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Changing Roles and Relationships of Lawyers in Silicon Valley

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My theory is that what happened out here was a really unusual combination of events, which created a very wonderful thing. And part of that combination was that young lawyers in particular took a very fresh look at what it means to assist a client. And they gave these clients not only legal advice, but business advice, about how to run themselves and how to maneuver themselves, and how to get funded and all that. They were very full service. They were very much hand -- in -- hand with the client, and as a result, an industry grew up, which otherwise might not have, because the barriers to entry might have been too high. You had fledgling companies which had really bright people, you know, the Hewlett Packards and the Microsofts and Apple. They're really phenomenally visionary people who were not necessarily able to fund a company. And it took a combination of the technical expertise and vision on the part of the businesspeople, as well as vision on the part of the lawyers to help these little fledglings kind of get out of the nest. And if you had very traditional, conservative, risk -- adverse legal activity, I'm not sure that it would have ever happened, or it would have happened much more slowly. So, I happen to buy into this notion that whatever it was the lawyers did by partnering with their client, they've created an environment -- they've helped to create an environment that allowed a phenomenal growth of New Age, kind of thinking and business modeling and products.

law firms are just kind of struggling to come up with the right economic model to continue to grow, to continue to grow partner profits as much as a way to recruit lawyers, and to continue to be able to grow, and to attract clients. And so this equity in clients was born of the great Internet gold rush. But I think it's also reflective of the fact of the law firms as professional organizations are really struggling to tweak their business model which traditionally, and it's a pretty simple business model. They're selling time. There are only so many ways you can leverage that or get more value out of it. I think law firms now will be looking at ways to do the higher value-added work because that is what's going to be compensated at premium rates. And one of the ways to do that is through this equity investment. I20.F53

I think there's money to be made, you know. We can make way more money by putting together a deal and going public or whatever and being the successful business than we ever are going to make fighting and paying lawyers to, you know, to fight over something that's finite and isn't going to have the huge up side. I4.F65

Introduction

The world that law firms and lawyers in Silicon Valley inhabit has allowed, encouraged and reflected the development of new legal/business forms. These new forms have in turn called forth and entrenched a series of organizational dynamics and supporting structures that reinforce these new professional paradigms. A crucial outgrowth of the new institutional form of investing in a client's company has been a change in roles and relationships between lawyers and clients, and a redevelopment and redeployment of these categorical terms. These dynamics have meaning and implications for the organizational structure of the firms, for the relationships between lawyers within the firms, between lawyers and firms within the same organizational field, and for the monopoly market position of the profession.

This paper is part of a series of ongoing explorations of law firms that take equity in their Silicon Valley client's Pre-IPO companies as an integral part of their fee for representing these firms.[1] This paper examines the changing relationships between lawyers and their clients, as well as changing notions of what these terms mean. I propose that neoinstitutional theory provides a useful and robust mechanism for exploring

[1] This paper presents preliminary findings based on taped interviews of 1 to 1.5 hours with approximately 45 attorneys at 35 law firms in Silicon Valley, as well as several interviews with accountants and venture capitalists.

processes of innovative change in organizational practices, the dynamics of institutional adoption or rejection, and resultant shifting of organizational structures across organizational fields.

I approach law firms' investing in clients as institutions. I frame my inquiry as: What are the processes by which attorneys in law firms adopt and discard templates governing their roles and relationships with clients, given the institutionalized nature of the legal profession? Through this inquiry, I seek to explain an agentic process of change in the adoption of an organizational practice that leads to enabling shifts in the alignment of roles and relationships between lawyers and their clients, and a corresponding and subsequent redeployment of these terms. I suggest that any organizational analysis of law firms needs to take account of the unusual organizational structure of law firms and the ways in which the organizational field of these professional organizations is framed.

I propose that certain lawyers at certain firms, simultaneously and inconsistently enabled and constrained by the overlapping organizational fields in which they are embedded, began to innovate with their fee structures in the 1970's in an effort to develop long-term relationships with emerging companies and to further and deepen their relationships with capital providers. By the 1980's, firms began to institutionalize the representation of emerging companies and began to ask for an ownership interest (in the form of equity) in the companies in which they were investing. This allowed the firms to mitigate the risk of the emerging company developing, but failing to continue the relationship with the firm. It also allowed the possibility of an exaggerated return that would mitigate the risk of the non-emergence of the company. By the 1990's, with the internet dot-com explosion, lawyers and firms positioned through the prior two decades, began investing in their clients as a required part of their fee for representation. These lawyers were able to leverage their relatively high discretionary income, the extensive network of contacts and relationships with the venture community, and the skills they had acquired in emerging company representation, to play a crucial role in the development of the local economy.

As the lawyers' status changed from external, disinterested advisor, to internal, vested investor with the possibility for making great wealth, the roles and relationships between lawyers and clients changed. Lawyers came to be seen as a necessary part of a business team, and clients came to lawyers principally for 1) introductions to venture capitalists; 2) assistance in mimicking the normative mode of successful company presentation to the venture capitalist, 3) business advice and the sequencing of steps necessary for successful development, 4) to lend a visage of credibility and legitimacy to their enterprise by virtue of the representation by the firm, and 5) for independent financial investment.

Some unique features of law firms central to an organizational analysis

In order to consider the ways in which the legal organizations are different from traditional business organizations, and the implications these differences have for an institutional analysis, I briefly describe some of the salient features of law firm's organizational structure.

In general terms, law firms are composed of partners or members, all of whom have been lawyers for a minimum of 6 years, who are the owners of the firm, associates who are attorneys and enter into an employment relationship at-will with the firm, and support staff (secretaries, mail room, paralegal, etc.). As owners, partners owe a fiduciary relationship to one another and are jointly and severally liable for the actions of their fellow partners.[2] Law firms are also prohibited from having any outside (non-legal) ownership. As such, law firm do not have boards of directors, investors, or stockholders

[2] The ways in which attorneys have constructed and appropriated various legal vehicles such as limited liability corporations, limited liability partnerships, and other legal fiction entities for the purposes of limiting their liability and mimicking corporate environments will be the subject of a forthcoming article.

outside of the firm.[3] These lawyers have chosen to associate for a variety of reasons, which have changed over time and are different within between firms and within firms.

