and there's no issue.¹⁰¹

Another informant opined that the slow yet gradual decline of racial-based discrimination also benefited Jewish lawyers.¹⁰²

The impact of a decline in anti-Semitism and religious-based discrimination on Jewish law firms was significant, making it more likely that corporate clients who previously discriminated against Jewish law firms were subsequently more likely to retain them. “I think it's a combination [of] two things,” an informant said, speculating regarding the willingness of entity clients to hire Jewish firms. “I think it's a combination of an overall decline in discrimination [and] a ‘rat race’ for the best lawyers.”¹⁰³

Another informant described the combined effect of diminished discrimination and increased reliance on merit-considerations:

About 14 years ago my firm was asked to represent a [financial institution] and [a Jewish partner with the firm], who was probably the most respected banking lawyer in the country was concerned that the client might not know that [he] was Jewish. So, he got word to the client, the individual in the institution, that he wanted to know that it was all right, or was he disturbed by the fact that he was Jewish, because there were many other lawyers there. [The client] had been advised that he wanted, that he needed and should have good legal representation. He couldn't get better than [the Jewish partner]. That's what he cared about, to be well represented. I really think that the focus on the merits of lawyering, [on] a lawyer's abilities has overcome these stereotypes and prejudices.¹⁰⁴

One informant, explaining the experience of Jewish lawyers at white-shoe firms concluded that the success was a symptom of a more general, even generic, phenomenon:

¹⁰¹ Informant #7, 9–10.

¹⁰² “Jews had a lot of trouble getting jobs in, I think, the Wall Street firms until the fifties or sixties. I think African American pride and Black independence in the United States and specifically in New York City really helped the Jews” (Informant #15, 19). Notably, the belief that the decline of ethno-religious and racial discrimination in the 1960s were reinforcing phenomena contrasted with the sentiment of some within the Jewish and Catholic communities following the Civil War who feared that greater racial equality for African-Americans might erode the standing and status of ethno-religious minorities. See Jonathan D. Sarna, *When General Grant Expelled the Jews* (New York: Nextbook Schocken, 2012), 24–49.

¹⁰³ Informant #10, 16.

¹⁰⁴ Informant #12, 24.

“I think it's a general social change, I mean there were some people who were older partners at that time in the 50's who just would not consider the idea of having a Jewish partner, and life has changed a lot.”¹⁰⁵ To the informant, the key issue was the overall decline in anti-Semitism and religious-based discrimination. The success of Jewish lawyers and Jewish firms was but the consequence of this general societal trend in the legal profession.¹⁰⁶

B. The Powerful Interplay of Diminished Discrimination, the Rise of Inside Counsel, High Visibility, and the Existence of a Jewish Client Base

The informants suggest that parallel developments within the legal profession magnified the impact of decreased discrimination, making it even more likely that corporate clients would retain Jewish law firms. The first trend was the rise of inside counsel, and more specifically, the shift in decision-making authority within corporate clients over the engagement of outside counsel from discriminating non-lawyer executives to inside counsel.¹⁰⁷ For example, one informant recalled:

I was picked up by [a large corporation] and the General Counsel for [that large corporation]. He saw me and formed an attachment to me. He saw all the lecturing and the work I had been doing, and being retained by [that large corporation] brought me into the world of [large entity in another industry] and [large corporation in a third industry] because they were all working together on legislative issues. [When] they brought me in as their counsel . . . I was really in the world of the [general counsels] of . . . [these three corporations] . . . And the relationships and the networking just began to expand and expand. And before I

¹⁰⁵ Informant #19, 6.

¹⁰⁶ Informant #19, 6–7.

¹⁰⁷ On the rise of inside counsel, see Jonathan R. Maslow, “The Rise of In-House Counsel,” *California Lawyer* 1 (1981): 30; Robert L. Nelson and Laura Beth Nielson, “Cops, Counsel, and Entrepreneurs: Constructing the Role of Inside Counsel in Large Corporations,” *Law & Society Review* 34 (2000): 457–94; Robert Eli Rosen, “The Inside Counsel Movement, Professional Judgment and Organizational Representation,” *Indiana Law Journal* 64 (1989): 479–553; Ted Schneyer, “Professionalism and Public Policy: The Case of House Counsel,” *Georgetown Journal of Legal Ethics* 2 (1988): 449–84; Eli Wald, “In-House Myths,” *Wisconsin Law Review* (2012): 407–61. See, generally, George P. Baker and Rachel Parkin, “The Changing Structure of the Legal Services Industry and the Careers of Lawyers,” *North Carolina Law Review* 84 (2006): 1635–82; Deborah A. DeMott, “The Discrete Roles of General Counsel,” *Fordham Law Review* 74 (2005): 955–81. See also Abram Chayes and Antonia H. Chayes, “Corporate Counsel and the Elite Law Firm,” *Stanford Law Review* 37 (1985): 277–300.

knew it I was representing [multiple large corporate entities] . . . I just happened to be a good lawyer, and I was doing good work. I got hired by [a fourth corporate client] because they were in a case with [the large corporation who was already a client] and they were going to get into trouble. They saw what I did and they came in and hired me. It was that kind of networking and knowing. And, by the way, around this time, the general counsel began to have a much greater role in hiring outside lawyers. And somehow or another, that too helped break the barrier, because the chairman of the board and the CEO didn't hire any more at country clubs. He turned to his general counsel and said, "Get me the best lawyer you can," and if you [were an] outstanding lawyer in the 60's and the 70's and into the 80's, you got hired.¹⁰⁸

Another informant explained that, while breaking down anti-Semitism was more difficult in the corporate world, inside counsel helped sever the long-standing ties between corporate clients and their WASP firms.¹⁰⁹

The second trend, which helped inside counsel to make the decision to hire Jewish firms, was the high visibility of the practice of the Jewish firms and their prominent attorneys. This trend also benefited from diminished discrimination. As one informant put it:

Law, I think, was easier and medicine was easier, because once we became visible, once we were capable of making ourselves visible, it became clear that we were pretty good. And then one thing leads to another. I think law and medicine are kind of unique because they are individual and you can make a reputation for yourself. You can make a reputation climbing up the ladder in the world of the circumscribed corporation but law, it seems to me, is a more open profession. You have more capacity to be seen in law and medicine than you do in management. If you want a career, you need to be seen so I think visibility is critical.¹¹⁰

The informants suggest that Jewish law firms displayed their superstar power at a

¹⁰⁸ Informant #21, 6–7.

¹⁰⁹ Informant #10, 9–10. Another informant noted: "And that was true of a whole range of firms. It was referred to then as client loyalty. Unless you really screwed up, there was a tendency not to move around. Starting in about the 1980s that changed. First, in financial institutions and then moved over to a whole bunch of others and now there is no such channel anymore" (Informant #22, 12). On the transformation of the attorney-client relationship between large law firms and entity clients and the shift from stable long-term and loyal affiliations to shorter competitive relationships see David B. Wilkins, "Team of Rivals? Toward a New Model of the Corporate Attorney-Client Relationship," *Fordham Law Review* 78 (2010): 2067–2136.

¹¹⁰ Informant #21, 17, 18–19. On the role of visibility within and outside large law firms in informing lawyers' professional success see Eli Wald, "The Visibility of Socioeconomic Status and Class-Based Affirmative Action: A Reply to Professor Sander," *Denver University Law Review* 88 (2011): 861–88.

very opportune time; they began rising after 1945 and achieved prominence by the late 1970s and early 80s. This was the period before continued institutionalization of the large firms rendered personal, individual visibility less apparent and anonymity became the norm of large firm practice. “With increasing specialization and division of labor in the blue-chip bar,” said a commentator, “the individual lawyer . . . has no opportunity to stand out. The firms become the powers, not the men in them . . . In short, the blue-chip bar has become a place for a man to make money, not to make his mark.”¹¹¹ This legal environment was quite different from that of the early 1950s and 1960s, when attorneys such as Milton Handler of Kaye, Scholer, Ira Millstein of Weil, Gotshal, Marty Lipton of Wachtell, Lipton, and Joe Flom of Skadden, Arps rose to prominence and lent their highly visible careers to their Jewish law firms.¹¹² In those early days of high visibility, success in one major case could mean a ticket out of low status and an opportunity to establish a large corporate client base.¹¹³

Finally, the interplay of diminished discrimination, the rise of inside counsel, and the high visibility of the work of prominent attorneys at Jewish firms was particularly important to the growth of Jewish law firms and to their development of a large corporate client base because initially Jewish law firms did not represent large entities, or even large Jewish entities. For example, as one informant recollected: “XXX was a Jewish firm. Its client base consisted of mostly Jewish clients, [but] it generally did not represent industry leaders. Instead of representing the first or second largest garment maker, it typically represented the third biggest. The firm's client base changed in the 1970s

¹¹¹ Hoffman, *Lions in the Street*, 52.

¹¹² Brill, “Two Tough Lawyers in the Tender Offer Game,” 54–55. In an exposé article detailing the rise to prominence of Joe Flom of Skadden, Arps and Marty Lipton of Wachtell, Lipton, Brill describes the high visibility of the careers of Flom and Lipton and explicitly argues that their individual successes played a key role in the rise of their respective law firms. See also Malcolm Gladwell, *Outliers: The Story of Success* (New York: Little, Brown and Company, 2008), 116–58.

¹¹³ Informant #17, 4–5 (describing how the success of one name partner in a notorious case played a significant role in establishing the firm's reputation).

[when] New York City became about merit . . . The decline of the importance of old style relationships was a big deal, replaced by merit representations.”¹¹⁴ Indeed, one informant at a large Jewish firm, describing the firm's clientele in the late 1960s, explained that while “many of our clients were Jewish,” the firm had hardly any Fortune 500 clients.¹¹⁵ Another informant affirmed, “Interestingly enough, for the so-called gentile law firms, in many cases, the principal business was with the Jewish banks. The [large] Jewish law firms weren't representing [large] Jewish corporations.”¹¹⁶ One informant added:

Now, why did [Jewish clients] go to these big [WASP] law firms? Because people wanted . . . their businesses. They thought they needed a fancy bank; they thought they needed a fancy lawyer. They can be impressed with them [the WASP firms] . . . I'm serious. I was angry about it.¹¹⁷

These circumstances were echoed by another informant:

When [Jewish] clients started coming in from Brooklyn, somebody once mentioned to me, “Why don't we open up an office in Brooklyn?” So, I told him, “I feel that anybody that can afford our rates wants to come to a Manhattan lawyer; they don't want to stay in Brooklyn.” That's true.¹¹⁸

One informant recalled his frustration with observant Jewish clients taking their business to non-Jewish or to secular Jewish firms:

I used to walk around almost resentful when I would see the Hasidic and obviously Orthodox people sitting in offices of lawyers. Well, why weren't they coming to me? I understand them, I know the culture. But no, that wasn't the issue. The issue was they wanted successful lawyers and the lawyers had no problem dealing with them. I think in the fifties I would have been embarrassed to bring one of them to my office.¹¹⁹

¹¹⁴ Informant #14, 2. An informant at another firm described the client base of his firm in the mid-1960s as consisting of small businesses and start-ups that could not retain the large established law firms of the day (Informant #17, 3). Over time, as the firm's reputation grew, its client base expanded to include large corporate entities (Informant #17, 6).

¹¹⁵ Informant #16, 3.

¹¹⁶ Informant #17, 17. Another noted, “it [a white-shoe firm] actually represented old Jewish investment banks all those firms” (Informant #15, 18).

¹¹⁷ Informant #8, 11–12.

¹¹⁸ Informant #10, 15.

¹¹⁹ Informant #7, 10–11.