> But the ideology of lawyers, at least through my time, and seeing it play here with the younger lawyers here is that you want to be a stand-alone professional. And you affiliate with others to support what you're doing. But as far as the area you feel you're competent to perform in, you don't want to be reviewed by anybody else. You want to be the guy in charge or the person in charge. Independence is just the autonomy is very difficult in managing law firms to get people to surrender autonomy. I10f36

Law firms are managed by various and changing alignments of partners in the firm, who meet rarely. These managing partners maintain active legal practices.[4] In general, these committees and their delegated managing partners run the day-to-day affairs of the firm. They sign payroll checks and pay service providers, negotiate leases for the firm, make sure that cases are adequately staffed, screen prospective new clients to make sure there are no conflicts of interest that would bar the firm from the representation, settle disputes, and oversee the process through which firms determine in what way the profits at the end of the year should be divided, which represents their most crucial and contentious chore.[5] Law firms are also small by any corporate measure. While a few firms are now composed of a several thousand attorneys, divided over multiple cities and nations, it is still analytically useful to think of a law firm with 100 or more lawyers as large.

The management committees of these firms set and enforce policies of the firm. These policies govern internal organizational issues such as the number of hours that

[3]The reason for this legal prohibition was to prevent any limitation on the independence of a lawyer to provide objective advice to a client.

[4] Beyond the scope of this paper, and the subject of a forthcoming paper, will be an examination of the ways in which these prohibitions on outside ownership has been contested, and the ways in which law firm managers have increasingly become full-time business managers without legal practices.

[5] The lawyer is compensated by the firm with a base pay, and at the end of the firm's fiscal year, receives a bonus or draw from the money left over after expenses are paid (profit). The amount the partner receives is typically determined by an objective component which takes into account t he partner's contributions to the firm based on hours billed, size of their book of business, and dollar amount of new business generated. Consideration is also given to subjective factors, such as whether the partner played a management role in the administration of the firm, the degree to which the partner supervises junior attorneys, and publications or other public relations or advertising work performed by the partner. Consideration may also be paid to such political factors as how the partner is posit ioned within the hierarchy of the firm, whether the firm wishes to send a positively or negatively coded message to the partner in regards to his or her future prospects, and the firm may even take into account whether higher pay is necessary to prevent a defection by the partner.

associates and partners are expected to bill in a given year, the number of years before an associate will be considered for partnership, maternity leave policies, sex discrimination policies, vacation policies, and whether the firm should seek to grow through hiring more lawyers or lawyers in a particular specialty. They will also concern themselves with monitoring and enforcing compliance with external obligations imposed by the State, acting through state bar associations and other governing bodies. These obligations include ensuring that written retainer agreements are signed by prospective clients and that these agreements contain all of the provisions required by law, making sure the firm maintains separate client trust funds, and approving any arrangements with clients or strategic issues concerning cases that could expose the firm to liability, risk of non-payment, or professional embarrassment.

What makes a legal organization different from most business organizations, and most organizations which have been the subject of inquiry by institutional sociologists is that a law firm is owned by individual professionals who are each solely responsible for the development and management of their practices (Scott, 2001). Partners at these firms are each solely responsible for generating new clients, performing services for these clients, billing these clients, and ensuring that bills are collected. A large law firm will contain many partners in a variety of specialties. The most significant demarcation is between litigators and transactional attorneys. Litigators specialize in issues relating to dispute resolution in a courtroom setting, or at least within the shadow of a courtroom. Transactional attorneys specialize in the art of the deal, and are primarily concerned with corporate representation. Transactional attorneys are primarily and overwhelmingly the ones who are presented with the opportunity to represent Pre-Ipo companies.[6]

[6] It should be noted that this is a simplified explanation of a complicated schema of lawyer specialties. Litigators may be broken down into state court trial attorneys, appellate advocates, administrative court practitioners, for example, and these specialties are divided even further as you consider patent, bankruptcy, maritime, employment, toxic tort, tax, or class action law, to name just a few examples.

Law firms grow in two ways, principally. First, law firms, especially larger law firms, hire first year associates directly out of law school. Second, law firms hire lawyers from other firms, who become known as laterals. Law firms will typically hire laterals either to fill a perceived gap in the law firm's expertise or to leverage a market trend or opportunity.

> There was a time in the '80s when these things were exploding. You know, there was a rapid run-up in the size of law firms. And then some of them started to just totally destroy themselves. Once the mold [broke], it was acceptable to jump from firm to firm and take your book of business… So, that's the kind of phenomenon. It's changed the way for some, I think, in what the lawyer's role is as a professional. I10.F36

If the lateral is a partner, which is an increasing trend in the modern law firm, that partner will typically also bring one or more associates, and perhaps even a staff member such as a secretary or a paralegal. The partner is typically responsible for ensuring that the associates have sufficient work to qualify as a productive employee of the firm. The partner will also bring a book of business, or a collection of clients with whom the partner is currently representing or represents periodically.[7]

Thus, when law firms bring in laterals, they give an ownership interest and employment relationship to attorneys who have developed their skills, clients, and conceptions of control in other professional organizations. These partners are generally fully responsible for their own practices. The niche or market opportunity that they have been brought in to exploit is likely not a part of the practice that the other members of the firm understand, nor do they have an incentive to familiarize themselves with this area. It is left to the new lateral to exploit these opportunities.

Further, the lateral partner's conception of control may include experiences formed from the overlap of organizational fields in which the partner participated at the prior firm or through their practice. For example, firm2 may develop the view that large

[7] It is an extremely contentious process between the firm and the departing lawyer as to whether the client will remain with the firm or follow the attorney to the attorney's new firm, or even the degree of permitted contact between the departing attorney and the client in regard to the attorney's departure. This process and it s organizational ramifications will be the subject of a forthcoming paper.

corporate clients are increasingly engaging in acquisitions of other corporations. The firm's management committee may decide that they would better be able to serve their client's needs, and leverage a business and marketing opportunity, if they were to bring in one or two lateral partners skilled in mergers and acquisitions. Firm2 would approach a mergers and acquisitions partners at Firm1, and through a variety of incentives, lure those partners, and a couple of associates and staff to join Firm2.

However, firm2 may not realize that the organizational field that overlaps with mergers and acquisitions is the public offering stage of Ipo's. As such, the lateral partner has represented or partially represented emerging growth companies, holds substantial equity positions in a number of firms, sits on a variety of boards of emerging growth companies, and has an extensive network of contacts with venture capitalists. In short, the lateral partner and associates are deeply embedded in the organizational field of those who participate in entrepreneurial growth and development. If Firm2 is a 45 lawyer firm and it brings in 2 lateral mergers and acquisitions partners, who bring 3 associates with them, 10% of the firm has a conception of control and is deeply embedded in the organizational field of entrepreneurial representation.

Finally, associates in law firms, while formally employed by the law firm, may typically work closely with only 1 or 2 partners for the majority of their associate careers (5-8 years). As such, they will have a tendency to learn and adopt the conception of control of their mentor. Also, their professional development will take place within the organizational field of their mentors. Associates of partners within the organizational field of emerging growth company representation will interact with entrepreneurial clients, frequently interact with other attorneys who also represent emerging companies, attend seminars and professional development continuing legal education (CLE) series concerning emerging growth company representation, and subscribe to and read specialized trade journals concerning this organizational field. When, and if, they finally become partners themselves, they will be deeply embedded in the organizational field of emerging company representation, which will affect their practices.

Traditional roles and relations of transactional attorneys

-- INSERT FIGURE 1 --

Traditionally, clients go to see lawyers for legal advice or assistance. They seek the very skill law schools pound into students: the IRAC method of legal problem solving. IRAC is an acronym for Issue, Rule, Analysis, Conclusion. That is, clients are interested in presenting a subjective experiential occurrence from which the expert will determine a legally relevant fact pattern (issue), be knowledgeable of the applicable law (rule), apply the law to the fact pattern (analysis), and explain a conclusion. Clients may then determine a course of action from a range of possibilities whose attendant risks have been quantified and explained by the lawyer, who may then be asked to zealously implement that course of action. Critical within this traditional scenario are that the client is primarily seeking legal advice, from an independent, impartial and objective expert, in return for a specified and quantified monetary compensation.

Figure 1 illustrates the traditional paradigm of lawyer and law firm representation in a corporate transaction. The state creates and recognizes the profession of law. That is, it is the state which creates, legislates and regulates the designation of the category of attorneys, and which grants to them the right to charge monopoly rent and to exercise hegemony over certain matters which are deemed to be “legal”. It delegates member qualifications, regulations and ethical and professional rule making authority to state bar associations. Law firms follow the rules and regulations of the bas associations.

In a traditional model, as depicted in Figure 1, the lawyer, as a partner in, and therefore owner of, the law firm, owes a fiduciary duty to his or her fellow partners. The lawyer, acting on behalf of the law firm, represents the corporate client. The law firm bills the client for .1 of the lawyers billing rate for each 6 minutes of the lawyer's time, as specified in the written retainer agreement signed by both parties at the start of the representation. The lawyer owes a duty of zealous advocacy on behalf of the client, as well as a duty of objectivity, independence, and candor. The other side of the typical corporate transaction is similar with regard to the organizational structure of the employment agreement between the lawyer and the firm and the independent contractor agreement with the client. The lawyers on each side of the transaction are zealously representing their client's interests and will threaten, fight and negotiate to protect their clients' interests in concluding the transaction. After the completion of the transaction and payment to the lawyers, the relationships between the clients and their lawyers either ends, or begins anew on a separate, discrete matter.

-- INSERT FIGURE 2 --

Roles and Relations of Lawyers in Silicon Valley Pre-Ipo Representation

As illustrated by Figure 2, by contrast, the roles and relationships of lawyers and law firms in the Silicon Valley model are qualitatively different and more complex than the typical organizational and representational model of lawyering. In the Silicon Valley model, the client's primary interest is not legal help. Client's are primarily interested in obtaining introductions to venture capitalists who will provide a level of funding for their company, which will assist them in someday becoming a public company or selling their company to a public company, and making a lot of money ("plane money" in the language of the Valley). Clients know that Silicon Valley law firms are repeat players with respect to capital providers, are experienced investors, represent other information technology companies and are representatives of the investors themselves. Law firms have access to venture capitalists that most emerging growth companies lack and critically require.

The lawyer plays the role of matchmaker (Suchman, 1994). Law firms, once a decision has been made to accept a client, will contact the venture capitalist that the lawyer thinks will be most likely to fund the company. The lawyer has a store of knowledge as to who the venture providers are, the kinds of companies, sectors and markets in which the financer has invested or will likely invest, whether a potential financer is a prospect for first round financing, for pooling, or as a later subscriber.

> I've hooked up many examples of start-ups that have come to us who haven't been funded that we've taken on, and hooked up and introduced to funding sources, and got them funded and off and running. That is one of the things that we love to do. I17.F63

One of the few avenues to a venture capitalist, and the one most likely to be successful, is through law firms. These firms undertake their own level of screening, based on their perceptions of which companies are likely to go public. The firms then channel the companies into the form on which they think the venture capitalist will look most favorably.

> I'll be dealing with an entrepreneur, who meets with me, and we really hit it off, and the entrepreneur says I'd like you to help me get financing. So, what I do is I get out my Rolodex of really good contacts, and venture funds. Some of those contacts happen to be clients that I will represent on deals from time to time. They know me. They like me. This guy needs financing. So, I pick up the phone and say, hey I've got a business plan for you, here is what it is can I send it over? If I send it over, generally speaking it gets above the noise level. It's not that they are going to rollover and fund it automatically, but it gets above the noise level, because there is an introduction. It's a hell of a great service for an entrepreneur right? I4.F65

A more coercive form of matchmaking can also take place between the company and the law firm at the insistence of the venture capitalist. Client companies may also seek to be represented by the law firm because the venture capitalist whom the company has independently contacted tells the law firm to use a specific lawyer at a specific firm, and that this arrangement is a precursor to further contact (and potential funding) with the venture capitalist. If the company is already represented by a lawyer, the venture capitalist will insist upon the firing of that lawyer and the retention of the lawyer/firm that the venture capitalist chooses. If a certain percentage of stock has already been pledged to the company's lawyer, the venture capitalist may take the perspective that the pledged equity comes out of management's share, not from the venture capitalist's share and not from the new firm's share.

> we enjoy the position we do, because we -- we get deals done, both for the venture capitalists and for the companies. And there are investor terms, and there are company terms. And everybody sort of knows what's going to happen and what's going to fly and what isn't going to fly, and, in fact, it's the firms who you don't play at the major league level and are unfamiliar with the ways of getting these deals done, which is the ultimate goal, who can bring the whole thing to a grinding halt and say, well, start pushing for terms that the venture capital industry hasn't given for 15 years. I13.F8

The lawyer/firm that the venture capitalist insists upon will typically be someone at a prestigious firm who has and likely is representing the venture capitalist in negotiations with client companies, who has and likely is representing other client companies at the insistence of the venture capitalist.

> the real reason that the Valley has worked so well, you know, pretty well, which is that people all have relationships with each other. And they learn by doing business with each other to trust each other to a certain extent. And when you mix in somebody else who doesn't know the rules and tries to play by a different set of rules, it gets very inefficient. It gets very costly. I1.VC

Venture capitalists and the lawyers who are the objects of referrals from venture capitalists, insist that this arrangement reflects the efficiencies that are most conducive to a company obtaining financing and taking the steps necessary to become a mature, public company.