To the extent that Jewish law firms did benefit from the existence of a Jewish client base, the informants point out that rather than representing large Jewish clients, the Jewish firms relied on a large number of smaller entity Jewish clients. One informant described the client base of his law firm as mostly Jewish: “I think the large number were Jewish, with some exceptions. A lot of the real-estate people were . . . Jewish clients. . . . Today, you couldn't tell.”¹²⁰ Another informant described the development of his expertise as a function of the large number of small corporate clients represented by his firm:

The [Jewish] firm I joined was basically a corporate law firm. That's what we did, and when I joined it, unlike today, there weren't many defined departments. Maybe there was a tax department, but beside that the young lawyers were assigned on an occasional basis to whomever needed help and so my early practice experience was exposure to a very diverse area. It involved lending and borrowing transactions, investment transactions, a lot of small private corporations and organizational development, bankruptcy, litigation, contracts. I mean you worked for a partner and then you went to another partner. That is, there were no assignments so I was luckier than people are today because I had very broad exposure to a wide variety of things and circumstances. I developed [expertise] mostly in corporate, in corporate finance and the securities area and I got involved in public offerings and everything having to do with stocks and bonds.¹²¹

The experience was shared by the following informant:

I came here [to a Jewish firm], I worked for I would say five years, doing everything. I mean, we didn't have a very big bunch of clients but work was kind of fun.¹²²

Moreover, the informants suggest that not only did large entity Jewish clients fail to patronize the large Jewish firms, they also failed to use their influence to advocate for increased diversity within their WASP law firms. Said one informant, “I have not

¹²⁰ Informant #2, 8.

¹²¹ Informant #13, 2–3.

¹²² Informant #21, 4.

perceived the entree of Jewish lawyers coming as a result of demands from Jewish clients.”¹²³ And another remarked:

I am not aware that . . . in the 70's clients were saying, “We want to make sure that we have a Jewish lawyer [as] opposed to a non-Jewish lawyer,” or [asking that firms be] more diverse From my perspective, I don't know if that is correct. . . . [My] sense at the time was not that clients wanted more diversity.¹²⁴

Drawing a distinction between the conduct of large Jewish clients in the past and contemporary corporate calls for increased diversity, one informant noted:

Very prominent investment firms had all of their personal business done by a Jewish law firm. But their public business was done by a non-Jewish firm. They made no effort whatsoever to encourage the non-Jewish firm to hire Jews. However, once [Jewish attorneys] started to show up at [white-shoe firms], they did feel a little more comfortable about that. But these [Jews at investment firms] were the German Jewish people exercising their patrimonial rights [with regard to the Jewish attorneys at white-shoe firms]. But I would not credit that point in history any very serious attempt by them to influence the hiring or retention of people. I wouldn't credit it all. Never saw it [referring to “A Call to Action,” a demand by large corporations for greater diversity at large law firms¹²⁵]. . . . That is an example of strong arming I have never seen before. But it is the kind of strong arming that is going on now days. Nowadays it is acceptable. If it existed in earlier years, it was a hell of a lot [more] subtle.¹²⁶

V. Increased Client Demand for Corporate Legal Services and the Growth of The Jewish Firm

A. The Growth of Business Law and Increased Demand for Corporate Legal Services

¹²³ Informant #10, 15.

¹²⁴ Informant #6, 12.

¹²⁵ In 1999, chief executives of about 500 major corporations signed a document entitled, “Diversity in the Workplace—A Statement of Principle.” The Statement evidenced the commitment of the signatory corporations to diversity in the legal profession. In particular, it was intended to be a mandate for law firms to make immediate and sustained improvements in this area. See <http://www.acc.com/vl/public/Article/loader.cfm?csModule=security/getfile&pageid=16074> (last visited July 10, 2013).

¹²⁶ Informant #22, 10–11. For analysis of Corporate America's diversity efforts vis-à-vis their outside counsel, see David B. Wilkins, “From ‘Separate is Inherently Unequal’ to ‘Diversity is Good for Business’: The Rise of Market-Based Diversity Arguments and the Fate of the Black Corporate Bar,” *Harvard Law Review* 117 (2004): 1548–1615; Eli Wald, “A Primer on Diversity, Discrimination, and Equality in the Legal Profession or Who is Responsible for Pursuing Diversity and Why,” *Georgetown Journal of Legal Ethics* 24 (2011): 1079–1142.

The growth of the large law firm is explained by a complex mix of demand and supply considerations.¹²⁷ Increased demand for corporate legal services¹²⁸ explains in part the rise and growth of large firms. Indeed, the Cravath blueprint for the organization of the large law firm was, in part, an institutional response on the supply side to the demands of large corporate clients. “It is well known that the large law firm was born . . . in a period of institutional reorganization dominated by the rise of the giant business corporation.”¹²⁹ Thus, the rise of large law firms in the late nineteenth and early twentieth centuries was in response to the growing needs of big corporate clients.¹³⁰

After 1950, increased demand for legal services explains the growth of WASP and Jewish law firms alike. The increase in corporate demand for legal services has been both quantitative and qualitative. Significant growth in the body and scope of statutory and administrative laws regulating the conduct of entity clients shaped the legal needs of large corporate clients and called for a corresponding growth in the size and expertise of the large law firms.¹³¹ Nelson argues that increased government regulation of business,

¹²⁷ See, e.g., David B. Wilkins and G. Mitu Gulati, “Why Are There So Few Black Lawyers in Corporate Law Firms? An Institutional Analysis,” *California Law Review* 84 (1996): 528 n. 109 (“a variety of factors, including, inter alia, the inherent dynamics of partnership tournaments, the needs of clients, the potential for extracting higher profits through leverage, and status competition among firms for the coveted designation of being a “national”—or increasingly a “global”—leader in the corporate law firm world contributed to the rapid escalation in firm size.”). For a supply side account of the growth of the firm, see Galanter and Palay, *Tournament of Lawyers*, 77–120 (arguing that tournament theory, or the promotion-to-partnership system, is a cause of law firm growth); Kevin A. Kordana, “Law Firms and Associate Careers: Tournament Theory versus the Production-Imperative Model,” *Yale Law Journal* 104 (1995): 1923–33 (arguing that law firm growth is better explained by the “production-imperatives” of the work these firms do for their clients). See also George Rutherglen and Kevin A. Kordana, “A Farewell to Tournaments? The Need for an Alternative Explanation of Law Firm Structure and Growth,” *Virginia Law Review* 84 (1998): 1705 (growth of firms is explained by the leveraging of partners’ human capital and the competition between firms for associates are sufficient); Wald, “Smart Growth” (studying models of organic and strategic large law firm growth).

¹²⁸ Ronald Gilson was among the first to distinguish supply side from demand side explanations and stress the importance of the latter. See Ronald J. Gilson, “The Devolution of the Legal Profession: A Demand Side Perspective,” *Maryland Law Review* 49 (1990): 916 (“The study of professionalism by lawyers and sociologists has been dominated by a myopic, albeit understandable, focus on the supply side of the traditional market for legal services.”).

¹²⁹ Larson, “On the Nostalgic View of Lawyers’ Role,” 448.

¹³⁰ Milton C. Regan, Jr., “Taking Law Firms Seriously,” *Georgetown Journal of Legal Ethics* 16 (2002): 155.

¹³¹ Large law firms had “no choice but to grow so rapidly to meet the intense demand created by the flood of business in corporate, litigation and intellectual property practices . . . no choice but to staff up to meet

blockbuster litigation involving corporations, and the proliferation of high transaction cost deals,¹³² “reflects growing demand for corporate legal services of a type big firms offer.”¹³³ In addition, Nelson asserts that restructuring in the market for corporate legal services further contributes to large firm growth: the shift from continuous, general service relationships between corporate clients and law firms led to firm growth based on highly specialized, often isolated, transactions and lawsuits.¹³⁴ Further, “the breakdown of stable regional markets for law firms created a national market in corporate legal services that was unprecedented. The leading firms in New York City and in other major legal centers openly competed for the most lucrative client relationships and projects.”¹³⁵

Jewish law firms were able to take advantage of increased demand for corporate legal services because the dominant WASP corporate bar was fairly small in terms of the absolute number of large firms and their size, as well as in terms of the relative number needed to deal with the increased client demand for corporate legal services.¹³⁶ Consequently, after 1945, Jewish firms gained ground on the WASP firms in a relatively short time span. If the WASP firms had been either more numerous or bigger in size, perhaps they would have been better positioned to meet the growing needs of corporate clients and would have crowded out the Jewish firms. But their relatively small number

torrential increases in the volume of work” (Inst. of Mgmt. & Admin., Inc., “1980s Redux? Large Law Firms Report Record Profits & Revenues,” *Law Off. Mgmt. & Admin. Rep.* 98–99 [1998]: 1).

¹³² See, e.g., Marc Galanter, “Reading the Landscape of Disputes: What We Know and Don’t Know (and Think We Know) about Our Allegedly Contentious and Litigious Society,” *UCLA Law Review* 31 (1983): 4–71.

¹³³ Robert L. Nelson, “Of Tournaments and Transformations: Explaining the Growth of Large Law Firms,” *Wisconsin Law Review* (1992): 747.

¹³⁴ *Ibid.*, 747–48.

¹³⁵ *Ibid.* On the growth of large firms since 2000, see Bruce E. Aronson, “Elite Law Firm Mergers and Reputational Competition: Is Bigger Really Better? An International Comparison,” *Vanderbilt Journal of Transnational Law* 40 (2007): 817–19; James R. Faulconbridge et al., “Global Law Firms: Globalization and Organizational Spaces of Cross-Border Legal Work,” *Northwestern Journal of International Law & Business* 28 (2008): 455–88; Carole Silver, “What We Don’t Know Can Hurt Us: The Need for Empirical Research in Regulating Lawyers and Legal Services in the Global Economy,” *Akron Law Review* 43 (2010): 1009–79.

¹³⁶ In 1945 there were approximately three dozen elite, large WASP law firms with less than 2,000 attorneys. By 1971, the stable group of large WASP law firms grew in number of lawyers employed to approximately 3,000, but the number of firms stayed stagnant (Hoffman, *Lions in the Street*, 1–14).

and size did not allow them to eliminate the competition. While the WASP firms grew rapidly and consistently both before and after 1945,¹³⁷ their growth after 1945 could not satisfy the even greater growing client demand for corporate legal services.¹³⁸

B. The “Economics of Discrimination”? Increased Demand and the Decline of Religious-Based Discrimination

The increased demand for corporate legal services, which led to the growth of the WASP firms in the first half of the twentieth century, contributed to the rise and growth of the Jewish law firms after WWII. In addition, it led to a significant change in the hiring and promotion practices of the large firms. The WASP law firms could not satisfy their increased need for associates from within the ranks of WASP associates. They began, gradually and hesitantly, to hire and eventually promote Jewish lawyers. One informant affirmed this trend, stating:

As the . . . law business grew, the firms grew, [and] the need for high quality lawyering grew, meaning a) the growth of business, b) the growth of business regulation and the increasing need for lawyers, the need to give both legal and ethical advice to keep these corporations out of trouble. . . . These law firms needed people, and they couldn't afford to discriminate. Discrimination became a negative business plan—they were shooting themselves in the foot because they had to reject superior lawyers to hire ethnically acceptable inferior lawyers. . . . [It's] true whether you're discriminating against Jews, . . . Catholics, . . . Asians, . . . Blacks, or . . . anybody. Any time you discriminate, you take some guy who's not as good over the person you're discriminating against, so as a business proposition. . . . I think those are two factors that changed the world.¹³⁹

Another informant argued:

What changed? Brain-power needs. The complexity of the world became so great—

¹³⁷ Shearman & Sterling grew by 150% between 1963 and 1981 and was still the largest law firm in New York; Cravath grew by 81%, Davis, Polk by 97%, Sullivan & Cromwell by 91% and Simpson, Thatcher by 92%. However, the Jewish firms grew much faster. See above, Table 2.

¹³⁸ Fried, Frank grew by 264%, Weil, Gotshal by 424%, Paul, Weiss by 143%, Kaye, Scholer by 91% and Cahill, Gordon (a Catholic firm) by 130%. See above, Table 2.

¹³⁹ Informant #5, 12–13.

an explosion in the marketplace, globalization, the growth of the economy. . . . The coverage is so big that you need manpower. . . . So, you want to hire. You use them all up, and you need talent, too. So, Harvard has 500 students and 250 are WASPs. [All of the WASPs] get jobs, [and] there is [sic] still plenty of jobs for the other 250 Jews. So, the growth in the economy created a demand. They need more manpower. They need more bodies and they need some talent . . . so . . . they need the Jews. My view is as simple as that. It's the law of supply and demand.¹⁴⁰

And a third informant added:

I think that [the decline of discrimination against Jewish lawyers was] tie[d] into the commercialization of the practice of law. And whether it's corporations or law firms, we're looking simply for merit and for talent, so, [the] old school [discriminatory hiring practices of] the firms in the teens, 20's and 30's wouldn't work anymore.¹⁴¹

The informants' accounts, however, caution against too-quickly accepting the theory that competition leads to the decline of discrimination, as is evidenced in the following:

The firms ultimately had to take in Jewish people because they grew so quickly. But my friend . . . in my class tells the story of going to a WASP firm [that was] well known, and being shown around the conference room. They had medallions from the various law schools, including Yale [whose seal includes several Hebrew letters]. And one fellow there who did the interview . . . asked what ethnicity [my friend] was. He said, "Czechoslovakian or what?" He said, "Can you read this?" [referring to the Hebrew letters in Yale's seal]. So, there were relatively few Jews who were being taken and that had to change because of the explosions in the law firms and the demand for . . . smart lawyers. And if you were looking for smarts, Jews had the big capital among them.¹⁴²

¹⁴⁰ Informant #8, 13, 14.