> It was a requirement of the business. Anytime these lawyers tried to come in and put on an advocate hat, they'd end up being more destructive then constructive. Again, the issues that ultimately made these companies succeed or fail, didn't have a lot to do with legal documents the kinds of things that lawyers like to get out of balance about. That's an important understanding for a lawyer to be successful. I8.f53

Those within the preferred lawyer-emerging growth company-venture provider network insist that the trust relationship which exists between the venture provider and the lawyer allows the lawyer to successfully act as a trusted business intermediary, rather than an advocate that would inspire distrust.

> These are people that the venture capitalists can feel are going to help the company run in a way that the venture capitalist is comfortable with and thinks is necessary to execute the business plan. So, part of it is, yeah, just a sense of prior relationships and business dealings, that, okay, this guy can do it. And your guy may be able to do it. I don't know. But this guy I know can do it, or will get it done, because he owes me, or there's a relationship there. I5.F22

In addition to gaining access, law firms, through their repeat player status, can also assist companies in four additional, interconnected, ways: 1) assisting the company by providing business advice and in the sequencing of steps necessary for successful development, 2) lending a visage of credibility and legitimacy to their enterprise by virtue of the representation by the firm, and 3) the law firm participants can serve as an independent financial provider.

Sequencing occurs as the lawyer helps the company to set its priorities, goals, organization, personnel, direction and timetable in such a way that it will maximize its market position and chances of Business advice.

> Ultimately many legal issues translate into business decisions. They are asking for, they are trying to make a business decision. They would not only like to know what the legal issues are, but what your advise is having probably done a lot more of whatever these transactions are then they have. What are the options available? What are the pros and cons of the options available, and what should I do? We take it to that level. Here is what I think makes the best sense for you from a business point-of-view. I4.F65

As illustrated in Figure 2, the lawyer who represents the firm may serve on the board of directors of the company. The lawyer/board member will be present at meetings that the lawyer has arranged with the specific financiers, will present the business plan the firms has assisted in preparing, and will outline the ways in which the company is similar with respect to other companies the venture capitalist has financed previously which have been successful. The lawyer as board member imposes a new set of roles and relationships on the lawyer. A board member has a fiduciary duty to the shareholders; the board member is charged with the nebulous and poorly understood role of maximizing shareholder value. The board of directors also owes a separate duty of guidance to the firm, including the firm's employees.

The lawyer simultaneously owes a fiduciary duty to his or her partners, who collectively are major shareholders in the firm, to his or her fellow board members, to the shareholders and the company, to himself or herself as shareholder, to the venture capitalist on the other side of the transaction who insisted upon the lawyer being hired and whom the lawyer simultaneously represents directly in other transactions. In addition, the venture capitalist's lawyer is likely to also be a shareholder, and both the

IPO Co's lawyer and the venture capitalists lawyer have an interest in potentially leaving their firms and going to work for IPO Co, and both lawyers and law firms have an interest in representing the Post IPO Co. Further, both firms have an interest in representing the founders of the company in their next venture.[8] Finally, since there are so few firms engaging in these practices, the lawyers have ties to each other that will influence their future work opportunities.

The very fact of the representation may lend a critical degree of legitimacy to the firm. In the highly stratified legal community, law firms, in accordance with their relative strata, are highly selective in determining which company to represent. From the law firm's perspective, they are looking to represent companies that have the best chances of going public and maintaining a strong stock price for the required insider time mandated by the SEC until they can sell their interest and realize a huge gain. The law firm typically requires a 2-5% stake in the company in exchange for their representation. The firm still bills for hours worked on the case, but this amount is often not actually billed to the client, but rather held until the company is better funded. If the company goes out of business, it is typically not anticipated that there will be an opportunity for any recovery. Venture capitalist's, when they receive a telephone call from an experienced emerging growth company lawyer, know that the law firm has taken an equity position and are making an investment of time and money based on the future prospects of the company.

> The only other thing that we will sometimes do, is if a client comes in and says you know, we'd really like to work with you. We don't have any money. We want you to do a lot of work, and if we don't get funded, you don't get paid. In that situation we'll say to them well that sounds like an equity caliber risk to us, and so we'd like – if we are going to take that

[8] The career mobility of founders of Pre-Ipo companies, regardless of the success or failure of any particular venture, often encompasses many companies, and will be the subject of a forthcoming paper.

> risk, and we agree that you are not going to pay us, what we would like to do is get an equity interest common stock in the company. I3.F32

In this way, the venture capitalist uses the firm as a first line level of review of the company, which derives legitimacy from the representation. This legitimacy has a market currency. It also has a coercive effect. Silicon Valley firms will require equity, even if the client company is in a position to pay the firms retainer and hourly billing rates, or even higher rates. Law firms that engage in this new institutional form have even written to clients whom they have represented in the past on an hourly billing rate to tell them the firm will no longer represent them. That is, the firm "drops them" as clients because they want to focus their resources on equity representation.

Law firms have always had management committees. In the usually model, the Cravath model, the management committees are composed of gray haired elders who decide whether there are conflicts of interest in representing a certain client, whether the work that the firm does is well suited to the type of representation required, whether the client or the client's cause is "appropriate" for the firm to accept, who will staff the case so as to maximize the firms resources, and how much retainer to require.

In the Silicon Valley model, management committees are composed of business-oriented people. They review business proposals or ideas of potential companies to see how strong a chance they have of going public. They examine the market for the company's products to determine relative degrees of market saturation. They consider the market structure and trends for investment in the sector of the economy the company will serve. They consider the firm's economic position with respect to the potential client and consider whether the firm is over-invested in a particular sector. The lawyer who brings the potential case to the management committee "pitches" the cause of the company.

> we don't really want to invest a lot of time in a venture that we don't think is going to be successful. We'll do that because we don't want to use our contacts, and refer something that just doesn't make sense to us, because that is a credibility issue. We'll do it to be candid with whomever we are talking to and see gee this may be great, and it may work. Here is what concerns us about it. I don't think it's in our sweet spot. I had this conversation with somebody yesterday. It sounds like you are developing interesting technology there, but we really don't understand the market opportunity. It sounds like a technology is in search of a product. It's probably not right for us. We think you are probably not going to get financed in the kind of financing that we can be helpful in. I4.F65

Absent from their consideration is the relative complexity of the legal issues involved. One of the striking features of law firms' representation of these Pre-IPO companies is that the legal work is not that complicated. The needs of the client, the reasons that the client sought out the firm and the firm agreed to represent the company, have little to do with traditional lawyering.

> A lot of the legal issues that you typically might knit pick over in a transaction document, is really pretty irrelevant, because 99% of what was going to determine whether this was a good transaction, had nothing to do with the dotting the i's and crossing the t's. It had to do with is the business going to be successful? You are going to lose your money irrespective of the legal document. If it was hugely successful, most of the issues that you dealt with didn't have to do with hugely successful issues having to do with huge success. I9.F53

The legal work that is actually done tends to be very repetitive, somewhat form driven, and operates within a short time frame in which interested parties have an incentive to make the deal work rather than argue the minutiae, the standard skill of the traditional lawyer. One venture capitalist that I interviewed, who asked not to be taped, laughingly showed me a financial document received from the Pre-Ipo company whom he had sent to the lawyer he prefers. He was laughing because the lawyer had used the same documents as for the last Pre-Ipo deal with another company, and had simply globally replaced the names, though without noticing that a variant on the old company's name had changed part way through the old document. The venture capitalist was not concerned by this development and appreciated the uniformity of the documents he saw from this lawyer.

Also absent from the client companies reasons for seeking a lawyer/law firm to represent them is that they are seeking impartial and objective counseling. Lawyers/firms, from the time they agree to represent the company, are personally involved at several levels – major equity holder, member of board of directors, business plan writer, financial networker, personal cash investor, strategic planner, etc.

The law firm can also serve as a financial provider for the company, separate and apart from their ability to help the company gain venture capitalist financing. The firm, individual partners, associates and even staff are allowed by the firm to invest in a client.[9] Some firms do this by managing an investment fund that each law firm strata can invest in up to a specified percentage; others by allowing the investment in specific companies. Further, the partner who brings in the case will likely require "directed share" or shares of stock that belong to the partner.[10] While the firm is an additional source of funding for the client company, it can still have a coercive side. The law firm that agrees to represent the company will likely require that its members be allowed to invest, regardless of whether the company wants the firm to invest. Companies that are hot financial prospects ("have legs") may be oversubscribed and might well refer different investors than the lawyers and staff of the firm, but must accept the terms anyway in return for the representation.

[9] The way in which firms organize their investment vehicles are myriad, and the effect that these choices have on firm's organizational structure are significant to understanding the impact of lawyer/firm investment. This subject is beyond the scope of this paper, and will be the subject of a forthcoming work. For purposes of this paper, I will refer to firm's investing in their clients.
[10] This partner can then distribute these to associates, which allows the creation of individual fiefdoms, makes working for certain partners and on certain business more lucrative than for others, and allows for 2 associates, members of the same cohort, in offices right next to each other, to have income and equity that may differ by hundreds of thousands of dollars.

Separate and apart from gaining the financial backing of the law firm, the growth oriented company may want the lawyers working on the case to invest as a means of incentivizing them to perform services in the best interests of the company and to privilege work done for the company over other obligations.

> small start-up companies have figured out, much to my chagrin, that it is true, that if individuals have an equity stake in a company, you give better attention to the company. The companies often like to get a partner and key associates working on an account to invest, because they figure their calls will be answered. I think it's a perversion of the professionalism of the lawyer, but that's what happens. I10.F36

> the clients love it because they say gee I'm incenting my employees to act in my best interest and giving them equity. I would like you to be incented the same way. That sounds great to me, so go for it. I31.F65

> I find that client's really like the fact that you are willing to put your money on their projects. It buys a tremendous amount of loyalty… It also buys a tremendous amount of good will. Plus, I've made a lot of money off of doing these deals. I17.VC2

In almost every interview, I have posed a hypothetical situation in which the lawyer calls the venture capitalist to discuss 2 matters—first, a situation in which the lawyer represents the emerging growth company, and second, a situation in which the lawyer represents the venture capitalist in a matter with another client. I anticipated that I would hear that the lawyer is a master of juggling hats, and can easily switch between zealously representing the interests of multiple clients. Instead, I repeatedly heard that the lawyer "considers the client to be the deal", or "considers the client to be the relationship." These lawyers answer my hypothetical by saying they speak to all parties as an invested, interested, intermediary, as a translator.[11]

> The company's there, and they need the funding, okay, so we've got to get this done. And their best hope may be that you can talk to that venture capital source -- As a friend, and say, "Look, this is a pretty good deal

[11] Some lawyers will try to justify the traditional professional ethics boundaries by saying that in this way, they give their client the most zealous representation possible

> here, you know, and these are good people, and they're in good shape, and blah, blah, blah," whereas, you know, you go in and it's, "We want this, we want that." The venture capitalist's going to say, "Man, I've got business plans stacked up from here to San Francisco."I don't need this. I13.F8

> there's money to be made, you know. We can make way more money by putting together a deal and going public or whatever and being the successful business than we ever are going to make fighting and paying lawyers to, you know, to fight over something that's finite and isn't going to have the huge up side. So, maybe, yeah, that—that mindset and the fact that equity is such a big deal around here possibly has an impact on the overall approach to things. I20.F53

Neoinstitutional Theory as Tool to Explain Change

Traditional neoclassical economic accounts see organizations as systems of coordinated and controlled activities that best serve the capitalist demands of efficiency (Selznick, 1969; DiMaggio and Powell, 1983; Heimer, 1999). In this account, bureaucracy, the rational and inevitable manifestation of capitalist competition, is an efficient and rational means of organizing and controlling the work environment so as to maximize production and minimize costs. For Weber, bureaucracy was so powerful of a controlling and organizing structural force that it had become an iron cage in which humanity was, essentially, "imprisoned perhaps until the last ton of fossilized coal is burnt." (Weber, 1952: 181) Organizational change, in the neoclassical account, is driven primarily through competition in the free market, through changes in demand and technological innovations that bring about new mechanisms of efficiency.

Neoinstitutional theory departs from the neoclassical economic account of the organization (Meyer and Rowan, 1977; DiMaggio and Powell, 1983, 1991; Fligstein, 1990; Suchman and Edelman, 1997; Heimer, 1999).[12] In so doing, it provides a powerful

[12]The term "institutionalization" was first used within organizational theory by Philip Selznick in the 1940's and 1950's. Neoinstitutional theory is contrasted with this "old" institutional theory. Three important points of departure should be noted between the two institutional accounts. First, Selznick's model viewed institutions as repositories of institutional values, and individual commitment as a result of normative socialization. Neoinstitutionalism focuses more on institutions as cognitive phenomena, emphasizing its taken-for-granted pre-conscious nature. Second, following Selznick (1957: 17), institutionalization occurs "when the tools of action become infused with value beyond the technical requirements of the task at hand." The environment is seen as a set of forces to which the organization must adapt. In contrast, neoinstitutionalism views environments as a source of institutional models. Third, while both models are highly critical of rational choice models, under the Selznick model internal cultures cause goal displacement, whereas in neoinstitutionalism, conformity with institutional models is the primary motivating impetus (Selznick, 1969; DiMaggio and Powell, 1983; Heimer, 1999).

theoretical tool for understanding organizations, and especially professions, as institutions. An institution is, following Jepperson (1991: 143),

> thus a social pattern that reveals a particular reproduction process. When departures from the pattern are counteracted in a regulated fashion, by repetitively activated, socially constructed control -- that is, by some set of rewards and sanctions -- we refer to a pattern as institutionalized. Put another way, institutions are those social patterns that, when chronically reproduced, owe their survival to relatively self-activating social processes.