¹⁴¹ Informant #4, 16. Another informant added: "I would say success in the law depends on a lot of things. Well, you have to have some intelligence and be able to cope with issues, and Jews—many of them are highly qualified in that respect so as the need for lawyers grew, and the number of people able to do the work and to bring something to the table didn't grow particularly by comparison [Jewish lawyers experienced decreased discrimination]. People realize you have to hire the most qualified people . . . and there are a lot of very qualified Jews and I think the world, the community came to understand that they were depriving themselves of a whole segment of the population, mainly Jews, who had great ability and why should they do that; why should they exclude them, so they hired them" (Informant #13, 10).

¹⁴² Informant #2, 6–7 (names have been omitted to preserve anonymity). See Gary S. Becker, *The Economics of Discrimination* (Chicago: University of Chicago Press, 1971). Becker's seminal analysis is considered by some to be the "prevailing economic theory of race discrimination" (Richard H. McAdams, "Cooperation and Conflict: The Economics of Group Status Production and Race Discrimination," *Harvard Law Review* 108 [1995]: 1033). See also David Chamy and G. Mita Gulati, "Efficiency-Wages, Tournaments, and Discrimination: A Theory of Employment Law for 'High-Level' Jobs," *Harvard Civil Rights-Civil Liberties Law Review* 33 (1998): 62 ("The cornerstone of the modern discussion has been the model developed by Gary Becker."). Cf. Pierre Bourdieu, *Outline of a Theory of Practice*, ed. Earnest Gellnor et al. and trans. Richard Nice (Cambridge: Cambridge University Press, 1977) (advancing a theory of discrimination that centers on human capital, social capital, and cultural capital); Meir Dan-Cohen,

Another informant pointed out that, while increased client demand was a key factor causing both the growth of large firms and the decline of discrimination, the decline was gradual and slow and took over twenty years to develop into the norm, and added, “I believe in the 70’s in some of the non-Jewish firms, they would have had more difficulty accommodating for their needs.”¹⁴³

A time-consuming, gradual change in the hiring and promotion practices of the WASP firms meant that many Jewish lawyers in this “transition” period did not succeed in securing a job and struggled to survive professionally. For many lawyers who had been the objects of discrimination, the change came too late. The following account makes explicit the consequence of a prolonged decline in discrimination:

My first job [was with] a firm called Gold & Bach & Burrell, a small firm [of] about 10 or 11 lawyers. Jeff Gold graduated [from] Yale in 1941, first in his class, then he started his own practice; Marty Burrell [graduated from] Harvard [with a joint] M.B.A. & J.D in those days it took some doing . . . The firm eventually went bankrupt, as did many of the firms, and I got fired my first year. I wanted to be a corporate lawyer, and I thought it might be a bit different . . . Then I went to work in a storefront in Brooklyn where I eked out a living doing wills and house closings, making \$5,000 a year, [and] moved to Court Street in Brooklyn. Then I got a break, I went into the legislature. I rose to the position of chief counsel for the speaker of the New York City senate. . . . I met a friend of mine who was a member of this firm. And twenty-five years ago, I joined this firm and, little by little, I gradually moved up to Senior Partner.¹⁴⁴

No doubt, diminished anti-Semitism and increased demand for corporate legal services “generically” explain the rise and growth of the Jewish law firms.¹⁴⁵ Indeed, the latter

Rights, Persons, and Organizations: A Legal Theory for Bureaucratic Society (Berkeley: University of California Press, 1986) (advancing an organizational theory of discrimination); Rosabeth Moss Kanter, *Men and Women of the Corporation* (New York: Basic Books, 1977) (same); Kenji Yoshino, *Covering: The Hidden Assault on our Civil Rights* (New York: Random House, 2006) (exploring racial passing and covering).

¹⁴³ Informant #6, 7.

¹⁴⁴ Informant #8, 9–10.

¹⁴⁵ Malcolm Gladwell offers yet another generic explanation for success in the professional realm—building on one’s background conditions, life’s circumstances as well as social and cultural capital to distinguish oneself as an outlier. Gladwell, *Outliers: The Story of Success*.

provides a general explanation for the growth of all large law firms, including the old WASP firms, rather than an account of the unique, faster growth of the Jewish firms. The informants suggest, however, that the rise of the Jewish law firm was not generic. Rather, it was also explained by the conduct and practices of the WASP firms.

VI. The Unique Growth of the Jewish Law Firm

A. White-Shoe Ethos and Protected Pockets of “Jewish” Practice Areas

The large WASP firms stayed clear of what they perceived to be “undignified” practice areas, inconsistent with their white-shoe ethos and notions of professionalism, such as real-estate, hostile takeover work, bankruptcy, and litigation.¹⁴⁶ As one informant put it, “In the 1950s Jews were restricted to Jewish firms and Jewish practice areas.”¹⁴⁷

Another remarked:

[A particular attorney] was a real-estate lawyer and litigator and a real-estate investor—a very wealthy man. . . . And, as you probably know, at the time, the largest firms at the time really had no real-estate partners. . . . That's not the case today. . . . Real-estate, like divorce, was viewed as dirty work. And WASP lawyers didn't get involved in real-estate . . . until they saw there was something worth happening in the area. So, this fellow was involved in a variety of developments, real-estate developments and otherwise.¹⁴⁸

This division is emphasized by another informant:

The specialization or over-specialization that we have now didn't exist then . . . Real-estate was not a big thing in those days. . . . It was almost [unheard of] for the large firms to have a real-estate department, and now that's a big thing . . . and bankruptcy is big; when I say that I mean, what I'm trying to say, is that those specialties in the old days were little firms that did only that—you had a bankruptcy

¹⁴⁶ One informant at a traditionally white-shoe firm tellingly recalled the transition of the firm into the previously “undignified” real-estate practice area: “I pretty much started the real-estate group here, I started as a corporate lawyer as we were doing mergers and acquisitions, and the head of the M & A group . . . said to me . . . ‘we need real-estate law.’ . . . Basically it was real-estate that was really hooked into our corporate practice, it was, you know, securitized real-estate” (Informant #15, 14–15).

¹⁴⁷ Informant #14, 2.

¹⁴⁸ Informant #2, 5–6 (names have been omitted to preserve anonymity).

firm, you had a real-estate firm. . . . There is much more specialization now.¹⁴⁹

This conduct by the WASP firms created pockets of practice that Jewish law firms occupied and promptly came to dominate. In the hostile takeover market, for example, Skadden, Arps and Wachtell, Lipton took advantage of the reluctance of the white-shoe firms to get involved in a less than dignified practice and in the mid 1970s monopolized this “Jewish pocket.” A commentator said of the monopoly:

Either because they're still snobby about such fighting, or because Flom and Lipton have such a head start on them in experience and reputation, the old-line law firms are still only rarely involved in tender fights. Usually, when a fight starts, a company whom they represent as general counsel brushes them aside because the investment bankers they're using have told them to get Flom or Lipton.¹⁵⁰

Consequently, Skadden, Arps and Wachtell, Lipton were able to monopolize the hostile takeover pocket of practice:

There is probably no other major area of law where so small a group of attorneys, and one attorney in particular, enjoys such total domination. . . . Flom today enjoys unprecedented pre-eminence in the field. My count has him on one side or the other, or working for the investment bankers, in ninety percent of the tender fights of the last three years. Lipton is the only lawyer who seems to share even a portion of the field with him.¹⁵¹

Bankruptcy law was another example of an “undignified,” Jewish practice area. One informant remembered:

Years ago it was like bankruptcy because they were collection lawyers. It was like a primate part of the Bar, you weren't proud to be a collection lawyer and do bankruptcy. Now [in the 21st century] the biggest firms have major bankruptcy departments.¹⁵²

Another informant described how practicing in this protected pocket of practice

¹⁴⁹ Informant #10, 6–8.

¹⁵⁰ Brill, “Two Tough Lawyers in the Tender Offer Game,” 54.

¹⁵¹ Ibid.

¹⁵² Informant #20, 17.

allowed his firm to develop expertise and build its reputation:

We acted in the XXX Bankruptcy, which, up to that point was the largest bankruptcy that had taken place in the US. And [a partner with the firm] headed the effort on that. It turned out to be a very successful liquidation and established our reputation as creditor's rights lawyers with the major banks. Also in [the same year], we represented [a large corporation] which was on the brink of bankruptcy. We acted as counsel to [that corporation] in working out an agreement with banks and [other parties] to solve its fiscal crisis. That too was a matter of considerable notoriety particularly in the banking world and on Wall Street. So that [a few years later], we had an established reputation for corporate merger/acquisition/take over matters, major creditor's rights problems, financial issues.¹⁵³

As one informant revealed, the Jewish pockets of practice allowed Jewish firms to establish and develop a loyal client base, with little competition from the WASP firms:

We had a family; I've known that family for probably . . . forty-five years, through thick and through thin, through marriages through divorces, etc. . . . They had to do major estate planning, and I am totally capable of that. . . . I introduced them to the person here that does that, and they put in a lot of time and effort . . . The person that did the estate planning [later] left the firm and took with him the list of clients he worked with . . . He wrote each of them a . . . nice form letter, saying, "If you have any interest in your relationship, here's a release" . . . and this guy sent back a little note that said, "[the informant] has been my lawyer for forty years [and] I'm not changing now."¹⁵⁴

Building on client relationships within the Jewish pockets and establishing their expertise and reputation, the Jewish firms were gradually able to cross over and represent the same clients outside of the "undignified" arenas in "respectable" corporate affairs. One informant described the transformation and expansion of the firm's client base:

In those days bankruptcy was not such a respectable practice but it smelled to me like a big firm going into bankruptcy may just fit in one of these days and the rest is history, because in the 70's, the real industry started to boom and here we were and that practice just took off, the firm really took off, and of course it grew in other areas too.¹⁵⁵

¹⁵³ Informant #17, 4–5 (names have been omitted to preserve anonymity).

¹⁵⁴ Informant #10, 9–10.

¹⁵⁵ Informant #21, 8.

Another informant similarly noted:

In 1969, we represented [a large corporation] in a merger with [another large corporate entity]. That transaction ended up with two relationships that became very important. We met [a banker at a large investment bank] in that transaction and he liked the work that we did and as a result of that we began to do a fair amount of work for [the investment bank], which was one of the leading investment banks. And the company that acquired [our 1969 corporate client] liked what we did and we began to do a significant amount of legal work for [the acquiring entity] which was a major step forward in that we were now representing a leading Wall Street investment bank and one of the country's largest corporations. Both were very active clients.¹⁵⁶

Several years later, a successful representation of one corporate client in conjunction with a takeover attempt saw the client base of the firm grow from one major client, to several clients the following year, to several hundred clients a decade later.¹⁵⁷ Importantly, the firm was able to expand its practice and client base beyond the protected practice areas into mainstream corporate practice, so much so that the informant revealed that “[Today] we're fairly active in what I call the corporate governance area, advising companies as to how to structure their board processes and corporate governance guidelines and so on which has become a major part of our practice.”¹⁵⁸

While the WASP firms were willing to concede “dirty” law practice to the Jewish firms, they were unable to contain the areas of concession. The Jewish firms crossed over to the “dignified” practice areas, as is noted in the following:

When the tender-offer boom began a few years ago, Flom became a hot commodity, not only to raiders but to the more established target companies who decided they'd rather have him defending them than attacking them. As late as 1970, Skadden, Arps had 29 lawyers. . . . Now the firm has ninety. . . . This skyrocketing growth dwarfs the much slower expansion of the old, white-shoe firms on Wall Street. . . . Joe's done the most magnificent thing anyone's ever done i[n] the law business. . . . He's broken the link between the old investment-banking firms

¹⁵⁶ Informant #17, 3.