An important aspect of institutionalization is its taken-for-granted nature. Deliberate, premeditated, purposefully chosen action is not institutional. The legal profession, a law firm, and a law firm's billing mechanism, can all be analyzed as institutions. They are culturally and historically embedded social patterns that are continually enacted and reenacted through routine procedures. (Jepperson, 1991; Suchman and Edelman, 1997)

Following DiMaggio and Powell (1991) organizational fields are the totality of the institutions which occupy a recognized area of institutional life. Central to the concept of an organizational field is that the field includes far more than competing firms, or even networks of organizations that interact, but to the mutually constitutive role of the "totality of actors that interact." (DiMaggio and Powell, 1991: 65). Analytically, to understand a given area of sociological inquiry, it is critical to look beyond the boundaries of a single firm or group of competing firms and consider the negotiated, contested, social and political constructs and ideological influences that enable and constrain an organizational field (DiMaggio and Powell, 1991; Harrington, 1994; Nelson and Trubek, 1992).

These fields include all of the organizations that serve some role or purpose in helping to define the institutions that make up the organizational field. This organizational field includes the mutually constitutive role played by firms that compete within the deeply stratified law firm environment, the lawyers who make up these organizations, the law schools that provide the educational setting through which these professionals develop, the state which grants a monopoly to lawyers to practice law and enforces rules of conduct, and a host of supporting institutions that enable and constrain the organizational field. Most importantly for my analysis, the organizational field that law firm lawyers inhabit is also composed of clients. Once an institutionalized billing mechanism is in place, an organizational structure develops around it that reflects, constitutes, and entrenches both those practices and the organizational structure. (Fligstein, 1991; DiMaggio and Powell, 1983)

Early neoinstitutional theory was often been critiqued, both from within and from without, for failing to provide a robust vehicle for understanding change. (Scott, 2001; Fligstein, 1990; Morill, 1999; Greenwood and Hinings, 1996) The implication of these early critiques was that that any sense of agency was lost within an institutional analysis as organizations blindly follow the institutional trends of the organizational fields in which they are embedded (Guthrie, 1999; DiMaggio, 1988; Emirbayer and Goodwin, 1994).

Agency, circumscribed within historically specific ideological, political, legal, and social constructions, has been observed in a number of circumstances in neoinstitutional work. (Guthrie, 1999; DiMaggio, 1988; Dobbin and Sutton, 1998; Scott, 2001; Fligstein, 1990). Agency, within the neoinstitutional framework, does not refer to action independent of, or exterior to the social structure in which the actor is embedded. Rather,

> All social action is a concrete synthesis, shaped and conditioned, on the one hand, by the temporal-relational contexts of action and, on the other hand, by the dynamic element of agency itself. The latter guarantees that that empirical social action will never be completely determined or structured. On the other hand, there is no hypothetical moment in which agency actually gets "free" of structure. (Emirbayer and Mische, 1988:1004; Scott, 2001)

In <u>The Transformation of Corporate Control</u> (1990), Neil Fligstein looks to the ways in which the political and legal system have interacted with organizations to construct socially approved conceptions of legitimate organizational practices. In this model, professionals have "conceptions of control", which are totalizing world-view, simplifying and filtering assumptions from which to perceive and analyze problems. Professionals' conceptions of control and the organizational fields they construct define how markets are structured. That is, they define a socially efficient definition of markets. The political and legal systems play important roles in approving or disapproving of organizational innovations. If these systems disapprove of organizational practices or conceptions of control, then they are no longer efficient, and must be reconstructed. As new innovations are approved, they diffuse and spread across organizational fields as other organizations in the same field copy the model of success and legitimacy and incorporate them into their own conceptions of control (Fligstein, 1990).

Fligstein's analysis is significant in that it offers both a micro level and macro level analysis of institutional dynamics. Fligstein's analysis incorporates individual actors struggling to give rise to new conceptions of control, enabled and constrained by the shifting characteristics of the organizational field in which they are embedded, to the mutually constitutive ways in which these conceptions of control spread across organizational fields.

Scott (2001) proposes that change occurs and can be studied with attention to a) the number and type of social actors, b) the nature of institutional logics, and c) the characteristics of governance systems. They note that we cannot consider social action separate and apart from the institutional structures in which they are embedded, and which simultaneously give rise to, reflect and entrench both the action and the structure, while also allowing for agency. “And social structures themselves are nested, groups within organizations or networks of organizations, organizations within fields, fields within broader societal and trans-societal systems.” (Scott, 2001:203). Scott describes the process of change as an ongoing, active, negotiated and contested process, the seeds of which are located within various overlapping institutional environments that make institutions vulnerable to change and resistant to change at different moments and in different contexts.

Calvin Morrill (1999) grounds institutional change as occurring through "interstitial emergence. . . which begins with pragmatic innovation of alternative practices among informal networks of players in overlapping organizational fields as they respond to real or perceived institutional failure." (Mann, 1999; 1986, 16) He identifies three overlapping historical moments in the emergence process. Innovation occurs as networks of social actors experiment with pragmatic solutions. A simultaneous critique of the existing institutional structure may also arise in such moments, which also provides a rhetorical vehicle for categorizing the changed practices and for identifying the deficiencies that gave rise to them. The second stage, mobilization, involves a kind of "tipping point" as the practices develop and deploy a host of supporting actors. A third stage, which Morrill labels structuration, occurs as the practices gain legitimacy and institutional recognition as the organizational field is reconfigured.

Greenwood and Hinings (1996) sets forth a framework for understanding organizational change by investigating the processes through which firms adopt, alter and discard templates for organizing. They differentiate between convergent change ("fine tuning") and radical change ("frame bending"), and between revolutionary change (swift and pervasive) and evolutionary change (gradual and occasional). Following Powell (1991), they highlight the ways in which "institutional fields may have multiple pressures providing inconsistent cues or signals, opening the possibility for idiosyncratic interpretation and either deliberate or unwitting variation in practices." (1996: 1029) The authors hypothesize that permeable boundaries between institutional fields provide the opportunity and increased likelihood of new archetypical templates to emerge.

Taken together, Fligstein, Scott, Morrill and Greenwood and Hinings put forward robust mechanisms for understanding processes of change from a neo-institutional perspective. I began with the observation that, in Silicon Valley, some lawyers, at some firms, at a specific historical moment and under specific economic conditions, have been able to play a crucial role as an intermediary between capital providers and emerging growth companies. From the observation that the roles and relationships between these lawyers and their clients have radically changed, I explore the processes by which attorneys in law firms adopt and discard templates governing their roles and relationships with clients, given the institutionalized nature of the legal profession.

The relevant point for a neoinstitutional analysis of law firms in Silicon Valley is that lawyers practices are so specialized, their clients so diverse, their normative modes of operation so unique, their organizational fields so differentiated from one another, that while still interacting within a firm environment, their practices are not easily subjected to oversight, review, or control.

> A lot of firms are feudal in their organization. They're fiefdoms, and you have certain vassals that would do your work, and certain serfs, and they work on your projects." And you have these boundary disputes [as] if there was a king, or some super thing. Nominally there wasn't, but when there was any crisis or any struggle over resources, it sort of boiled down to control of the business. I10.f36

Notwithstanding the general prohibition on not violating the laws of professional responsibility and not subjecting the firm to embarrassing situations, lawyers relations with their clients are both personal and varied. The firm may demand a level of productivity from its partners, by they will generally adopt a laissez faire attitude with respect to the ways in which they meet these goals. This is not intended to indicate that law firm lawyers are not deeply embedded in their organizational environment. Taken together, the general organizational structure of law firms most resembles various CEO's, each with their own conception of control.

Following Fligstein (1990) lawyers, and law firms, which developed the unique set of social relationships with venture providers, the unique set of business/legal skills with respect to developing companies, and an organizational structure that permitted these practices, created a market for their services. The lawyer as required team player of an emerging growth company, paid in equity, created a form of "sociological efficiency" that resulted from the interaction of organizational fields, organizations, and the social, political and legal fields. There was nothing a priori about the economic conditions of Silicon Valley that called forth the market for these services. Lawyers have no particular skill with respect to reading business plans or deciding which plans should be forwarded to venture capitalists. It was not necessary that venture capitalists permit and encourage a pipeline of information and contacts with lawyers. It is also not necessary, a priori from the perspective of market rationality, that lawyers insist on being paid in equity.

> I think for entrepreneurs, whose first love is really the technology and building the business, that one of the members of the team for that entrepreneur now is the lawyer. And so the lawyer's going beyond the technical legal documentation work into advising overall how the business can grow, can succeed, can fail, and plan accordingly. So, the lawyers, I agree, have become much more part of businesses like that… I11.F65

The organizational structure of firms in Silicon Valley enabled and constrained the ability of partners to innovate in the providing of reduced legal fees in the hopes of a long term relationship, which also played a crucial role in positioning them with respect to taking equity. At a basic level, firms below a certain size could not easily compete for this business, as they did not have the resources that would permit lawyers to spend time working on cases that did not provide a certain and predictable short term cash flow. Smaller firms could also not count on other, predictable casework to provide sufficient cash flow to the firm to allow it to wait until the emerging company obtained financing.

Of the firms with sufficient size and resources to accept the risk of not getting paid and to be able to wait to receive payment, the organizational field of some firms provided less opportunity for the partners to innovate with billing mechanisms for emerging companies. Many firms did not interact with emerging growth companies, such as firms specialized in litigation. Further, in the innovation/evolutionary-convergent stage of this practice, many partners with developed practices saw little reason to experiment with fee structures—that is, their institutional logic and conception of control did not invite a willingness to alter their traditional schemas.

> The practice to law is a front for getting equity in companies, just as public relations work, and consulting, and things like that is a front for getting equity in these companies, by providing a service needed by these companies, and saying all right we'll directly or indirectly provide the service, but we want equity… there are law firms in the Valley whose partners who have made significantly more on an annual basis for their equity investments, then they have from the practice of law. …where you have a substantial majority of your net income generated by equity, you become less and less of a professional, and more and more of an investor, who is using his law office as the honey to bring the bees. I2.F2

The organizational structure also prevented a number of firms from accepting this kind of work because they had taken the step of creating a policy that explicitly forbade a partner in the firm from accepting a case in return for equity or, in some cases, from accepting any cases in which the firm did not receive a significant retainer fee and a reasonable likelihood of payment. The firms that forbade these practices did so for what they considered sound financial and professional reasons. The taking of equity by a firm raises a host of conflicts issues and was seen as unprofessional, unseemly, and dissimilar from the practices of most large firms.[13] Some firms analogized these practices to the taking of cases on a contingency fee, which was strongly associated with the lower strata of firms. Such practices were more akin to the practices of "ambulance chasing" firms than the staid and dependable practices of the firms servicing corporate America. Some firms with national or international practices formed a policy against engaging in these practices, which constrained firms from leveraging the unique opportunities provided in Silicon Valley.

In the 1970's, a small network of lawyers who represented venture capital and investment banking clients began to provide legal services to emerging companies for reduced or no fees. The financiers would recommend to the emerging companies that

[13] The ethical conflicts which arise when lawyers and firms accept equity in their client's work, and the response of the professional bar to these practices, as well as the effects these practices have on the organizational structure of firms, will be the subject of forthcoming papers.

they approach the lawyers and firms who represented them. For the firms/lawyers, their rationales for accepting the companies were two-fold. On one hand, they were performing a service for the financiers, thereby deepening those lucrative relationships. On the other hand, the firms/lawyers hoped the companies would develop into established, financed corporations, which would then use the firm for its paid legal services. In essence, the firms were making an investment in the goodwill of the emerging companies with the hopes of a long-term financial relationship with the financiers and the emerging companies. The firms/lawyers also sent promising emerging companies to finance providers.

> there began to be a real partnership between lawyers and these young companies, where the companies were quite uninformed, unsophisticated, and lacked knowledge about how to go about getting money to grow their businesses. Well, the one thing the lawyers could do was to help almost -- it's like making some presentable for an interview, you know, a grooming candidate.Well, lawyers often performed grooming functions for these companies and taught them how to pitch themselves to venture capitalists, venture capitalists, and how to go about doing that in more and more sophisticated ways. I14.F24

These lawyers, who were trying to develop long term relationships with these entrepreneurial companies, worked closely with the companies and provided a wide range of services, both legal and business/strategic. As such, they developed an expertise in the successful development of emerging growth companies. They also developed an extensive network of connections to investors and venture capitalists.

> the lawyers married two different worlds. They married the business world, the unsophisticated babies, with the very sophisticated, vulture -- like venture capitalists, and they melded them. I21.F31

By the 1980's, these same firms began to experiment with asking for an ownership interest in the companies in which they were providing risky legal services. This equity effected a form of barter for legal services for firms that did not bill the company or reduced their billing fees, or in return for the risk of non payment from firms who deferred their payment until a funding source could be arranged.