¹⁵⁷ Informant #17, 5–6.

¹⁵⁸ Informant #17, 7. The same informant further said, “I would say that as you got to the millennium, 2000, we were one of the major established law firms with expertise in securities, corporate law, tax and trusts, executive compensation, real-estate [and litigation].”

and blue-chip companies and their Wall Street lawyers.¹⁵⁹

Moreover, white-shoe ethos not only restricted the growth of WASP firms in terms of practice areas, but also limited their growth in terms of lateral hiring, which was considered rude and unprofessional.¹⁶⁰ As one informant recalled:

After I'd been [in public service] for five years, I decided I wanted to go back to private practice and I wanted to return to New York I remember looking through the New York Martindale-Hubbell trying to see if there was any firm there that appealed to me and I came to the conclusion that there wasn't. You know there were certain firms that are famous never taking in people that are laterals. In more recent years there have been a few exceptions to that, but basically you know the major firms at that level didn't take in laterals. So it wasn't so hard to exclude those firms. The only firm I went to made me an offer, promised a partnership. [It was] still very definitely a Jewish firm with these two Catholic partners.¹⁶¹

The Jewish firms, on the other hand, uninhibited by the weight of white-shoe culture, were aggressive in recruiting laterally. One informant described such hiring patterns at his firm:

We do a lot of lateral hiring. And, if you look at the economics of it, assuming that you take in thirty or forty kids, how many of them are going to become partners? . . . I mean, economics doesn't permit it, which means you have to get rid of people along the way. And . . . you have to fill in the gaps at some point. And so you bring people in, while you're getting rid of people. It's a strange dynamic, but it exists. So, we do a great deal of that and more.¹⁶²

Another informant recalled his personal experience when he was laterally cherry-picked to lead the corporate department of a large Jewish firm:

About twenty-five years ago, in 1981, after eighteen years [elsewhere, with another Jewish firm, which was also growing] I joined [a different large Jewish firm] as head of the corporate department. . . . We hired nine people . . . and they were really first rate people. . . . We had people from many different firms. . . . and one of the

¹⁵⁹ Brill, "Two Tough Lawyers in the Tender Offer Game," 54.

¹⁶⁰ Fern S. Sussman, "The Large Law Firm Structure: An Historic Opportunity," *Fordham Law Review* 57 (1989): 969.

¹⁶¹ Informant # 11, 7-8.

¹⁶² Informant #1, 10.

partners came with me and is with me still, and an associate came with me and eventually became a partner and subsequently led the real-estate department. Also [having] join[ed] was the head of our corporate department.¹⁶³

The contrast between the aggressive recruiting practices of the Jewish firms and the more passive practices of the WASP firms, as well as their consequences in terms of lateral recruitment and retaining talent, are captured in the following account of one informant:

I think one or two people left, and [a small Jewish firm I was with before being recalled into the army] called and asked me to come down and talk to them, which I did, and they said, “We would like you to come back. We’re sorry you left us; it’s a year or two later, but we’d like you to come back.” And they made me a very substantial salary offer, which was substantially more than I was making [at the new firm], and I was making twenty-five percent more than I had been making there when I left. . . . Now, we’re talking early 1960s, so \$12,000 a year was a lot of money, and I think I was making \$12,000 here and they offered me \$16,000 or \$18,000, which was a stupendous amount of money, and I told them I really was very comfortable here, that I really like[d] the people here [and] I liked what I was doing. I had a career here, and I was staying.¹⁶⁴

B. Effective Discrimination by the WASP Firms and its Consequences: The Creation of a Robust Entry-Level and Lateral Pool of Elite Jewish Lawyers to the Benefit of the Jewish Law Firms

In the 1950s and 1960s, WASP law firms effectively discriminated against Jewish lawyers.¹⁶⁵ According to one informant, “There’s no question that in 1955 the major New York law firms were not hiring Jews.”¹⁶⁶ Echoing the same sentiment, another informant remembered, “I was at the top of the class and very high ranked student. I started interviewing in the downtown law firms, not a chance. There was no way that a Jewish, a young Jewish lawyer was going to get accepted into the big firms. It just wasn’t going to

¹⁶³ Informant #2, 1, 8.

¹⁶⁴ Informant #5, 6–7.

¹⁶⁵ “The Jewish Law Student and New York Jobs: Discriminatory Effects in Law Firm Hiring Practices,” 630.

¹⁶⁶ Informant #17, 17.

happen.”¹⁶⁷ A third informant noted, “When I came down to look for a job in 1953 there weren't too many Jews being hired so, it was just beginning. There were then some firms that had no Jews, some major law firms that had some Jews and unless it was a Jewish firm even the ones that had some Jews didn't have many.”¹⁶⁸

The realities of discriminatory practice were clearly perceived by Jewish attorneys. “I suppose it was just generally assumed that Jewish people, or Jewish boys—it was all boys then—wouldn't go to a Sullivan & Cromwell or something else like that,” recalled one informant. “There certainly was discrimination . . . so that is all true.”¹⁶⁹ One of the informants added:

In the fall of 1953, a number of members of my class were elected to the board of editors. And that also coincided with our looking for jobs for the summer of 1954. If you looked at the board of the Columbia Law Review from the class of '54, '55 there was a very, very significant Jewish population on that board so going back to the attitudes of myself and my colleagues in the fall of '53, then there were Jewish firms [like] Proskauer, Strauss and Spiegelberg, although frankly, I was unaware of that firm at that time, and I don't know anyone in my class who went to that firm. And there was one firm which was regarded as egalitarian and that was Paul Weiss which had Jewish partners, Catholic partners, and Gentile partners and even the occasional black associate. Many people in my class had a lot of trouble getting summer jobs. I don't know what the percentages were but [I have a] clear memory of how discouraged many people were going through the interview process over and over again and not getting any offers. So you know at the end of the summer of 1954, we entered our third year in law school. And except for people who had offers from the summer everybody went through the same process all over again, and also I have the same memory of how discouraged people were.¹⁷⁰

The same frustration was expressed by another informant:

This would have been early '58, the downtown white-shoe firms were simply not really hiring Jews as they do now. . . . Certainly, the discrimination was evident to me when I was at . . . law school, and none of us had any doubt that it was there. I

¹⁶⁷ Informant #21, 2–3.

¹⁶⁸ Informant #13, 9.

¹⁶⁹ Informant #4, 15–16.

¹⁷⁰ Informant #11, 2–4. The informant added that: “The other memory I have is, when I was interviewed, interviewing at a firm called . . . a very white-shoe firm, the person who interviewed me who I think was not yet a partner . . . tried very hard to get me an offer . . . and he failed, and he was very apologetic about that” (6) (names have been omitted to preserve anonymity).

mean, we all talked about it, and we recognized it and deplored it.¹⁷¹

By effective discrimination, I do not mean to suggest that no Jewish lawyers were hired by the WASP firms. For example, one informant noted:

I had, as I started to look in the job market in 1955, had mentally thought that there were two problems I faced. One, [my law school] was not ranked with Harvard or Columbia, and secondly because I am Jewish, and not the least hesitant to say so I thought that I was relegated to firms that were not of size or substance, and in point of fact I literally stumbled into the offices of [a large white-shoe firm]. Literally stumbled in without an appointment, without prearranged anything and asked for an interview. At the end of the very first interview, I had a job offer, but was told that I had to come back for a second round. So I came back for the second round, had the offer and was accepted on the spot . . . But it was my impression that life being what it was, my destiny was to be in one of the smaller firms. To my surprise, [a large white-shoe firm], which had no Jewish partners [extended me an offer].¹⁷²

Another informant described his experience interviewing at a large white-shoe firm:

Then in my second year I decided I should try New York . . . [a mixed firm] was clearly the place I sort of wanted to go . . . I went to [a white-shoe firm] [because] I figured I really would not care for it, and so it would be a good sort of stress interview for me, good thing to subject myself to. And I actually interviewed there first. . . . So, I go [to the white-shoe firm] first and am interviewed by a man. He was so different than my expectations, that I was just you know . . . I left the office and my expectations were . . . I went to [the mixed firm] . . . Somebody there at some point suggested that it was a strike against me that I wasn't on the law review. They sort of didn't care for that. By the way, I have many friends there. I respect the firm immensely . . . So, I just sat there not knowing what the hell to do, and I decided finally to go with my heart, and I went with [the white-shoe firm]. I enjoyed the summer and came back and stayed. That's the law firm choice.¹⁷³

Rather, my aim is to convey a professional reality whereby discrimination was the norm at WASP law firms. This discrimination was indicated by the following informants' accounts:

[I] found a job here. And this was a very small firm at the time. It was a

¹⁷¹ Informant #5, 4, 11.

¹⁷² Informant #22, 4–5.

¹⁷³ Informant #12, 5–6.

predominantly Jewish firm because, even in those days, it wasn't easy for Jews to break into the large law firms. Although, some of the major firms did have Jewish partners. White & Case had one and Sullivan & Cromwell had a couple. But, it was not the norm.¹⁷⁴

Absolutely—there's no question about that now—I cannot give you statistics, [and] I'm sure some of these “pubas” would argue with me, but I was there. I saw it happen. The major firms who were known as the white-shoe firms—the Gentile firms—they hired Jews, but very few. In no way did they hire Jews in proportion to the number of Jews that were at the top of their class and were successful in law school—that simply didn't happen.¹⁷⁵

In addition, WASP firms that did hire Jewish attorneys as associates tended not to promote them to partnership.¹⁷⁶ Tellingly, one informant recalled:

I went back to [a large white-shoe firm after a couple of years in public service], and was told that I would have to take my place in line as one option. The other option was to try to get a partnership in [another] firm. I had those offers at the time. [A large Jewish firm] was one of the firms that offered me a partnership. Looking at the opportunities, and even at that point of time—now this in 1968—I had a considerable concern about what the opportunities were for Jews in the field, and opted for [the large Jewish firm] to get that issue out of the way.¹⁷⁷

Another informant similarly noted, “At the time, we [at a large white-shoe firm] had a lot of associates who were Jewish, probably not in the same proportion as now, but . . . many. [There were] many senior associates, but none of them stayed, and none of them made partner.”¹⁷⁸

Importantly, whereas in the decades preceding World War II, elite colleges and law schools discriminated against Jewish students by imposing admission quotas,¹⁷⁹

¹⁷⁴ Informant #1, 5.

¹⁷⁵ Informant #5, 19.

¹⁷⁶ One informant noted: “and actually in our day [the mid-1960s] the Gentile law firms were hiring Jewish associates. The question was whether you became a partner or not” (Informant #17, 17). See also Auerbach, *Unequal Justice*, 25–26.

¹⁷⁷ Informant #22, 7.

¹⁷⁸ Informant #4, 8. The informant left the non-Jewish firm after two years to join a small law firm with another former associate at the firm (9).

¹⁷⁹ One informant recalled: “And by then when I went to [an elite] college, talking about discrimination, I had applied at the high school and they made it perfectly clear that I was Jewish and in those days, you had to fill out a form with your name and your religion. I said I was Jewish and I was told that I'd be very lucky to get in because they had to set a quota. I was told ‘we take no more than 10% Jews, and if you get in

beginning in the late 1940s and throughout the 1960s, a growing number of Jewish attorneys were top graduates and editors of the Law Review at elite law schools.¹⁸⁰ As one informant remembered:

What was happening in the early 50's was the opportunity to get into a really top flight law school as graduates of the Hebrew College . . . There had been a few exceptions [Jewish graduates of Hebrew College who were admitted to elite law schools before the 1950s] . . . Suddenly, in our time in 1954 and 1955, the [elite] law school opened up at Harvard for whatever reason. Generally Hebrew College graduates had done very well in graduate school and they gave the school a very much-deserved reputation. And so it was like, "Hey, you know you could really go to a good law school." And I think that was the attraction for me . . . and now it seemed like even guys like me could get in.¹⁸¹

Still, many Jewish graduates of elite law schools could not find a job with the white-shoe firms. The informants affirmed this fact in the following accounts:

Because, no, you got into law school and the minorities did well, the Jewish students did well . . . [but] they still couldn't get jobs. It wasn't the law school, so it had to be some other thing . . . The Jewish kids at the top of the class had a tougher time . . . with the white-shoe law firms.¹⁸²

Getting a job was impossible. It was impossible because the law firms that hired law students were all—with the exception of a couple, which I will tell you about—blatantly anti-Semitic. . . . They posted—and I remember to this day—on the bulletin board of the Yale Law School—this great liberal bastion of universal love of all creeds—the interviews that were to be given at the Yale Law School campus. Fifty percent of the law school was Jewish, [and] not one single Jewish name—not one single—[was posted], including the editor-in-chief of the Yale Law Journal . . . or . . . the man who was first in his class . . . I complained, so they took this list and they went to the Hotel Taft in New Haven, and they interviewed them down there. A Sabbath[-]observing Jew is like having cancer on top of AIDS—useless. The law firms that hire[d] were few in number.¹⁸³

you'll be a very lucky boy” (Informant #21, 3). See, generally, Jerome Karabel, *The Chosen: The Hidden History of Admission and Exclusion at Harvard, Yale and Princeton* (New York: Houghton Mifflin Company, 2005).