The lawyers who represented these entrepreneurial companies themselves became more entrepreneurial, more willing to innovate and break from the organizational and professional structures in which they were embedded.

> the lawyers in big companies, middle managers and so on, often view themselves right or wrongly as rewarded for not screwing up. In other words it's not about taking chances…That breeds a very conservative mindset. A very cautious mindset. Out here, it's about entrepreneurism, and wealth creation…[the client says]I am a risk taker and I need help doing a transaction. I need it done quickly…I want to understand what the big issues are, and I want to get on with life. I don't need you to create the most perfect contract, and I don't need you to tell me every single legal issue that might come up, no matter how I4.F65

> traditionally, lawyers are, as you know, very conservative… Risk averse, and counsel clients to be risk averse. That was not going to work in Silicon Valley at the beginning, because these young clients were not at all typical. And if they got nothing but negative risk averse advice from the lawyers, they never would have taken off, okay? So, what the lawyers did in some ways was create an industry. I2.F2

By the 1990's, in addition to accepting cases with equity, mitigating risk of non-payment or failure to develop lucrative relationships, firms and/or individual attorneys in firms began investing their own money in exchange for equity purchased for a very low stock price. Lawyers positioned at firms of sufficient size and resources, who had already developed the networks and relationships with entrepreneurial companies through their initially providing free or reduced legal services and later receiving equity for their services, also had significant discretionary income.

They, and their firms, had already experienced the explosive development of the internet economy, with returns on investment frequently exceeding 1000% (known as a "10 bagger"). Stories of lawyers who invested received 1 million dollars or more on $100,000 investments, or stories of lawyers who received 5% of the equity of a company and realized gains of 10 to 100 million dollars quickly diffused across the industry.

The lawyers/firms who were positioned to do leverage these opportunities were the ones who had developed the extensive relationships with venture providers, both of sources of referrals to the venture providers and as recipients of emerging companies from the financers. This select group of firms/lawyers were repeat players with respect to the needs of Pre-Ipo companies.

Once they personally held significant equity positions, with the possibility of life changing riches, the incentive to lawyers/firms to actively and aggressively leverage the variety of skills they had developed led to dramatically changed role and relationships for the lawyers and the emerging growth companies. Lawyers re-wrote or provided templates to firms for business plans, developed market position and strategy, boosted sagging morale and kept companies focused, assisted the company in putting into place a team, introduced the companies to financiers with whom they had extensive relationships, served on the board of directors, and oversaw all aspects of the journey from Pre-Ipo through the Ipo.

> So, you had clients really pushing the lawyers to give them service, which wasn't your normal traditional cautious legal service. And I think these clients were lucky enough to get some of these very bright, very innovative young lawyers who were willing to look at things fresh and chose to do things differently than, you know, a traditional firm would. And it was very risk -- taking, very risk -- taking. I5.F22

In the 1990's law firms also began to institutionalize the process of accepting equity. Firms began to develop organized policies in regard to accepting equity.[14] There have come to be normative expectations for firm's representation of emerging growth companies and the roles and relationships that lawyers will play as intermediaries between venture providers and the emerging company. Firms that try to take more than the accepted amount of equity of a company, or who make investment demands above the normative level, risk being informally sanctioned through the extensive monitoring and surveillance that occurs among the venture community and between the firms.

[14] The ways in which individual attorneys accepting equity positions affected firms organizational structures, as well as the processes by which the organized bar association has reacted to the practices of firms accepting equity are the subject of forthcoming articles.

Conclusion

The practice of certain lawyers at certain law firms, who represent a particular type of client, of investing in those clients, has become an institutionalized practice. It has become an embedded social pattern that is enacted, reproduced and entrenched through the day-to-day activities of the participants in the organizational field of emerging growth company representation. Organizational analysts have warned of neoinstitutionalists concentration on the ability of organizations to constrain, focus on lack of agency, and emphasis on the role of organizations in creating isomorphisms, convergence, and conformity. (DiMaggio, 1988; Perrow, 1985; Fligstein, 1987; Scott, 2001) Professional organizations are seen as even more susceptible to isomorphic tendencies. (DiMaggio and Powell, 1983)

I suggest, however, that law firms organizational structures makes them peculiarly susceptible to opportunities for the deployment and contestation of diverse institutional logics. Lacking centralized control, and with partners in modern firms responsible for their practices, and with their practices based on their interactions with a diverse client base, the potential for innovative processes to take hold and compete for legitimacy is always present. I suggest that the history of law firms' representation of emerging growth companies followed a pattern of early innovation, undertaken as a complement to and in furtherance of an existing practice. As firms began accepting equity from their clients and assuming an ownership position thereby, more lawyers mobilized around the alternative practices. The internet dot-com gold rush of the 1990's brought forth an institutional acceptance and organizational legitimacy, which allowed for the reconfiguration of the organizational field.

This institutional acceptance remains partial, negotiated and contested, and subject to deployment by other institutional logics. As mentioned, many firms and lawyers categorically reject these practices as unprofessional or too potentially corrosive to the organizational structure. Other firms made decisions constraining innovation with these practices in distant offices without regard to local conditions, or firms and lawyer's form of legal practice did not lend themselves to the representations.[15]

As these practices became institutionalized, one supporting dynamic or structure that resulted was a dramatic change in the roles and relationships between lawyers and clients. Lawyers with repeat-player status and discretionary income, backed by powerful law firms, leveraged the reciprocal network of contacts with the venture community to secure a privileged position with respect to emerging growth companies. Lawyers as investors, both personally and through their firms, assumed the role of matchmaker, cheerleader, sequencer, strategic adviser, and deal-maker. Notions of independence, objectivity, distance, and zealous advocacy, or even of the provision of legal services, were de-emphasized or eliminated.

I also propose that the historical process by which lawyers for emerging growth companies leveraged their opportunities created a market for their services. Lawyers and law firms are barred by professional rules from having any shareholders or outside owners or directors of firms. By assuming large equity positions in emerging growth companies, law firms were able to earn a rate of return based on the value of the companies in which they held positions, rather than through their hourly billing rates. These lawyers/firms are fundamentally not practicing law, but rather have found a way to avoid competing with lawyers/firms that are practicing traditional legal services. By positioning themselves as essential parts of a emerging growth company's team, and leveraging the access they held through a reciprocal economic relationship with venture capital, actors were able to create a market for a new business form, and define themselves as having a privileged position with respect to that market. In so doing, a socially efficient market for their services resulted. That is, the lawyers' conceptions of

[15] The ways in which lawyers whose practices or firm policies constrain their ability to invest in their clients have nevertheless begun deploying the institutional logic of the new business lawyers, is the subject of a forthcoming paper.

control and the organizational fields they constructed defined how the market for their services was structured.