¹⁸⁰ One informant described the discriminatory admission policies of elite colleges and law schools prior to the 1950s as coinciding “with what was happening in the United States: quotas on Jews at Harvard and Columbia and, those places where, starting in the twenties, the United States became, you know, the world moves the same way you know, same spirit that you saw in the fascist countries of Europe, which was true in England, it was true in the United States” (Informant #15, 18).

¹⁸¹ Informant #7, 4–5.

¹⁸² Informant #5, 18.

¹⁸³ Informant #8, 5. Also telling is the account of another informant about his experience seeking a law

Graduating Law School in 1958 was tough times for jobs generally . . . I don't think I encountered the normal discrimination so to speak because I don't think I had even attempted to get into the white-shoe firms . . . So there were plenty of firms to go to that you didn't have to try to break into where you were not wanted.¹⁸⁴

As a result of these discriminatory hiring and promoting practices, Jewish attorneys tended to flock to the Jewish law firms, sometimes self-selecting out of even applying for a position with the WASP firms. "I wouldn't interview [with] those [WASP] firms," said one informant.¹⁸⁵ And another noted, "I think many of them practiced discrimination not even realizing it was discrimination; plus the fact that there's also self-discrimination where people don't apply there because they . . . don't want to be rejected."¹⁸⁶

The deeper roots of self-selection were described as follows by an informant who interviewed with WASP firms, but ended up accepting an offer from a Jewish firm:

And then there is reverse discrimination . . . I did not do much interviewing [with WASP firms,] but I do remember . . . several years later I met somebody at [a WASP firm] and he said to me, "[W]hy didn't you respond to our offer?" I said "what [offer]?" He said, "We telephoned your home, and I think we spoke to your mother, and we made you an offer. We asked you to call; you never called back." So I said, "I didn't call back because I didn't know that it happened." So, at an appropriate time, I said to my mother, "Mother, do you remember getting a call from [the WASP firm] offering me a job?" She said, "yes." "How come you didn't

related job while attending college:

Nobody had better credentials than me. I was chief editor of the high school newspaper. Nobody had better criteria, it was irrelevant. It was totally irrelevant. So the lady described the position, and said, "Well, we would expect you to come in at X and you leave at Y, and once every three weeks, you'd be expected to come in to work on Saturday. We rotate that." And I told her, "Well, I can come in and work on Sunday or at night but I am an observant Jew and I cannot work on Saturday." Now you'd think that, today it is not an issue, wrong at that time. "Oh well, we have two or three Hebrews" —that was her expression, Hebrews—"but they all come in and work on Saturday." I said that I'm afraid that I would not be able to. That was it. So it was very satisfying for me to be in an office thirty-five years later with a Jewish client who prevailed, they were a target and won [against a client represented by the law firm with which the informant sought the position as a college student]. And I learned later that one of the founders of the firm was Jewish. But I never knew that until much later that that was the case (Informant #2, 6).

¹⁸⁴ Informant #7, 1.

¹⁸⁵ Informant #1, 6.

¹⁸⁶ Informant #10, 16. Informant #16, for example, did not recall experiencing any anti-Semitism or bias, but conceded that, in spite of graduating in the top of the class and serving on the Columbia Law Review, he did not apply for a summer position with any of the white-shoe firms because he believed such firms were only hiring "token" Jewish attorneys and not promoting them subsequently (2).

tell me about it?" [I asked]. She said, "Well, you already had a job offer from a firm that was very." She wouldn't have used this word—"egalitarian"—I don't know what word she used. She said, "And I thought it was a good firm, and I didn't see any reason why you should consider an offer from a Gentile firm." So, the point I'm trying to make . . . is that it worked both ways.¹⁸⁷

Another informant commented about the disapproval of his classmates upon learning of his decision to join a white-shoe firm:

I remember when I went to [a white-shoe firm] for the summer and came back from the summer, then when I announced I was going to go back there after graduation, a number of my classmates, particularly Jewish classmates, made it clear that they disapproved of my decision. I don't want to say made it clear, there are various ways of making things clear and it just infuriated me that they were drawing upon these stereotypes that get to them and they obviously did, because they are so fixed. [Stereotypes] count, they matter . . . There's no question that a stereotype was present. Then it subsisted for a while. I do think it isn't there today, but I could be wrong. It just really got me pretty upset, mostly disappointed in the people who otherwise, had good judgment.¹⁸⁸

The effective discrimination by the WASP firms resulted in the creation of a large pool of highly qualified attorneys from which the Jewish firms could pick and choose elite talent at their discretion. A partner at a Jewish firm recalled, "We hired nine people, of which six had continued into federal clerkships. And they were really scholastically outstanding: we had several editors and editors-in-chief who were authors of the Harvard Law Review . . . They were really first rate people."¹⁸⁹ One informant concluded, "the Jewish firms' edge was that they were getting the Jewish students at a period when the non-Jewish firms were actually not hiring,"¹⁹⁰ and another opined that [Jewish firms] "benefited from discrimination, [we] recruited a lot of Jewish attorneys."¹⁹¹ A third informant noted:

¹⁸⁷ Informant #11, 4–5. The informant later noted: "I can tell you that I was very reluctant to interview at [a large Jewish firm] because I didn't want to go to a Jewish firm" (6).

¹⁸⁸ Informant #12, 22.

¹⁸⁹ Informant #2, 8.

¹⁹⁰ Informant #15, 18.

¹⁹¹ Informant #16, 4.

In terms of recruitment I perceived there was, still at that point of time, this is now 1967, 1968, 1969, to 1970, a divide. That younger people who aspired to achieve, who were of the Jewish faith, had less opportunity, except in targeted areas, or targeted firms like [a large Jewish firm], to grow, whereas, non-Jews had no problems. So the opportunity was to get really talented people from that market, and later on from that market of women lawyers trying to achieve who likewise had the same barrier and so we pushed actively in those two areas because the chances of getting a well qualified Law Review graduates in one or another of those markets was greater than getting somebody who was not Jewish because he or she might go to [a particular white-shoe firm] or [another particular white-shoe firm].¹⁹²

Indeed, one informant suggested that some at Jewish law firms saw it as their mission to hire discriminated-against, elite Jewish lawyers: “One outstanding example was [a particular Jewish law firm] [which] . . . made its business to hire Jews—particularly Orthodox Jews—that came from law schools and couldn't get jobs otherwise.”¹⁹³

The existence of a large, talented pool of Jewish candidates, over-looked by the WASP firms and consequently available to work for the Jewish firms, was also confirmed by an informant recalling his job-hunting days:

I already had the understanding that the firms I would be looking at would be the Jewish firms, and it was not because I was looking for the Jewish firms, but I was looking for a job, and whether right or wrong, I do not know—all I can give you is personal experience—there was a feeling that the white-shoe firms downtown . . . were not interested in Jews. I can't say that [from] firsthand testimony, [but] I do know [that] when I came to [a growing Jewish firm] they hired me . . . relatively quickly, [and] I concluded [that] this would be anecdotal . . . [to] whatever discrimination or alleged discrimination or the perception of discrimination that was occurring in these large firms. . . . We were getting, in my opinion, the cream of the crop, and when I say “cream of the crop,” let's face it, there were non-Jews that were cream of the crop too, but many Jews would feel the same [way] that I did and therefore immediately opt for a firm like [ours]. When I came to the firm . . . there were fifty-four lawyers, and now there's . . . four or five hundred . . . with offices all over.¹⁹⁴

In conclusion, the Jewish firms benefited from near exclusive access to this talented pool of attorneys between the early 1950s and the mid 1960s, and to a lesser, yet still

¹⁹² Informant #22, 7–8.

¹⁹³ Informant #8, 5–6.

¹⁹⁴ Informant #10, 2–3.

significant, degree between the mid 1960s and the early 1980s—access that allowed them to grow at a pace faster than that of the WASP firms while recruiting and retaining top talent.

Curiously, and seemingly contrary to the basic logic of supply and demand, the pool of elite Jewish candidates throughout the 1950s and 1960s remained large, notwithstanding discrimination by the WASP firms and limited hiring by the growing, but still relatively small, Jewish firms. In other words, in spite of relatively weak demand for their services by discriminatory WASP firms and growing Jewish firms, the supply of talented Jewish lawyers graduating from elite law schools remained robust. The informants suggest a complex interplay of religious, cultural, and socio-economic considerations that drove many Jews to attend elite law schools in spite of grim hiring prospects. Some suggest the affinity between Judaism and Jewish studies and law.¹⁹⁵ One informant affirmed this affinity, stating:

When I started . . . I was in tax law. There are, I think, a greater proportion of people with a religious studies background in tax law than in anything else, because I think there is a parallelism. . . . Tax has an affinity [with the Talmud in that] you are [dealing with] a multitude of layered interpretations.¹⁹⁶

Others highlighted the commitment within the Jewish community to education:

I became a lawyer just because I wanted more education. I didn't have any lawyers in my family. I didn't know any lawyers but I went to law school because I wanted more education and I didn't have a particular career path.¹⁹⁷

Indeed, the connection between religious upbringing and education, on the one hand, and law, on the other, entailed a commitment not only to pursuing graduate education but to elite education, status, and credentials as building blocks for a future professional

¹⁹⁵ Informant #15, 1–3. The informant said later, “And I will say that, oddly enough, Talmudic study is a very similar experience to law” (6). See, generally, Auerbach, *Rabbis and Lawyers*, 42.

¹⁹⁶ Informant #4, 19–20.

¹⁹⁷ Informant #13, 1.

career. An informant confirmed:

From Ramaz [an orthodox Jewish school] I was admitted both to Columbia and to Harvard, and much to the disappointment of the people at Ramaz, I chose to go to Columbia. They would've liked me to go to Harvard, which says something about that. . . . I think I wanted to be a lawyer from the time I was ten years old. . . . There was no one in the family that I knew who was a lawyer . . . I think I liked dealing with words and writing . . . So . . . law seemed like an obvious extension of the kind of things that I was good at . . . I could read fast, I could articulate well, and so forth. . . . The only diversion was the possibility of going to Yeshiva to Rabbinical School. . . . Then I considered seriously for career reasons maybe I'd rather be a rabbi than a lawyer. [I] decided that while I might like studying to be a rabbi, I would never like the work, [whereas] even if I didn't like studying [the] law, I was sure I was going to like [practicing law], from what I could see.¹⁹⁸

Other informants describe a cultural background in which graduate school was an obvious extension of their upbringing, if not the only acceptable choice after college.¹⁹⁹

Particularly telling is the following account of an informant who describes his decision to attend law school as his only available option to avoid starvation:

I went to law school because, like many children of rabbis, it's a form of rebellion to not go into your father's profession. I found [being a rabbi] to be a very difficult profession—great physical and psychological toll. . . . So, being a rabbi was not for me. I had no scientific skills. Also, many of my classmates were [studying to be doctors]; in those days, it was the biggest accomplishment to be a Jewish doctor. . . . So, I didn't want to compete in the world of doctors. It was hard enough to get into medical school for Jews at the time. There were so many who wanted to be doctors. So, I took up a little art education, having zero money, no capital, [and] no abilities

¹⁹⁸ Informant #4, 1, 3.

¹⁹⁹ One informant described the cultural and educational background that led him to attend law school as follows:

Everybody, all our nephews and relatives were all doctors. My brother's a doctor, my cousins are doctors. I was the first lawyer in the family, I majored in sociology and my brother came in from medical school and said, "What do you do with sociology . . . you have to take chemistry." So I put myself through a year of chemistry to satisfy him. And I took calculus and math and said, "I don't want to be a doctor" (Informant #20, 12).

Another informant's account revealed similar influences. "It was, very frankly, it was the choice of being a doctor or being a lawyer. I couldn't stand the sight of blood. I had a large mouth at that time already and thought that the law would be an appropriate alternative" (Informant #22, 3). The same informant also discussed the relationship between the Jewish community and a strong educational drive: "From the get-go, education has been a cornerstone of those of the Jewish faith in terms of their religion and in terms of their home life and their experiences and the like. And the same is with Catholics by the way. There is a secondary reason in some areas and that is . . . a sense of patrimony about looking after one's own . . . There is some unity between Jews among compatriots as there is in Catholics. In terms of scholarship there are some Jews that do exceedingly well and there are some that do terribly. But the cornerstone of educational need and the requirement is beaten into you the first day" (9–10).

to open a business because there were very few Jews in business, unless they were running their parents['] business. . . . I learned not to starve to death. The only thing that was available to me was to get a law degree.²⁰⁰

While the informant's perception regarding law practice as a possible lucrative occupation was, as we have seen, somewhat mistaken, his reasoning is nonetheless revealing. He subjectively perceived his only career options as a rabbi, a doctor, a scientist, or an attorney.

Other informants identified a poor socio-economic background as the driving force behind attending law school; law school and a career as a lawyer represented not only a natural extension of an educational path, but also a ticket out of poverty.²⁰¹ One informant said:

Thompson Harris was a preparatory high school for city college and city college professors taught in the high school. If you wanted to be eligible to go to this high school, you had to pass an examination, and if you passed the exam, you obviously went. If you didn't pass, you went to the regular high schools. I was fortunate enough to go to Thompson Harris, which was a great educational experience. . . . [After WWII,] I finished at law school and then I got a fellowship at the London School of Economics, by which time . . . my wife was at the University of London.²⁰²

Similarly, another informant recalled:

[I] lived in Brooklyn for virtually all of my childhood in a two-family home. [I] went to [the] Horace Mann School [an elite prep school] [and] rode the subway for an hour and twenty minutes each day. . . . I remember in high school wanting to be a lawyer. I actually am one of those people that said that's what I'm going to be, and that was somewhere around the age of sixteen, so I never had any doubt.²⁰³

²⁰⁰ Informant #22, 1–3.

²⁰¹ A legal career was not uniformly perceived as a means of upward mobility. One informant noted, “We were not ‘upwardly mobile’ in the common sense. The American dream was not for [my father, a rabbi]. He did not get a benefit from it, and he had no interest in me having the benefit of it . . . I don't think [my father] was particularly interested in my becoming a lawyer, but he would have liked me to continue to study Jewish law” (Informant #3, 10).

²⁰² Informant #1, 3.

²⁰³ Informant #5, 1–2. Another informant recalled:

Then when I finished the sixth grade my parents, and I think it was particularly my mother, thought the Fort Lee public school system is not what she wanted for her child. So she and two other families banded together and they formed a carpool and enrolled us into a school called

One informant revealed, “[My parents] were not highly educated people. I have two older brothers. I was very fortunate to be able to have a good education. The schools were quite helpful with the financial drain at that time.”²⁰⁴

The robust supply of elite Jewish lawyers was thus not as sensitive to weak demand and challenging job prospects because, for many Jewish men, the decision to attend an elite law school was more than a mere cost-benefit analysis. Rather, it was the product of their upbringing, which emphasized education and scholarly pursuits as important and desirable values, commitment to graduate education, a perception that the law was a worthy alternative to a religious career, and a sense of debt to parental sacrifices that demanded a scholarly and thoughtful career path.²⁰⁵ The unique combination of effective discrimination against Jewish law students and attorneys by white-shoe firms and the commitment of Jewish students to enroll in elite law schools notwithstanding grim job prospects upon graduation thus resulted in the creation of a large talented pool of Jewish lawyers from which the growing Jewish firms recruited nearly exclusively.

C. The Transformation of Professional Ideology and the Flip Side of Bias²⁰⁶

The decline of the old, prevailing large law firm professionalism paradigm and the rise of

Horace Mann in New York City. There were two brothers in one family, one in another and I and we were the only children from New Jersey going to Horace Mann. So I went to school in New York. Most of my friends were from New York, but I still lived in New Jersey. The social scene was a little bit strange for me (Informant #12, 2).

²⁰⁴ Informant #6, 1.

²⁰⁵ An upbringing committed to education and excellence as a means of pursuing the American Dream and socioeconomic mobility is, of course, not unique to Jews and is common among other minority groups. See, e.g., Amy Chua, *Battle Hymn of the Tiger Mother* (New York: Penguin Press, 2011); Peter H. Huang, “Tiger Cub Strikes Back: Memories of an Ex-Child Prodigy about Legal Education and Parenting,” *British Journal of American Legal Studies* 1 (2012): 297–347, on upbringing and commitment to education among some Asian-American parents.

²⁰⁶ By the “flip side of bias,” I mean to denote the positive consequences of prejudice and contrast them with the usual negative outcomes of bias. See “An Interview with Jennifer Lee: What is Stereotype Promise?” <http://www.russellsage.org/blog/interview-jennifer-lee-what-stereotype-promise> (last visited July 10, 2013).

the business paradigm, what Russell Pearce has called a “paradigm shift,”²⁰⁷ played an important, and unexpected, role in the growth of the Jewish firms. As a result of a gradual ideological paradigm shift at large law firms—the decline of white-shoe ethos, paternalistic collegiality and secrecy,²⁰⁸ and the rise of a more explicitly competitive business ideology emphasizing the financial bottom line, profits-per-partners, an eat-what-you-kill ethos, and around the clock client service—the same prejudices, stereotypes, and bias that fueled and helped sustain effective discrimination against Jewish attorneys under the old ideology made Jewish attorneys and Jewish law firms desirable under the new model. That is, the paradigm shift in the underlying ideology of large law firms that replaced the prevailing white-shoe ethos with a more explicitly business-oriented notion of professionalism resulted in the “flip side of bias”; namely, it rendered the loathed “qualities” of Jewish lawyers under the old model—wealth maximizing, manipulative on behalf of clients, and instrumentalism, not to say conniving—into positive attributes of lawyering under the new one. The very same stereotypes that fueled prejudice against Jewish lawyers and Jewish law firms were now perceived as desirable qualities.²⁰⁹

The informants’ accounts confirm that the “flip side of bias” was a general phenomenon operating outside of the legal profession. For example, one informant stated, “The medical corps did not qualify for combat service because the general I.Q.

²⁰⁷ See Russell G. Pearce, “The Professionalism Paradigm Shift: Why Discarding Professional Ideology Will Improve the Conduct and Reputation of the Bar,” *N.Y.U. Law Review* 70 (1996): 1229–76; Eli Wald, “Glass Ceilings and Dead Ends: Professional Ideologies, Gender Stereotypes, and the Future of Women Lawyers at Large Law Firms,” *Fordham Law Review* 78 (2010): 2245, 2264–73. See also Richard A. Posner, *The Problematics of Moral and Legal Theory* (Cambridge, MA: Harvard University Press, 1999), 185–211.

²⁰⁸ One informant’s account of being promoted to partner demonstrates the old paradigm and its approach to disseminating information:

[A] hint was when I was invited to a lunch with the head of the firm, who invited all of the partners to his home on Long Island for lunch in the fall. And if you were invited there, and you were an associate, it was a pretty good sign . . . But I did not know when the partners made these decisions . . . I was called out of a deposition in Philadelphia and the head of the firm . . . told me I just went to partner. I had a hard time understanding what he was saying. He just sort of dumped it out. I went back into deposition and couldn’t tell anybody (Informant #12, 10–11).

²⁰⁹ See Wald, “The Rise and Fall of the WASP and Jewish Law Firms,” Part II.C.3.

was far below army standards. So, they took five Jewish kids from New York and put them in the medical corps so they could raise the general average so it became combat-worthy.”²¹⁰

Yet, they emphasize the interplay of the “flip side of bias” phenomenon with factors such as the possession of cultural and social capital, especially the notion of high intellectual self-esteem, in explaining their success.²¹¹ The same informant added:

Probably, in the back of my mind, there was the expectation that I would attend law school at some point. But, since I couldn't afford it, it was a vague hope. But then I got the scholarship at Yale, and that permitted me to participate in Yale activities, and after that, I went into the army, and then the G.I. Bill came along and that provided me with adequate funds.²¹²

Describing his experience at Harvard Law School one informant recalled a process of great intellectual growth, “I went to law school very unsophisticated and very ignorant. I did not know anything about law, about Harvard, or about much else related to the legal profession. But I was a pretty good soldier, and I went and did what I was supposed to do.”²¹³ Within a year, however, “All sorts of things happened to me in my second year at

²¹⁰ Informant #1, 2.

²¹¹ See Pierre Bourdieu, “The Forms of Capital,” in *Handbook of Theory and Research for the Sociology of Education*, ed. John G. Richardson (New York: Greenwood, 1986), 241–58; James S. Coleman, “Social Capital in the Creation of Human Capital,” *American Journal of Sociology* 94 (1988): 95, 100–101. On the impact of cultural and social capital on lawyers’ careers, see, e.g., Fiona M. Kay and John Hagan, “Cultivating Clients in the Competition for Partnership: Gender and the Organizational Restructuring of Law Firms in the 1990s,” *Law & Society Review* 33 (1999): 517, 542; Fiona M. Kay and John Hagan, “Raising the Bar: The Gender Stratification of Law-Firm Capital,” *American Sociology Review* 63 (1998): 728, 737; Ronit Dinovitzer, “Social Capital and Constraints on Legal Careers,” *Law & Society Review* 40 (2006): 445, 445–47, 451–52; Bryant G. Garth and Joyce Sterling, “Exploring Inequality in the Corporate Law Firm Apprenticeship: Doing the Time, Finding the Love,” *Georgetown Journal of Legal Ethics* 22 (2009): 1361, 1368; John P. Heinz et al., *Urban Lawyers: The New Social Structure of the Bar* (Chicago: University of Chicago Press, 2005), 69; John Hagan, “The Gender Stratification of Income Inequality Among Lawyers,” *Social Forces* 68 (1990): 835, 837; Jo Dixon and Carroll Seron, “Stratification in the Legal Profession: Sex, Sector and Salary,” *Law & Society Review* 29 (1995): 381, 382; David B. Wilkins, “Doing Well by Doing Good? The Role of Public Service in the Careers of Black Corporate Lawyers,” *Houston Law Review* (2004): 1, 27 (arguing that for black lawyers, a lack of social capital in the form of elite networks maintains or reinforces their disadvantage in the profession); John Hagan et al., “Cultural Capital, Gender and the Structural Transformation of Legal Practice,” *Law & Society Review* 25 (1991): 239, 239–44.

²¹² Informant #1, 2.

²¹³ Informant #3, 19.

law school. I became much more sophisticated and ‘worldly.’”²¹⁴ Tellingly, the informant never doubted his own capacity to grow so rapidly, to succeed, even excel at law school. Confident in his intellectual abilities, it was only a matter of time until he was to prove his talents. “I had been a young ‘hot shot’ student when I got out of law school.”²¹⁵

Another informant explained his decision to attend law school as follows: “[I] probably [chose law school] because . . . I like to read; I like intellectual exercises, and actually the affinity between law and mathematics, although using very different types of ways of the intellectual exercise, the logical exercise[s] are very similar.”²¹⁶ One informant explained that after graduating from law school he felt socially awkward. It was not merely that he self-selected out of interviewing with the large white-shoe firms because he thought they would not hire a Jew, or with the large Jewish firms because he thought they would not hire an Orthodox Jew. Rather, it was his perception that his lack of people skills would lead to failure in interviewing.²¹⁷ But, the informant reasoned, this notion of social awkwardness explains why he, and possibly other Jews, was interested in law. Many Jews thought that the only obstacle they had to overcome was social awkwardness. They never doubted their own abilities otherwise. Law was an “obvious” choice because “once you overcome the social factor, your mental capacities are there and Jews are confident in their ability to exercise judgment.”²¹⁸ Law schools, the informant concluded, “made it possible for Jews to play the game.”²¹⁹

Indeed, high intellectual self-esteem played a role not only in the success of Jewish law students at elite law schools and of Jewish attorneys at large firms, but it also helps explain the growth and success of Jewish law firms. One informant explained that since

²¹⁴ Informant #3, 20.

²¹⁵ Informant #3, 23.

²¹⁶ Informant #6, 3.

²¹⁷ Informant #14, 1.

²¹⁸ Informant #14, 1–2.

²¹⁹ *Ibid.*

there was no legal authority for a position he wanted to take, “I wrote [an] article which provoked the debate. In a way sometimes it's very useful to have the entire academic world take the opposite position because there must be something to your position if everybody in the academic world argues against it.”²²⁰ The point is not merely that the informant's position subsequently became the law on the issue; rather, it is that the informant, a practicing attorney, felt completely comfortable doing battle with leading scholars in the academic arena.

The informants highlighted the significance of familial and community support in developing high intellectual self-esteem which, in turn, allowed them to benefit from the flip side of bias and reap the benefits of positive stereotyping. Describing the reaction of his family to his decision to attend law school, one informant noted, “Oh, [they were] very proud. To have a kid go to Yale was beyond their dreams. So, there was nothing but great support. Not that they could afford anything, but they . . . approved heartily. And you know, it worked out well for me afterwards.”²²¹ Another reinforced the idea of strong cultural and familial support:

I was fifteen . . . [and] the career paths, I think . . . probably would have been either the rabbinate or law. And just sort of looking around, I thought the law was the more socially promoting, reinforcing kind of position. . . . The family was certainly supportive of me. I think at the time that I started law school, my father was either changing businesses or whatever it was, and at that time I even got a partial stipend or scholarship from Columbia Law, because it was something of a financial difficulty. . . . I cannot remember what I would call a serious discussion or even dispute over a career choice.²²²

Finally, another informant noted the importance of an upbringing in a cultural commitment to education to the development of cultural capital, stating, “The opposition [to law school] was only to the extent that people didn't think that you should be pursuing

²²⁰ Informant #17, 9–10.

²²¹ Informant #1, 5.

²²² Informant #4, 12.

secular careers at all. Even in those days, there were rabbis that would have preferred that I would have stayed on.”²²³

The stereotype of Jewish attorneys as learned experts, now a desirable quality under the new more competitive professional paradigm, was, according to the informants, consistent with their actual backgrounds. Describing his hobbies and interests as a child, one informant recalled:

If you mean before I was four and a half, there were no hobbies . . . [I was] taught to read, to ‘study,’ to pray, to carry out religious ritual and to count simple arithmetical operations . . . [growing up] I essentially had a five and a half day week; the day was from 8:45 to 6:30, Sunday through Thursday, and 9 to 12 Friday.²²⁴

Education took clear precedent over work. The same informant remembered, “Mostly, there was no time to work, because we did not work on the Sabbath and on Sunday I was at school all day. There was no real opportunity to work.”²²⁵ Further, “I never learned to do things with my hands. I, too, did not learn to do anything menial until I went out on my own, and had to learn to wash dishes and make beds.”²²⁶ The account is revealing exactly because the informant hailed from a poor socio-economic background. Not learning to make his bed was not an indication of a privileged background, rather, it was a reflection of commitment and devotion to learning and the intellectual over the mundane.

Another explained that he grew up in a culture in which commitment to education was a foregone conclusion, and graduate school was a default choice when one did not know what to do after college. When asked why he went to law school, the informant responded:

²²³ Informant #6, 2.

²²⁴ Informant #3, 3, 4.

²²⁵ Informant #3, 6.

²²⁶ Informant #3, 16.

I have no good answer for you. I'm not so sure that I knew what I was going to do as I went into my last year of college. I really had not pulled up my sleeves . . . But what happened was, I took the law school boards and I did very, very well. I can't say I stayed up nights, that I was going to save the world.²²⁷

Finally, commenting on the powerful interplay of commitment to education within the Jewish community and high intellectual self-esteem exhibited by Jewish lawyers, one informant jokingly noted:

It seems you have to be an ordained rabbi now to get on the law review. But the reason why, is because we [observant Jews] actually, I think, have an edge. As people were getting used to abstract thinking, and for legal reasoning, this was something that we had all done for a very long time . . . the basis, so much of the basis of law and civil law, whether it's, you know, torts or property law, is derived from the Judaic system and the problem, I think, with the whole method of reasoning and thinking [is] that it is so familiar to us. And [since selection to law review is] based on your first year's performance, I frankly think we had an unfair advantage.²²⁸

The “flip side of bias” phenomenon helped build the Jewish law firm's reputation. Under the new business model of professionalism, the thin religious identity of the Jewish firm—the product of the religious identity of its lawyers—served as a selling point to its clients. “But it may reflect a tendency that I've heard said rightly or wrongly about the stereotype of Jewish lawyers that they're always pushing to get ahead,” said one informant. “If you're pushing to get ahead, you're focusing on what you need to get ahead.”²²⁹

While the Jewish firms never cultivated an explicitly Jewish culture of legal practice, their perceived religious identity, one which “flipped bias” rendered desirable, arguably made law firms with a majority of Jewish lawyers more attractive to entity clients and, ironically, enabled Jewish law firms to actually benefit from bias and prejudice. An informant confirmed this perceived identity, stating:

²²⁷ Informant #10, 4–5.

²²⁸ Informant #15, 6, 8–9.

²²⁹ Informant #15, 29.

You have to understand that most of this is a perception . . . [It] is important to be seen by litigators because, how many people have ever seen me in court? That's how you get a reputation. You get a reputation by being seen with litigators. Just tell your clients, your students this one thing: it's a perception.²³⁰

VII. Conclusion

The interplay of diminished religious-based discrimination and increased client demand for corporate legal services provides the backdrop for the incredible success story of the Jewish law firm in New York City. The chapter identifies several factors, however, that combined to help explain the emergence and unique growth of the Jewish firm: the rise of inside counsel as decision-makers within large corporate entities regarding the engagement of outside counsel replacing discriminating executives; the emergence of Jewish firms at a time when individual visibility of superstar attorneys was still feasible and played a significant role in the building of firm-wide reputations; and the existence of a Jewish client base consisting of a large number of smaller entities. All of these factors, operating in the shadow of diminished anti-Semitism and religious-based discrimination, enabled the growth of Jewish firms.

Moreover, the relatively small number and size of the old WASP firms; their refusal to compete with the Jewish firms over the provision of “undignified” legal services, such as real-estate, bankruptcy and hostile takeovers, resulting in the de facto creation of Jewish pockets of practice in which the Jewish firms could prove their expertise and from which they crossed over to more “dignified” practice areas; effective discriminatory hiring and promotion practices by the old WASP firms against Jewish attorneys, which created a pool of talented entry-level and lateral Jewish lawyers from which Jewish law firms could cherry-pick; and the “flip side of bias” phenomenon all explain the unique

²³⁰ Informant #1, 7.

growth of Jewish law firms at a rate far exceeding that of the WASP firms.

Current practice realities in New York City and throughout the United States have changed significantly.²³¹ The informants suggest that Jewish lawyers presently face little to no systematic ethno-religious-based discrimination.²³² For instance, one informant noted, “There's no suggestion of anti-Semitism at the bar in New York . . . [Outside of New York City,] I don't know. I wouldn't like to try a case in Texas. Not because I'm Jewish, but because you can get home-towned.”²³³ Another opined: “You sort of had no choice, even if at your heart you were racist. You had to understand that the economics of the business could no longer support your racism.”²³⁴ One informant noted the current level of religious tolerance and accommodation afforded to Jewish attorneys.²³⁵ Moreover, to the extent it currently persists, religious discrimination reflects the opinions of the older generation within large firms. As one informant stated:

I think that when you look at what we would call the very established white-shoe firms, in many of their firms there really is what might be described as the old firm and the new firm . . . I remember I had a case, I tried a case . . . and one of the

²³¹ While large law firm systematic ethno-religious discrimination against Jews and Catholics is a thing of the past, some previously excluded groups still face significant hurdles and others experience implicit discrimination. On the glass-ceiling effect experienced by many women lawyers at large law firms see Cynthia Fuchs Epstein et al., “Class Ceilings and Open Doors: Women’s Advancement in the Legal Profession,” *Fordham Law Review* 64 (1995): 291–449; Deborah L. Rhode, “The ‘No-Problem’ Problem: Feminist Challenges and Cultural Change,” *Yale Law Journal* 100 (1991): 1731–93; Wald, “Glass Ceilings and Dead Ends,” 2250–64. On the experience of black lawyers at large law firms, see David B. Wilkins and G. Mitu Gulati, “Why Are There So Few Black Lawyers in Corporate Law Firms? 493–614. See also Maria Chavez, *Everyday Injustice: Latino Professionals and Racism* (Rowman & Littlefield, 2011).

²³² But some informants suggest that religious observers, Jewish or Christian, might still face some hurdles. For example, one informant opined: “And whether that [being a religious observer] would be a draw back in some firms, I don't know. I suspect it probably would. Here it does n't, but we're not a usual firm” (Informant #1, 12). Another noted: “It's true that Jews today are not suffering heavily the way it had been 50–60 years ago when firms as a practical matter did not hire Jews . . . it would be naive to think that [currently] there are not elements of prejudice and discrimination but its level is a lot less than it was” (Informant #10, 9).

²³³ Informant #10, 9.

²³⁴ Informant #11, 22.

²³⁵ Informant #15, 4-5. The informant further commented:

I think that culturally this firm [an old white-shoe firm] has been a super-meritocracy because really we only care about one thing, which is, talent. And if you do a good job, then nothing else matters and, in fact, the courtesy [to observant Jewish attorneys] is pretty overwhelming . . . the whole thing has changed and the courtesy has been absolutely overwhelming . . . And I think it really has to do with the fact that it's a meritocracy and a business that is very, so to speak, color blind (ibid.).

important witnesses in that case was a member of the board, who was a [senior] partner [at an old white-shoe firm]. I think it's fair to say that he had not covered himself in the handling of this situation. And I mentioned [to another partner at that firm] that I'd had [contact] with this particular partner and the reaction was, "Well, you have to understand, he's part of the old firm, he's not part of the new firm."²³⁶

Consequently, as old WASP firms hire and promote Jewish lawyers, and as Jewish firms hire and promote non-Jews, the Jewish firms, which never developed a distinctive professional Jewish culture, are losing their Jewish identity:

Our law firm is hardly a Jewish law firm anymore . . . we have offices all over the world in Germany and [China] and . . . and you can be sure the people working for us in Germany and [China] aren't Jewish, they are whoever they are and whatever they are is fine. So the firm, our firm, has expanded into the pluralistic world.²³⁷

That is, since the Jewish firms were Jewish only by discriminatory default, they gradually lose their Jewishness as they hire and promote non-Jews. An informant affirmed this fact, stating, "There were a number of non-Jewish, and today I would say it was a mixed firm. Largely, I don't know if it's fifty-fifty or two thirds/one third but very, very significant people in the firm are non-Jewish."²³⁸ Similarly, a partner at a non-Jewish firm described the composition of his firm as follows: "You know, the proportion now is probably, if I had to guess, I would say, a third to forty percent of the partners are Jewish, a third to forty percent [are] Catholic, and a third [are an]other [religious affiliation]."²³⁹

Indeed, contemporary practice realities in New York City nearly render the old divide among large law firms meaningless. One informant noted:

My favorite story [is] about [a particular old WASP firm], where a [a Jewish

²³⁶ Informant #11, 23–24.

²³⁷ Informant #21, 7.

²³⁸ Informant #2, 8. Another informant with a large Jewish firm estimated that thirty to forty percent of the firm's current partners are not Jewish, describing the change as the "Cravathization" of the Jewish firm (Informant #16, 4).

²³⁹ Informant #4, 8.

partner] I know, was head of the tax department. He and I were negotiating part of that deal that you see all bound in volumes. We had a whole group on the phone . . . He was trying to persuade me to do something in a different format. He says, “Look . . . you have to pay the tax [using a Yiddish phrase].” There was absolute silence, and I said, “Look guys, it's all right. I'll explain it to you.” But to me, that one telephone conference call represented how far we had come from 1960 to the year 2000 . . . or . . . 1998. That year he was—and I was—we were both very comfortable, and could talk in that language. So, it was within a lifetime, it was a big step forward.²⁴⁰

And another informant commented:

Our [Jewish] firm has expanded into the pluralistic world and the white-shoe firms have expanded into the pluralistic world, and we had a very funny experience because, at one point, we were talking to [a particular old WASP firm] about doing an arrangement together and [the old WASP firm], which really used to be one of the white-shoe law firms, sent their executive committee over to meet with our executive committee. Their executive committee was all Jewish, our executive committee was all Christian, and we commented on the fact that the world had really changed. And it has, it has. This is really astonishing.²⁴¹

As Jewish firms decline, has something of value been lost? The informants suggest that Jewish law firms were created because of discriminatory practice realities, and the decline of religious-based discrimination should lead to the decline of “Jewish” firms.

One informant pointed out:

From having dichotomized law firms, Jewish and un-Jewish . . . did you make a virtue out of a vice? The vice was anti-Semitism. The virtue was [that] there were some firms who took a few Jews. . . . The point is, it's like saying, “We'll put you in a concentration camp, but we'll be better, we'll give you bread . . . [and] put you out of the system.” So, somebody came to the rescue of a few people. There's no virtue; that's the point.²⁴²

Others echo the sentiment, suggesting that because Jewish law firms were Jewish

²⁴⁰ Informant #4, 15.

²⁴¹ Informant #21, 7–8. Informants at old white-shoe firms similarly described contemporary realities. For example, one informant opined, “At most of the large professional [law] firms it is true today that [one's religious identity does not constitute a barrier] and clearly it was a different situation back in the 50's and 60's, and after I became an associate here [a white-shoe firm] and they admitted their first Jewish partner, that alleviated the situation somewhat and over the years that's changed quite a bit” (Informant #19, 5–6).

²⁴² Informant #8, 15–16.

only by discriminatory default, such firms will disappear as Jewish attorneys become less and less religious.²⁴³ In fact, one informant stated:

I tend to believe that Jewish lawyers compartmentalize their [Jewishness] from the standpoint of law—they're as hungry as everybody else. What is good for their education, what is good for their practice . . . ? Maybe it shows the narrowness in terms of Jewish lawyers. Don't misunderstand me, they may go to a lecture [about Judaism] . . . or something . . . [and] they'll jump in and what not, but as a regular course, it's a luxury.²⁴⁴

The rise and growth of large Jewish law firms in the second half of the twentieth century is a remarkable success story of overcoming discrimination in the legal profession. Paradoxically, part of the very success of the Jewish firms is reflected in their demise by the early twenty-first century: because systematic large law firm ethno-religious discrimination against Jewish lawyers has become a thing of the past, the very reason for the existence of Jewish law firms has been nullified. As other minority groups, however, continue to struggle for equality within the profession's elite large law firms, can the experience of the Jewish firms serve as a "separate-but-equal" blueprint for overcoming contemporary forms of discrimination for women, racial, and ethnic minority attorneys?

Perhaps not. As this chapter establishes, the success of large Jewish law firms was the result of the coming together of numerous conditions and circumstances between 1945 and 1980, from the general decline of ethno-religious discrimination in American society and increased demand for corporate legal services; to the unique structure of the market for elite corporate legal services including the relatively small number and size of

²⁴³ See, generally, Alan M. Dershowitz, *The Vanishing American Jew: In Search of Jewish Identity for the Next Century* (Boston: Little Brown, 1997) (raising the possibility that, over time, a majority of lawyers in all large law firms will be Christian, if only due to the decline of the number of Jews in America and the corresponding decline in the number of Jewish lawyers). At the same time, with the increased secularization among American professionals, it is equally possible that, to borrow from Dershowitz, the vanishing religious lawyer would render the question of the religious identity of the large law firm meaningless.

²⁴⁴ Informant #10, 29.

large firms, their anti-competitive conduct, including staying out of undignified practice areas such as real-estate hostile takeovers, bankruptcy and even litigation allowing Jewish firms to establish themselves in these pockets of practice and the cross over to more dignified legal arenas, WASP firms' traditional and die-hard organizational habits and their discriminatory hiring and promotion practices; the rise of in-house counsel; the affinity of Jews to American law and the legal profession resulting in their flocking to law schools notwithstanding grim job prospects; and the flip side of bias phenomenon that has elevated the status and perception of Jewish lawyers as the dominant ideology of large law firms became more competitive and meritocratic. Such a unique combination of conditions and circumstances may never be replicated again.

To be clear, some of these conditions apply to some minority lawyers, for example, Joan Williams has opined that women lawyers may benefit from the flip side of bias as in-house counsel departments increasingly value stereotypically feminine qualities such as cooperative styles of practice and being a team player.²⁴⁵ But other key conditions are absent, for example, large law firms have become hyper-competitive and are unlikely to allow any newcomers the benefit of protected pockets of practice. As importantly, even if “separate-but-equal” styled law firms could succeed, the desirability of combating inequality by resorting to “separate-but-equal” institutions is likely to be a complex and controversial issue. Jewish lawyers, after all, did not choose to practice in Jewish law firms, they were forced into them by explicitly discriminatory practice realities. While implicit discrimination is still rampant in BigLaw, many minority lawyers today do have a choice to enter these institutions and some choose to do so hoping that equality can be

²⁴⁵ Michelle Coleman Mayes and Kara Sophia Baysinger, *Courageous Counsel – Conversations with Women General Counsel in the Fortune 500* (Leverage Media, 2011), 31 (quoting Joan Williams: “women have traditionally been under the pressure of not putting themselves ahead in the packing order, but rather, assuming a more attentive, helpful, emotionally intelligent role. These are the sort of things they were expected to do, but now, these same qualities are seen as being very effective for corporate legal leadership.”).

achieved by and from within large law firms rather than forced upon them by “separate-but-equal” competitors. Assuming other minority lawyers may choose to practice in “separate-but-equal” large law firms if such entities existed, would such institutions be desirable in a “post-gendered,” “post-racial” America?²⁴⁶

²⁴⁶ See, e.g., Anne-Marie Slaughter, “Why Women Still Can’t Have It All,” *The Atlantic* (July-Aug. 2012), available at <http://www.theatlantic.com/magazine/archive/2012/07/why-women-still-cant-have-it-all/309020/>; Sheryl Sandberg, *Lean In: Women, Work, and the Will to Lead* (New York: Alfred A. Knopf, 2013); Devon W. Carbado and Mitu Gulati, *Acting White? Rethinking Race in “Post-Racial” America* (Oxford: Oxford University Press, 2013).

VIII. Appendix

I interviewed twenty-two male Jewish lawyers who graduated from law school between 1945 and 1962, either joined a large New York City firm, WASP, Jewish, or mixed, or established their own, and practiced in New York City throughout their respective careers.²⁴⁷ I began by identifying a universe that consisted of the nineteen largest law firms in New York City in 1963,²⁴⁸ and excluded from the list one law firm that dissolved.²⁴⁹

In particular, the study benefited from the assistance of two knowledgeable sources—a New York City law professor who is an advisor to the Center for Jewish History in New York and a New York City law professor who is the director of a program in Jewish law and interdisciplinary studies. These informants were knowledgeable with respect to the experience of the Jewish lawyers who were the object of my inquiry and familiar with the history of New York City Jewish law firms. These sources were asked to review the list of large firms and suggest other New York City firms of which they were aware that were either a white-shoe firm, a Jewish law firm, or a mixed law firm. They confirmed that the list of large law firms included all the firms that are traditionally considered white-shoe firms. Based on their advice, I added to the list three law firms, two Jewish firms and one mixed firm, founded in the late 1960s, but after 1963. The final list of

²⁴⁷ Lateral lawyer movement between 1945 and 1962 was uncommon. See Eli Wald, “Lawyer Mobility and Legal Ethics: Resolving the Tension between Confidentiality and Contemporary Lawyers' Career Paths,” *Journal of the Legal Profession* 31 (2007): 199. A majority of the interviewees joined a law firm and have practiced with it ever since. Some interviewees did leave their respective firms to assume public positions and returned to the firms thereafter.

²⁴⁸ Large New York City law firms experienced steady growth between 1945 and 1965. While the internal ranking within the largest nineteen firms changed, the list itself was stable. The firms in the initial list were, in order of their size: Shearman & Sterling; White & Case; Cravath, Swaine & Moore; Dewey, Ballantine; Milbank, Tweed; Sullivan & Cromwell; Davis, Polk; Simpson, Thatcher & Bartlett; Cahill, Gordon; Kaye, Scholer; Paul, Weiss, Cleary, Gottlieb; Cadwalader; Donovan, Leisure; Rogers & Wells; Fried Frank; Weil Gotshal; Coudert Brothers; and Skadden, Arps. The largest law firm, Shearman & Sterling, had 134 attorneys, and the smallest, Skadden, Arps, had ten attorneys. Remarkably, the same firms were the largest law firms in New York City in 1981, although the internal ranking within the list changed. See above, Table 2.

²⁴⁹ Coudert Brothers dissolved in 2005. See Ellen Rosen, “The Complicated End of an Ex-Law Firm,” *N.Y. Times*, Feb. 9, 2007, C7.

firms consisted of twenty-one of the largest firms in New York City.

My unit of analysis was the Jewish male lawyer who graduated from law school between 1945 and 1962 and was interested in joining a large New York City law firm²⁵⁰ My focus in the study was the attorney's interest and decision to apply to law school, his law school experience, his experience with the large law firm job market after law school, and his career path (for example, attempting to join a white-shoe firm as opposed to joining or founding a Jewish firm). I wanted to study the ways and the extent, if any, that ethnic and religious-based considerations played a role or were perceived to have played a role in the career of the attorney, and in his understanding and perception of the organization of the large firm. The purposive universe was limited to partners who have remained with their respective firms and thus experienced not only hiring and promotion with the firm, but also had the perspective of long tenure and the opportunity to observe changes in the firm's employment practices, if any, over time.²⁵¹ From December 2004 through July 2005, I conducted twenty-two semi-structured interviews, which were all taped and transcribed verbatim. Page numbers in the informants' citations in this chapter refer to the pages of the transcribed interviews. I spoke with twenty partners at fourteen large law firms. On three occasions, I interviewed more than one partner from a firm, and, thus, I was able to corroborate much of the information.²⁵² I also spoke with two former partners at two additional law firms who currently hold public office. The respondents were told that their identity would be kept confidential.

Within the list of law firms, I contacted respondents by snowball sampling. After

²⁵⁰ The number of female attorneys who graduated from law school between 1945 and 1962, joined a large New York City firm, and continued to practice with the firm, was very low, and I decided to exclude them from the universe. Furthermore, I was interested in studying ethnic and religious-based discrimination and decided to avoid the separate and important question of gender discrimination. See generally Chambliss, "Organizational Determinants," 739–40 (asserting that the common tendency to treat women and racial minorities as a single undifferentiated group is misguided).

²⁵¹ While it would have enriched the study to have the perspective of attorneys from all law firms on the list, time and resource constraints did not allow for this.

²⁵² Interviewing a second partner at a firm was possible when more than one partner met the criteria: graduation from law school between 1945 and 1962 and continuous practice with the firm.

interviewing a partner, I asked him for a list of partners at other firms who would be the most knowledgeable about the experience of the cohort of Jewish lawyers I was studying. I contacted the referrals and continued the process. Snowball sampling can introduce bias into a study in that the sample firms and the respondents within the firms may not be representative of the universe, but rather of a selected group or network within a universe. These potential biases are always a concern.

In this case, I believe bias through snowball sampling is less of a concern. The purpose of the present chapter is not to generalize to a broad universe, but to explore ideas and perceptions about the growth of Jewish law firms in New York City. The qualitative interviews provided in-depth descriptions of the experiences of these lawyers and law firms. It is important to remember that the number of all large New York City law firms was small.²⁵³ Furthermore, within the list of law firms, the universe of study was restricted to Jewish male lawyers who graduated from law school between 1945 and 1962 and were still practicing with their respective firms. Within that small universe, my sample was relatively large, consisting of twenty-two interviews and sixteen law firms.²⁵⁴ Finally, in exploring the experience of Jewish male lawyers attempting to break into the large law firm sphere between 1945 and 1962, I was interested in the possibility of the existence of a network that possibly facilitated the effort. In any event, I contacted every candidate for interview identified by my snowball sampling.

²⁵³ The universe consisted of twenty-one law firms. The nineteenth “largest” firm in the universe had ten attorneys in 1963.

²⁵⁴ Snowball sampling resulted in a fairly robust list of twenty-four candidates for interviews. I contacted all twenty-four attorneys referenced by my interviewees. Two declined to participate in the study.